



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

An Act to consolidate certain enactments relating to town and country planning in Scotland with amendments to give effect to recommendations of the Scottish Law Commission. [27th July 1972]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### ADMINISTRATION

#### 1 Local planning authorities

(1) Subject to the provisions of this section the local planning authority for the purposes of this Act shall be—

- (a) in the case of a large burgh, the town council;
- (b) in the case of a county (including, subject as after-mentioned, any small burghs therein), the county council or, in the case of a county combined with another county for the purposes mentioned in section 118(1) of the Local Government (Scotland) Act 1947, the joint county council of the combined county; and
- (c) in the case of a small burgh, to the town council of which powers and duties have been transferred under section 2(2) of the Town and Country Planning (Scotland) Act 1932, the town council,

and the district of the local planning authority shall be the burgh or the county or the combined county, as the case may be.

- (2) Two or more local planning authorities may, with the consent of the Secretary of State, combine for any of the purposes of any provision of this Act on such terms and conditions as may be agreed between them and approved by the Secretary of State.
- (3) If it appears to the Secretary of State that the combination of any local planning authority with any other local planning authority or authorities for any of the purposes of any provision of this Act would be of public or local advantage he may make an order combining those authorities as respects their districts or parts thereof for such of the purposes aforesaid as are specified in the order:

Provided that the Secretary of State shall not make such an order except after holding a local inquiry unless all the authorities concerned have consented to the making of the order.

- (4) The provisions of Schedule 1 to this Act shall have effect with respect to the combination of authorities under this section.

## **2 Joint advisory committees and sub-committees**

The provisions of Schedule 2 to this Act shall have effect with respect to the establishment and functions of—

- (a) joint advisory committees of local planning authorities;
- (b) sub-committees of such committees and of planning committees described in paragraph 1 of Schedule 2 to this Act; and
- (c) sub-committees of joint planning committees appointed in pursuance of any combination of local planning authorities under section 1 of this Act.

## **3 Delegation of functions to officers of local authorities**

- (1) A local planning authority may delegate to any officer of the authority who in their opinion is suitably qualified or experienced for the purpose the function of determining all or any, or a specified class, of the following applications, that is to say—
- (a) an application for planning permission under Part III of this Act;
  - (b) an application for an approval required by a development order or by a condition imposed on the grant of planning permission;
  - (c) an application for a determination under section 51 of this Act of the questions whether the carrying out of operations on land or the making of any change in the use of land constitutes or involves development of the land and, if so, whether an application for planning permission in respect thereof is required having regard to the provisions of the development order;
  - (d) an application for consent under an order under section 58 of this Act to the cutting down, topping, lopping or destruction of trees;
  - (e) an application for consent under regulations under section 61 of this Act to the display of advertisements;
  - (f) an application for an established use certificate under section 90 of this Act.
- (2) A delegation made by a local authority under this section to an officer of theirs—
- (a) shall be made to the officer by name;
  - (b) may be made with or without restrictions or conditions; and

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- (c) may be withdrawn at any time by the delegating authority (either generally or in respect of a particular application), without prejudice to anything previously done by the officer thereunder.
- (3) Where a local authority have under this section delegated to an officer of theirs the function of determining applications, and the officer so requests in the case of any application specified by him, the delegating authority shall themselves, instead of him, determine the application.
- (4) Where any functions have under this section been delegated to an officer of a local authority, any determination by him of such an application as is referred to in subsection (1) of this section shall, if it is notified in writing to the applicant, be treated for all purposes as a determination of the delegating authority.
- (5) Where an action has been brought against an officer of a local authority in respect of an act done by him in the discharge or purported discharge of functions delegated to him under this section and the circumstances are such that he is not legally entitled to require the delegating authority to indemnify him, that authority may nevertheless indemnify him against the whole or part of any damages and expenses which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of was done in the discharge of those functions and that his duty required or entitled him to do it.
- (6) In relation to any functions delegated under this section by a local authority to an officer of theirs, any reference to the local planning authority in any enactment relating to those functions shall (subject to the terms of the delegation and so far as the context does not otherwise require) be construed as including a reference to that officer.

## PART II

### DEVELOPMENT PLANS

#### *Survey and structure plan*

#### **4 Survey of planning districts**

- (1) It shall be the duty of the local planning authority to institute a survey of their district, in so far as they have not already done so, examining the matters which may be expected to affect the development of that district or the planning of its development and in any event to keep all such matters under review.
- (2) Notwithstanding that the local planning authority have carried out their duty under subsection (1) of this section, the authority may, if they think fit, and shall, if directed to do so by the Secretary of State, institute a fresh survey of their district examining the matters mentioned in that subsection.
- (3) Without prejudice to the generality of the preceding provisions of this section, the matters to be examined and kept under review thereunder shall include the following, that is to say—
  - (a) the principal physical and economic characteristics of the district of the authority (including the principal purposes for which land is used) and, so far as they may be expected to affect that district, of any neighbouring districts;

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- (b) the size, composition and distribution of the population of that district (whether resident or otherwise);
  - (c) without prejudice to paragraph (a) of this subsection, the communications, transport system and traffic of that district and, so far as they may be expected to affect that district, of any neighbouring districts;
  - (d) any considerations not mentioned in any of the preceding paragraphs which may be expected to affect any matters so mentioned;
  - (e) such other matters as may be prescribed or as the Secretary of State may in a particular case direct;
  - (f) any changes already projected in any of the matters mentioned in any of the preceding paragraphs and the effect which those changes are likely to have on the development of that district or the planning of such development.
- (4) A local planning authority shall, for the purpose of discharging their functions under this section of examining and keeping under review any matters relating to the district of another such authority, consult with that other authority about those matters.
- (5) Subsection (1) of this section shall, as respects any period during which this section is in operation in part only of the district of a local planning authority, be construed as requiring a local planning authority to institute a survey of that part of that district and to keep under review matters affecting only that part of that district; and subsection (2) of this section shall, whether or not this section is in operation in the whole of such a district, have effect as if the power thereby conferred included power for a local planning authority to institute, and for the Secretary of State to direct them to institute, a fresh survey of part only of their district; and references in subsection (3) of this section to the district of a local planning authority or any neighbouring districts shall be construed accordingly.

## **5 Preparation of structure plans**

- (1) The local planning authority shall, within such period from the commencement of this section within their district as the Secretary of State may direct, prepare and send the Secretary of State a report of their survey under section 4 of this Act and at the same time prepare and submit to him for his approval a structure plan for their district complying with the provisions of subsection (3) of this section.
- (2) The said report shall include an estimate of any changes likely to occur during such period as the Secretary of State may direct in the matters mentioned in section 4(3) of this Act; and different periods may be specified by any such direction in relation to different matters.
- (3) The structure plan for any district shall be a written statement—
- (a) formulating the local planning authority's policy and general proposals in respect of the development and other use of land in that district (including measures for the improvement of the physical environment and the management of traffic);
  - (b) stating the relationship of those proposals to general proposals for the development and other use of land in neighbouring districts which may be expected to affect that district; and
  - (c) containing such other matters as may be prescribed or as the Secretary of State may in any particular case direct.

- (4) In formulating their policy and general proposals under subsection (3)(a) of this section, the local planning authority shall secure that the policy and proposals are justified by the results of their survey under section 4 of this Act and by any other information which they may obtain and shall have regard—
  - (a) to current policies with respect to the economic planning and development of the region as a whole;
  - (b) to the resources likely to be available for the carrying out of the proposals of the structure plan ; and
  - (c) to such other matters as the Secretary of State may direct them to take into account.
- (5) A local planning authority's general proposals under this section with respect to land in their district shall indicate any part of that district (in this Act referred to as an " action area ") which they have selected for the commencement during a prescribed period of comprehensive treatment, in accordance with a local plan prepared for the selected area as a whole, by development, redevelopment or improvement of the whole or part of the area selected, or partly by one and partly by another method, and the nature of the treatment selected.
- (6) A structure plan for any district shall contain or be accompanied by such diagrams, illustrations and descriptive matter as the local planning authority think appropriate for the purpose of explaining or illustrating the proposals in the plan, or as may be prescribed, or as may in any particular case be specified in directions given by the Secretary of State; and any such diagrams, illustrations and descriptive matter shall be treated as forming part of the plan.
- (7) At any time before the Secretary of State has under section 7 of this Act approved a structure plan with respect to the whole of the district of a local planning authority, the authority may with his consent, and shall, if so directed by him, prepare and submit to him for his approval a structure plan relating to part of that district; and where the Secretary of State has given a consent or direction for the preparation of a structure plan for part of such a district, references in this Part of this Act to such a district shall, in relation to a structure plan, be construed as including references to part of that district.

## **6 Publicity in connection with preparation of structure plans**

- (1) When preparing a structure plan for their district and before finally determining its content for submission to the Secretary of State, the local planning authority shall take such steps as will in their opinion secure—
  - (a) that adequate publicity is given in their district to the report of the survey under section 4 of this Act and to the matters which they propose to include in the plan;
  - (b) that persons who may be expected to desire an opportunity of making representations to the authority with respect to those matters are made aware that they are entitled to an opportunity of doing so; and
  - (c) that such persons are given an adequate opportunity of making such representations;and the authority shall, consider any representations made to them within the prescribed period.

- (2) Not later than the submission of a structure plan to the Secretary of State, the local planning authority shall make copies of the plan as submitted to the Secretary of State available for inspection at their office and at such other places as may be prescribed; and each copy shall be accompanied by a statement of the time within which objections to the plan may be made to the Secretary of State.
- (3) A structure plan submitted by the local planning authority to the Secretary of State for his approval shall be accompanied by a statement containing such particulars, if any, as may be prescribed—
  - (a) of the steps which the authority have taken to comply with subsection (1) of this section ; and
  - (b) of the authority's consultations with, and consideration of the views of, other persons with respect to those matters.
- (4) If after considering the statement submitted with, and the matters included in, the structure plan and any other information provided by the local planning authority, the Secretary of State is satisfied that the purposes of paragraphs (a) to (c) of subsection (1) of this section have been adequately achieved by the steps taken by the authority in compliance with that subsection, he shall proceed to consider whether to approve the structure plan; and if he is not so satisfied, he shall return the plan to the authority and direct them—
  - (a) to take such further action as he may specify in order better to achieve those purposes; and
  - (b) after doing so, to resubmit the plan with such modifications, if any, as they then consider appropriate and, if so required by the direction, to do so within a specified, period.
- (5) Where the Secretary of State returns the structure plan to the local planning authority under subsection (4) of this section, he shall inform the authority of his reasons for doing so and, if any person has made to him an objection to the plan, shall also inform that person that he has returned the plan.
- (6) A local planning authority who are given directions by the Secretary of State under subsection (4) of this section shall forthwith withdraw the copies of the plan made available for inspection as required by subsection (2) of this section.
- (7) Subsections (2) to (6) of this section shall apply, with the necessary modifications, in relation to a structure plan resubmitted to the Secretary of State in accordance with directions given by him under subsection (4) as they apply in relation to the plan as originally submitted.

## 7 **Approval or rejection of structure plan by Secretary of State**

- (1) The Secretary of State may, after considering a structure plan submitted (or resubmitted) to him, either approve it (in whole or in part and with or without modifications or reservations) or reject it.
- (2) In considering any such plan the Secretary of State may take into account any matters which he thinks are relevant, whether or not they were taken into account in the plan as submitted to him.
- (3) Where on taking any such plan into consideration the Secretary of State does not determine then to reject it, he shall, before determining whether or not to approve it—

- (a) consider any objections to the plan, so far as they are made in accordance with regulations under this Part of this Act;
  - (b) afford to any persons whose objections so made are not withdrawn an opportunity of appearing before, and being heard by, a person appointed by him for the purpose; and
  - (c) if a local inquiry or other hearing is held, also afford the like opportunity to the local planning authority and such other persons as he thinks fit.
- (4) Without prejudice to subsection (3) of this section, on considering a structure plan the Secretary of State may consult with, or consider the views of, any local planning authority or other persons, but shall not be under an obligation to consult with, or consider the views of, any other authority or persons or, except as provided by that subsection, to afford an opportunity for the making of any objections or other representations, or to cause any local inquiry or other hearing to be held.

## **8 Alteration of structure plans**

- (1) At any time after the approval of a structure plan for their district a local planning authority may submit to the Secretary of State and shall, if so directed by the Secretary of State, submit to him within a period specified in the direction, proposals for such alterations to that plan as appear to them to be expedient or as the Secretary of State may direct, as the case may be, and any such proposals may relate to the whole or to part of that district.
- (2) The local planning authority shall send with the proposals submitted by them under this section a report of the results of their review of the relevant matters under section 4 of this Act together with any other information on which the proposals are based, and sections 6 and 7 of this Act shall apply, with any necessary modifications, in relation to the proposals as they apply in relation to a structure plan.

### *Local plans*

## **9 Preparation of local plans**

- (1) A local planning authority who are in course of preparing a structure plan for their district, or have prepared for their district a structure plan which has not been approved or rejected by the Secretary of State, may prepare a local plan for any part of that district.
- (2) Where a structure plan for their district has been approved by the Secretary of State, the local planning authority shall as soon as practicable consider, and thereafter keep under review, the desirability of preparing and, if they consider it desirable and they have not already done so, shall prepare a local plan for any part of the district.
- (3) A local plan shall consist of a map and a written statement and shall—
  - (a) formulate in such detail as the authority think appropriate the authority's proposals for the development and other use of land in that part of their district or for any description of development or other use of such land (including in either case such measures as the authority think fit for the improvement of the physical environment and the management of traffic); and
  - (b) contain such matters as may be prescribed or as the Secretary of State may in any particular case direct.

- (4) Different local plans may be prepared for different purposes for the same part of any district.
- (5) A local plan shall contain, or be accompanied by, such diagrams, illustrations and descriptive matter as the local planning authority think appropriate for the purpose of explaining or illustrating the proposals in the plan, or as may be prescribed, or as may in any particular case be specified in directions given by the Secretary of State; and any such diagrams, illustrations and descriptive matter shall be treated as forming part of the plan.
- (6) Where an area is indicated as an action area in a structure plan which has been approved by the Secretary of State, the local planning authority shall (if they have not already done so), as soon as practicable after the approval of the plan, prepare a local plan for that area.
- (7) Without prejudice to the preceding provisions of this section, the local planning authority shall, if the Secretary of State gives them a direction in that behalf with respect to a part of a district for which a structure plan has been, or is in course of being, prepared, as soon as practicable prepare for that part a local plan of such nature as may be specified in the direction.
- (8) Directions under subsection (7) of this section may be given by the Secretary of State either before or after he approves the structure plan ; but no such directions shall require a local planning authority to take any steps to comply therewith until the structure plan has been approved by him.
- (9) In formulating their proposals in a local plan the local planning authority shall secure that the proposals conform generally to the structure plan as it stands for the time being (whether or not it has been approved by the Secretary of State) and shall have regard to any information and any other considerations which appear to them to be relevant, or which may be prescribed, or which the Secretary of State may in any particular case direct them to take into account.
- (10) Before giving a direction under the preceding provisions of this section to a local planning authority, the Secretary of State shall consult the authority with respect to the proposed direction.
- (11) Where a local planning authority are required by this section to prepare a local plan, they shall take steps for the adoption of the plan.

## **10 Publicity in connection with preparation of local plans**

- (1) A local planning authority who propose to prepare a local plan shall take such steps as will in their opinion secure—
  - (a) that adequate publicity is given in their district to any relevant matter arising out of a survey of the district carried out by them under section 4 of this Act and to the matters proposed to be included in the plan;
  - (b) that persons who may be expected to desire an opportunity of making representations to the authority with respect to those matters are made aware that they are entitled to an opportunity of doing so ; and
  - (c) that such persons are given an adequate opportunity of making such representations;

and the authority shall consider any representations made to them within the prescribed period.



- (2) When the local planning authority have prepared a local plan, they shall, before adopting it or submitting it for approval under section 12(4) of this Act (but not before the Secretary of State has approved the structure plan so far as it applies to the area of that local plan), make copies of the local plan available for inspection at their office and at such other places as may be prescribed and send a copy to the Secretary of State ; and each copy made available for inspection shall be accompanied by a statement of the time within which objections to the local plan may be made to the authority.
- (3) A copy of a local plan sent to the Secretary of State under subsection (2) of this section shall be accompanied by a statement containing such particulars, if any, as may be prescribed—
  - (a) of the steps which the authority have taken to comply with subsection (1) of this section ; and
  - (b) of the authority's consultations with, and their consideration of the views of, other persons.
- (4) If, on considering the statement submitted with, and the matters included in, the local plan and any other information provided by the local planning authority, the Secretary of State is not satisfied that the purposes of paragraphs (a) to (c) of subsection (1) of this section have been adequately achieved by the steps taken by the authority in compliance with that subsection, he may, within twenty-one days of the receipt of the statement, direct the authority not to take any further steps for the adoption of the plan without taking such further action as he may specify in order better to achieve those purposes and satisfying him that they have done so.
- (5) A local planning authority who are given directions by the Secretary of State under subsection (4) of this section shall—
  - (a) forthwith withdraw the copies of the local plan made available for inspection as required by subsection (2) of this section ; and
  - (b) notify any person by whom objections to the local plan have been made to the authority that the Secretary of State has given such directions as aforesaid.

## **11 Inquiries, etc. with respect to local plans**

- (1) For the purpose of considering objections made to a local plan the local planning authority may, and shall in the case of objections so made in accordance with regulations under this Act, cause a local inquiry or other hearing to be held by a person appointed by the Secretary of State or, in such cases as may be prescribed by regulations under this Act, by the authority themselves, and—
  - (a) subsections (4) to (6) of section 267 of this Act shall apply to an inquiry held under this section as they apply to an inquiry held under that section ;
  - (b) the Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing held under this section as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by a local authority.
- (2) Regulations made for the purposes of subsection (1) of this section may—
  - (a) make provision with respect to the appointment and qualifications for appointment of persons to hold a local inquiry or other hearing under that subsection, including provision enabling the Secretary of State to direct a local

planning authority to appoint a particular person, or one of a specified list or class of persons;

- (b) make provision with respect to the remuneration and allowances of a person appointed for the said purpose.

## **12 Adoption and approval of local plans**

- (1) After the expiry of the period afforded for making objections to a local plan or, if such objections have been duly made during that period, after considering the objections so made, the local planning authority may, subject to section 10 of this Act and subsections (2) and (3) of this section, by resolution adopt the plan either as originally prepared or as modified so as to take account of any such objections or of any matters arising out of such objections.
- (2) The local planning authority shall not adopt a local plan unless it conforms generally to the structure plan as approved by the Secretary of State.
- (3) After copies of a local plan have been sent to the Secretary of State and before the plan has been adopted by the local planning authority, the Secretary of State may direct that the plan shall not have effect unless approved by him.
- (4) Where the Secretary of State gives a direction under subsection (3) of this section, the local planning authority shall submit the plan accordingly to him for his approval, and—
  - (a) section 7 of this Act shall, subject to paragraph (b) of this subsection, apply in relation to the plan as it applies in relation to a structure plan;
  - (b) before deciding whether or not to approve the plan the Secretary of State shall consider any objections thereto which have been considered by the authority, but he shall not be obliged to cause an inquiry or other hearing to be held into the plan if any such inquiry or hearing has already been held at the instance of the authority; and
  - (c) after the giving of the direction the authority shall have no further power or duty to hold a local inquiry or other hearing under section 11 of this Act in connection with the plan.

## **13 Alteration of local plans**

- (1) A local planning authority may at any time make proposals for the alteration, repeal or replacement of a local plan adopted by them and may at any time, with the consent of the Secretary of State, make proposals for the alteration, repeal or replacement of a local plan approved by him.
- (2) Without prejudice to subsection (1) of this section, a local planning authority shall, if the Secretary of State gives them a direction in that behalf with respect to a local plan adopted by them or approved by him, as soon as practicable prepare proposals of a kind specified in the direction, being proposals for the alteration, repeal or replacement of the plan.
- (3) The provisions of sections 9(9) to (11), 10, 11 and 12 of this Act shall apply in relation to the making of proposals for the alteration, repeal or replacement of a local plan under this section, and to alterations to a local plan so proposed, as they apply in relation to the preparation of a local plan under section 9 of this Act and to a local plan

prepared thereunder, but as if the reference in section 12(4) (a) to section 7 of this Act were a reference to section 8 of this Act.

### *Supplementary provisions*

#### **14 Disregarding of representations with respect to development authorised by or under other enactments**

Notwithstanding anything in the preceding provisions of this Act, neither the Secretary of State nor a local planning authority shall be required to consider representations or objections with respect to a structure plan, a local plan or any proposal to alter, repeal or replace any such plan if it appears to the Secretary of State or the authority, as the case may be, that those representations or objections are in substance representations or objections with respect to things done or proposed to be done in pursuance of—

- (a) an order or scheme under section 1 of the Trunk Roads Act 1936, sections 1 and 4 of the Trunk Roads Act 1946 or section 1, 3 or 14 of the Special Roads Act 1949 (trunk road orders, special road schemes and ancillary orders);
- (b) an order under section 1 of the New Towns Act 1946 or section 1 of the New Towns (Scotland) Act 1968 (designation of sites of new towns).

#### **15 Default powers of Secretary of State**

- (1) Where, by virtue of any of the preceding provisions of this Part of this Act, any survey is required to be carried out, or any structure or local plan or proposals for the alteration, repeal or replacement thereof are required to be prepared or submitted to the Secretary of State, or steps are required to be taken for the adoption of any such plan or proposals, then—

- (a) if at any time the Secretary of State is satisfied, after holding a local inquiry or other hearing, that the local planning authority are not carrying out the survey or are not taking the steps necessary to enable them to submit or adopt such a plan or proposals within a reasonable period; or
- (b) in a case where a period is specified for the submission or adoption of any such plan or proposals, if no such plan or proposals have been submitted or adopted within that period,

the Secretary of State may carry out the survey or prepare and make a structure plan or local plan or, as the case may be, alter repeal or replace it, as he thinks fit.

- (2) Where under subsection (1) of this section the Secretary of State has power to do anything which should have been done by a local planning authority, he may, if he thinks fit, authorise any other local planning authority who appear to the Secretary of State to have an interest in the proper planning of the district of the first-mentioned authority to do that thing.
- (3) Where under this section anything which ought to have been done by a local planning authority is done by the Secretary of State or another such authority, the preceding provisions of this Part of this Act shall, so far as applicable, apply with any necessary modifications in relation to the doing of that thing by the Secretary of State and the latter authority and the thing so done.
- (4) Where the Secretary of State incurs expenses under this section in connection with the doing of anything which should have been done by a local planning authority, so much of those expenses as may be certified by the Secretary of State to have been

incurred in the performance of functions of that authority shall on demand be repaid by that authority to the Secretary of State.

- (5) Where under this section anything which should have been done by one local planning authority is done by another such authority, any expenses reasonably incurred in connection with the doing of that thing by the latter authority, as certified by the Secretary of State, shall be repaid to the latter authority by the former authority.

## **16 Supplementary provisions as to structure and local plans**

- (1) Without prejudice to the powers conferred on him by the preceding provisions of this Part of this Act, the Secretary of State may make regulations with respect to the form and content of structure and local plans and with respect to the procedure to be followed in connection with their preparation, submission, withdrawal, approval, adoption, making, alteration, repeal and replacement; and in particular any such regulations may—
- (a) provide for the publicity to be given to the report of any survey carried out by a local planning authority under section 4 of this Act;
  - (b) provide for the notice to be given of, or the publicity to be given to, matters included or proposed to be included in any such plan, and the approval, adoption or making of any such plan or any alteration, repeal or replacement thereof or to any other prescribed procedural step, and for publicity to be given to the procedure to be followed as aforesaid;
  - (c) make provision with respect to the making and consideration of representations with respect to matters to be included in, or objections to, any such plan or proposals for its alteration, repeal or replacement;
  - (d) without prejudice to paragraph (b) of this subsection, provide for notice to be given to particular persons of the approval, adoption or alteration of any plan, if they have objected to the plan and have notified the local planning authority of their wish to receive notice, subject (if the regulations so provide) to the payment of a reasonable charge for receiving it;
  - (e) require or authorise a local planning authority to consult with, or consider the views of, other persons before taking any prescribed procedural step;
  - (f) require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State may direct, to provide persons making a request in that behalf with copies of any plan or document which has been made public for the purpose mentioned in section 6(1)(a) or 10(1)(a) of this Act or has been made available for inspection under section 6(2) or 10(2) of this Act, subject (if the regulations so provide) to the payment of a reasonable charge therefor;
  - (g) provide for the publication and inspection of any structure plan or local plan which has been approved, adopted or made, or any document approved, adopted or made altering, repealing or replacing any such plan, and for copies of any such plan or document to be made available on sale.
- (2) Regulations under this section may extend throughout Scotland or to specified areas only and may make different provisions for different cases.
- (3) Subject to the preceding provisions of this Part of this Act and to any regulations under this section, the Secretary of State may give directions to any local planning authority, or to local planning authorities generally.—

- (a) for formulating the procedure for the carrying out of their functions under this Part of this Act;
  - (b) for requiring them to give him such information as he may require for carrying out any of his functions under this Part of this Act.
- (4) Subject to the provisions of section 231 of this Act, a structure plan or local plan or any alteration, repeal or replacement thereof shall become operative on a date appointed for the purpose in the relevant notice of approval, resolution of adoption or notice of the making, alteration, repeal or replacement of the plan.

## **17 Meaning of "development plan "**

- (1) For the purposes of this Act, any other enactment relating to town and country planning and the Land Compensation (Scotland) Act 1963, the development plan for any area (whether the whole or part of the district of a local planning authority) shall be taken as consisting of—
- (a) the provisions of the structure plan for the time being in force for that district or the relevant part of that district, together with the Secretary of State's notice of approval of the plan;
  - (b) any alterations to that plan, together with the Secretary of State's notices of approval thereof;
  - (c) any provisions of a local plan for the time being applicable to the area, together with a copy of the authority's resolution of adoption or, as the case may be, the Secretary of State's notice of approval of the local plan; and
  - (d) any alterations to that local plan, together with a copy of the authority's resolutions of adoption or, as the case may be, the Secretary of State's notices of approval thereof.
- (2) References in subsection (1) of this section to the provisions of any plan, notices of approval, alterations and resolutions of adoption shall, in relation to an area forming part of the district to which they are applicable, be respectively construed as references to so much of those provisions, notices, alterations and resolutions as is applicable to the area.
- (3) References in subsections (1) and (2) of this section to notices of approval shall in relation to any plan or alteration made by the Secretary of State under section 1S of this Act be construed as references to notices of the making of the plan or alteration.
- (4) This section has effect subject to Schedule 5 and Part I of Schedule 21 to this Act

## **18 Commencement of Part II and interim provisions**

- (1) The preceding provisions of this Part of this Act (other than section 16 and except so far as they enable any matter or thing to be prescribed), and Part I of Schedule 21 to this Act, shall come into operation on a day appointed by an order made by the Secretary of State.
- (2) The provisions of Schedules 3 and 4 to this Act shall have effect until they are repealed by an order made by the Secretary of State.
- (3) Schedule 5 to this Act shall have effect as respects the transition from the said Schedules 3 and 4 to the preceding provisions of this Part of this Act.

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- (4) Different days may be appointed under this section for different purposes and, in particular, different days may be so appointed for the coming into operation or repeal of the same provisions in different areas.
- (5) Any reference in this Part of this Act to the commencement of any provision thereof shall be construed as a reference to the day appointed for the coming into operation of that provision or, in the case of a provision which comes into operation on different days in different areas, shall, in relation to any area, be construed as a reference to the day appointed for the coming into operation of that provision in that area.
- (6) An order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into operation or repealed, including such adaptation of those provisions or of any other provision of this Act then in force as appears to him to be necessary or expedient in consequence of the partial operation of this Act (whether before or after the day appointed by the order).
- (7) The Secretary of State shall maintain and keep up to date a register showing the effect of orders made under this section in such a way as enables members of the public to inform themselves—
  - (a) as to the provisions which have come, or are to be brought, into operation or have been, or are to be, repealed, and on which dates and in relation to which areas; and
  - (b) as to whether, in the case of a particular area, any transitional provision has been made by such an order.
- (8) The register maintained under this section by the Secretary of State shall be kept at his principal offices in Edinburgh and shall be available for inspection by the public at all reasonable hours.

### PART III

#### GENERAL PLANNING CONTROL

##### *Meaning of development and requirement of planning permission*

#### **19 Meaning of "development" and "new development"**

- (1) In this Act, except where the context otherwise requires, "development", subject to the following provisions of this section, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land, that is to say—
  - (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building and (in either case) are not works for making good war damage or works begun after 7th December, 1969 for the alteration of a building by providing additional space therein below ground;

- (b) the carrying out by a local highway authority of any works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road;
  - (c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
  - (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;
  - (e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;
  - (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use thereof for any other purpose of the same class.
- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part thereof which is so used;
  - (b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended and exceeds the level of the land adjoining the site.
- (4) Without prejudice to any regulations made under the provisions of this Act relating to the control of advertisements, the use for the display of advertisements of any external part of a building which is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.
- (5) In this Act "new development" means any development other than development of a class specified in Part I or Part II of Schedule 6 to this Act; and the provisions of Part III of that Schedule shall have effect for the purposes of Parts I and II thereof.

## **20 Development requiring planning permission**

- (1) Subject to the provisions of this section, planning permission is required for the carrying out of any development of land.
- (2) Where on 1st July 1948 (in this Act referred to as "the appointed day") land was being temporarily used for a purpose other than the purpose for which it was normally used, planning permission is not required for the resumption of the use of the land for the last-mentioned purpose before 8th December 1969.
- (3) Where on the appointed day land was normally used for one purpose and was also used on occasions, whether at regular intervals or not, for another purpose, planning permission is not required—
  - (a) in respect of the use of the land for that other purpose on similar occasions before 8th December 1969; or

- (b) in respect of the use of the land for that other purpose on similar occasions on or after that date if the land has been used for that other purpose on at least one similar occasion since the appointed day and before the beginning of 1969.
- (4) Where land was unoccupied on the appointed day, but had before that day been occupied at some time on or after 7th January 1937, planning permission is not required in respect of any use of the land begun before 8th December 1969 for the purpose for which the land was last used before the appointed day.
- (5) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of the use of the land for the purpose for which it was normally used before the permission was granted.
- (6) In determining, for the purposes of subsection (5) of this section, what were the purposes for which land was normally used before the grant of planning permission, no account shall be taken of any use of the land begun in contravention of the provisions of this Part of this Act or in contravention of previous planning control.
- (7) Notwithstanding anything in subsections (2) to (4) of this section, the use of land as a caravan site shall not, by virtue of any of those subsections, be treated as a use for which planning permission is not required, unless the land was so used on one occasion at least during the period of two years ending with 9th March 1960.
- (8) Where by a development order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is the normal use of that land, unless the last-mentioned use was begun in contravention of the provisions of this Part of this Act or in contravention of previous planning control.
- (9) Where an enforcement notice has been served in respect of any development of land, planning permission is not required for the use of that land for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.
- (10) For the purposes of this section a use of land shall be taken to have been begun in contravention of previous planning control if it was begun in contravention of the provisions of Part II of the Act of 1947.

### *Development orders*

## **21 Development orders**

- (1) The Secretary of State shall by order (in this Act referred to as a "development order") provide for the granting of planning permission.
- (2) A development order may either—
  - (a) itself grant planning permission for development specified in the order, or for development of any class so specified; or
  - (b) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority (or, in the cases hereinafter provided, by the Secretary of State) on an application in that behalf made to the local planning authority in accordance with the provisions of the order.



- (3) A development order may be made either as a general order applicable (subject to such exceptions as may be specified therein) to all land, or as a special order applicable only to such land as may be so specified.
- (4) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (5) Without prejudice to the generality of subsection (4) of this section—
  - (a) where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval of the local planning authority to be obtained with respect to the design or external appearance of the buildings:
  - (b) where planning permission is granted by a development order for development of a specified class, the order may enable the Secretary of State or the local planning authority to direct that the permission shall not apply either in relation to development in a particular area or in relation to any particular development.
- (6) Any provision of a development order whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references in this Act to limitations) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.
- (7) For the purpose of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with the development plan, a development order may direct that any enactment passed before 13th August 1947 or any regulations, orders or byelaws made at any time under any such enactment, shall not apply to any development specified in the order, or shall apply thereto subject to such modifications as may be so specified.

#### *Applications for planning permission*

## **22 Form and content of applications**

Any application to a local planning authority for planning permission shall be made in such manner as may be prescribed by regulations under this Act, and shall include such particulars, and be verified by such evidence, as may be required by the regulations or by directions given by the local planning authority thereunder.

## **23 Publication of notices of applications**

- (1) Provision may be made by a development order for designating the classes of development to which this section applies, and this section shall apply accordingly to any class of development which is for the time being so designated.
- (2) An application for planning permission for development of any class to which this section applies shall not be entertained by the local planning authority unless it is accompanied—

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- (a) by a copy of a notice of the application, in such form as may be prescribed by a development order, and by such evidence as may be so prescribed that the notice has been published in a local newspaper circulating in the locality in which the land to which the application relates is situated ; and
  - (b) by one or other of the following certificates, signed by or on behalf of the applicant, that is to say—
    - (i) a certificate stating that he has complied with subsection (3) of this section and when he did so ; or
    - (ii) a certificate stating that he has been unable to comply with it because he has not such rights of access or other rights in respect of the land as would enable him to do so, but that he has taken such reasonable steps as are open to him (specifying them) to acquire those rights and has been unable to acquire them.
- (3) In order to comply with this subsection a person must—
- (a) post on the land a notice, in such form as may be prescribed by a development order, stating that the application for planning permission is to be made; and
  - (b) leave the notice in position for not less than seven days in a period of not more than one month immediately preceding the making of the application to the local planning authority.
- (4) The said notice must be posted by affixing it firmly to some object on the land, and must be sited and displayed in such a way as to be easily visible and legible by members of the public without going on the land.
- (5) The applicant shall not be treated as unable to comply with subsection (3) of this section if the notice is, without any fault or intention of his, removed, obscured or defaced before the seven days referred to in subsection (3)(b) of this section have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement; and, if he has cause to rely on this subsection, his certificate under subsection (2)(b) of this section shall state the relevant circumstances.
- (6) The notice mentioned in subsection (2)(a) or required by subsection (3) of this section shall (in addition to any other matters required to be contained therein) name a place within the locality where a copy of the application for planning permission, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during such period as may be specified in the notice, not being a period of less than twenty-one days beginning with the date on which the notice is published or first posted, as the case may be.
- (7) An application for planning permission for development of any class to which this section applies shall not be determined by the local planning authority before the end of the period of twenty-one days beginning with the date of the application.
- (8) If any person issues a certificate which purports to comply with the requirements of subsection (2)(b) of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (9) Any certificate issued for the purpose of this section shall be in such form as may be prescribed by a development order.

## **24 Notification of applications to owners and agricultural tenants**

- (1) Without prejudice to section 23 of this Act, a local planning authority shall not entertain any application for planning permission unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say—
- (a) a certificate stating that, in respect of every part of the land to which the application relates, the applicant is the proprietor of the dominium utile or is the lessee under a lease thereof;
  - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, were owners of any of the land to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice;
  - (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in the last preceding paragraph as are specified in the certificate (setting out their names, the addresses at which notice of the application was given to them respectively, and the date of the service of each such notice), that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
  - (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) of this subsection, that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) of this subsection and that he has been unable to do so.
- (2) Any such certificate as is mentioned in paragraph (c) or paragraph (d) of subsection (1) of this section shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (being a date not earlier than the beginning of the period mentioned in paragraph (b) of that subsection) been published in a local newspaper circulating in the locality in which the land in question is situated.
- (3) In addition to any other matters required to be contained in a certificate issued for the purposes of this section, every such certificate shall contain one or other of the following statements, that is to say—
- (a) a statement that none of the land to which the application relates constitutes or forms part of an agricultural holding;
  - (b) a statement that the applicant has given the requisite notice of the application to every person (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, and setting out the name of each such person, the address at which notice of the application was given to him, and the date of service of that notice.
- (4) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b), (c) or (d) of this section, or by a certificate containing a statement in accordance with subsection (3)(b) of this section, the local planning

authority shall not determine the application before the end of the period of twenty-one days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as therein mentioned, whichever is the later.

- (5) If any person issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (6) Any certificate issued for the purposes of this section shall be in such form as may be prescribed by a development order; and any reference in any provision of this section to the requisite notice, where a form of notice is prescribed by a development order for the purposes of that provision, is a reference to a notice in that form.
- (7) In this section " owner " in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than ten years, and " agricultural holding " has the same meaning as in the Agricultural Holdings (Scotland) Act 1949.

## **25 Publicity for applications affecting conservation areas**

- (1) This section applies where an application for planning permission for any development of land is made to a local planning authority and either—
  - (a) the development would, in the opinion of the authority, affect the character or appearance of a conservation area; or
  - (b) the development is of a kind specified by the Secretary of State for the purposes of this section and in respect of land in or adjacent to a conservation area.
- (2) The local planning authority shall—
  - (a) publish in a local newspaper circulating in the locality in which the land is situated; and
  - (b) for not less than seven days display on or near the land, a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it. will be open to inspection by the public at all reasonable hours during the period of twenty-one days beginning with the date of publication of the notice under paragraph (a) of this subsection.
- (3) The application shall not be determined by the local planning authority before both the following periods have elapsed, namely—
  - (a) the period of twenty-one days referred to in subsection (2) of this section ; and
  - (b) the period of twenty-one days beginning with the date on which the notice required by that subsection to be displayed was first displayed.

*Determination by local planning authorities of applications for planning permission*

**26 Determination of applications**

- (1) Subject to the provisions of sections 23 to 25 of this Act, and to the following provisions of this Act, where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and—
  - (a) subject to sections 33, 39, 68 and 75 to 78 of this Act, may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
  - (b) may refuse planning permission.
- (2) In determining any application for planning permission for development of a class to which section 23 of this Act applies, the local planning authority shall take into account any representations relating to that application which are received by them before the end of the period of twenty-one days beginning with the date of the application.
- (3) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection (1)(b), (c) or (d) of section 24 of this Act, or by a certificate containing a statement in accordance with subsection (3)(b) of that section, the local planning authority—
  - (a) in determining the application, shall take into account any representations relating thereto which are made to them, before the end of the period mentioned in subsection (4) of that section, by any person who satisfies them that he is an owner of any land to which the application relates or that he is the tenant of an agricultural holding any part of which is comprised in that land; and
  - (b) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with the preceding paragraph.
- (4) In determining any application for planning permission to which section 25 of this Act applies, the local planning authority shall take into account any representations relating to the application which are received by them before the periods mentioned in subsection (3) of that section have elapsed.
- (5) Before a local planning authority grant planning permission for the use of land as a caravan site, they shall, unless they are also the authority having power to issue a site licence for that land, consult the local authority having that power.
- (6) In this section " site licence " means a licence under Part I of the Caravan Sites and Control of Development Act 1960 authorising the use of land as a caravan site and " owner" and " agricultural holding" have the same meanings as in section 24 of this Act.

**27 Conditional grant of planning permission**

- (1) Without prejudice to the generality of section 26(1) of this Act, conditions may be imposed on the grant of planning permission thereunder—
  - (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as

appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission ;

- (b) for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period:

Provided that conditions may not be imposed by a local planning authority under paragraph (a) of this subsection for regulating the development or use of any land within the area of another local planning authority except with the consent of that authority.

- (2) Any planning permission granted subject to such a condition as is mentioned in subsection (1)(b) of this section is in this Act referred to as " planning permission granted for a limited period ".
- (3) Where—
  - (a) planning permission is granted for development consisting of or including the carrying out of building or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition (not being a condition attached to the planning permission by or under section 38 or 39 of this Act); and
  - (b) any building or other operations are commenced after the time so specified, the commencement and carrying out of those operations do not constitute development for which that permission was granted.

## **28 Directions etc. as to method of dealing with applications**

- (1) Subject to the provisions of section 26(2) to (5) of this Act, provision may be made by a development order for regulating the manner in which applications for planning permission to develop land are to be dealt with by local planning authorities, and in particular—
  - (a) for enabling the Secretary of State to give directions restricting the grant of planning permission by the local planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
  - (b) for authorising the local planning authority, in such cases and subject to such conditions as may be prescribed by the order, or by directions given by the Secretary of State thereunder, to grant planning permission for development which does not accord with the provisions of the development plan;
  - (c) for requiring the local planning authority, before granting or refusing planning permission for any development, to consult with such authorities or persons as may be prescribed by the order or by directions given by the Secretary of State thereunder;
  - (d) for requiring the local planning authority to give to any applicant for planning permission, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with;
  - (e) for requiring the local planning authority to give to the Secretary of State, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for planning

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permission made to the authority, including information as to the manner in which any such application has been dealt with.

- (2) The Secretary of State may give directions to local planning authorities with respect to the matters which they are to take into consideration in determining an application to which section 25 of this Act applies and with respect to the consultations which such authorities are to undertake before determining any such application.
- (3) Different directions may under this section be given to different local planning authorities; and any such directions may require an authority—
  - (a) before determining an application to consult such persons or bodies of persons as the Secretary of State may specify, being persons or bodies appearing to him to be competent to give advice in relation to the development or description of development to which the directions have reference;
  - (b) to supply to any person or body, whom they are required by the directions to consult, specified documents or information enabling that person or body to form an opinion on which to base advice;
  - (c) to establish committees, consisting either of members of the authority or of other persons, or of both, to advise the authority in relation to the determination of any application referred to in subsection (2) of this section.

## **29 Permission to retain buildings or works or continue use of land**

- (1) An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether the buildings or works were constructed or carried out, or the use instituted, without planning permission or in accordance with planning permission granted for a limited period.
- (2) Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1) of this section; and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly:

Provided that this subsection shall not affect the construction of section 23, 25, 26(2) or (4), or 57, of sections 64 to 83 or of Part VII of this Act.

- (3) Any planning permission granted in accordance with subsection (2) of this section may be granted so as to take effect from the date on which the buildings or works were constructed or carried out, or the use was instituted, or (in the case of buildings or works constructed or carried out or a use instituted in accordance with planning permission granted for a limited period) so as to take effect from the end of that period, as the case may be.

## **30 Provisions as to effect of planning permission**

- (1) Without prejudice to the provisions of this Part of this Act as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein.

- (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

### **31 Information regarding, and registers of, applications and decisions**

- (1) A development order may make provision for requiring applicants for planning permission for development or for any class of development prescribed by or under the order to furnish at such time and to such persons as may be so prescribed such information with respect to the application as may be so prescribed.
- (2) Every local planning authority shall keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect to applications for planning permission made to that authority, including information as to the manner in which such applications have been dealt with.
- (3) A development order may make provision for the register to be kept in two or more parts, each part containing such information relating to applications for planning permission made to the authority as may be prescribed by the order, and may also make provision—
- (a) for a specified part of the register to contain copies of applications and of any plans or drawings submitted therewith; and
  - (b) for the entry relating to any application, and everything relating thereto, to be removed from that part of the register when the application (including any appeal arising out of it) has been finally disposed of, without prejudice to the inclusion of any different entry relating thereto in another part of the register.
- (4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

*Secretary of State's powers in relation to planning applications and decisions*

### **32 Reference of applications to Secretary of State**

- (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.
- (2) A direction under this section—
- (a) may be given either to a particular local planning authority or to local planning authorities generally; and
  - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
- (4) Subject to subsection (5) of this section, where an application for planning permission is referred to the Secretary of State under this section, the following provisions of this Act, that is to say, sections 23(2) and (7), 24, 26(1) to (3) and 27(1), shall apply, with



any necessary modifications, as they apply to an application for planning permission which falls to be determined by the local planning authority.

- (5) Before determining an application referred to him under this section, other than an application for planning permission referred to a Planning Inquiry Commission under section 45 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (6) The decision of the Secretary of State on any application referred to him under this section shall be final.

### **33 Appeals against planning decisions**

- (1) Where an application is made to a local planning authority for planning permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority or is granted by them subject to conditions, the applicant, if he is aggrieved by their decision, may by notice under this section appeal to the Secretary of State.
- (2) Any notice under this section shall be served within such time (not being less than twenty-eight days from the date of notification of the decision to which it relates, and in such manner as may be prescribed by a development order.
- (3) Where an appeal is brought under this section from a decision of a local planning authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the local planning authority, whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance.

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the local planning authority to which the appeal does not relate, he shall give notice of his intention to the local planning authority and to the applicant and shall afford to them an opportunity to make representations in regard thereto.

- (4) Before determining an appeal under this section, other than an appeal referred to a Planning Inquiry Commission under section 45 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Subject to subsection (4) of this section, the following provisions of this Act, that is to say, sections 24, 26(1) and (3) and 27(1) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under this section as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.
- (6) The decision of the Secretary of State on any appeal under this section shall be final.
- (7) If before or during the determination of an appeal under this section in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 26(1), 27(1) and 65 of this Act and of the development order and to any directions given under that order, planning permission for that development—
  - (a) could not have been granted by the local planning authority; or

- (b) could not have been granted by them otherwise than subject to the conditions imposed by them,

he may decline to determine the appeal or to proceed with the determination.

- (8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by or under any other provision of this Act.

### **34 Appeal in default of planning decision**

Where an application is made to a local planning authority for planning permission, or for any approval of that authority required under a development order, then unless within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either—

- (a) give notice to the applicant of their decision on the application ; or
- (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 32 of this Act,

the provisions of section 33 of this Act shall apply in relation to the application as if the permission or approval to which it relates had been refused by the local planning authority, and as if notification of their decision had been received by the applicant at the end of the period prescribed by the development order, or at the end of the said extended period, as the case may be.

### **35 Review of planning decisions where compensation claimed**

- (1) The provisions of this section and of section 36 of this Act shall have effect where, in accordance with the provisions of section 143 of this Act, one or more claims for compensation in respect of a planning decision have been received by the Secretary of State, and the claim, or (if there is more than one) one or more of the claims, has not been withdrawn.
- (2) If, in the case of a planning decision of the local planning authority, it appears to the Secretary of State that, if the application for permission to develop the land in question had been referred to him for determination, he would have made a decision more favourable to the applicant, the Secretary of State may give a direction substituting that decision for the decision of the local planning authority.
- (3) If, in any case, it appears to the Secretary of State that planning permission could properly be granted (either unconditionally or subject to certain conditions) for some development of the land in question other than the development to which the application for planning permission related, the Secretary of State may give a direction that the provisions of this Act shall have effect in relation to that application and to the planning decision—
  - (a) as if the application had included an application for permission for that other development, and the decision had included the grant of planning permission (unconditionally or subject to the said conditions, as the case may be) for that development; or
  - (b) as if the decision had been a decision of the Secretary of State and had included an undertaking to grant planning permission (unconditionally or subject to the said conditions, as the case may be) for that development,

as may be specified in the direction.

- (4) The reference in subsection (2) of this section to a decision more favourable to the applicant shall be construed—
- (a) in relation to a refusal of permission, as a reference to a decision granting the permission, either unconditionally or subject to conditions, and either in respect of the whole of the land to which the application for permission related or in respect of part of that land; and
  - (b) in relation to a grant of permission subject to conditions, as a reference to a decision granting the permission applied for unconditionally or subject to less stringent conditions.

### **36 Provisions supplementary to s. 35**

- (1) Before giving a direction under section 35 of this Act the Secretary of State shall give notice in writing of his proposed direction to the local planning authority to whose decision that direction relates, and to any person who made, and has not since withdrawn, a claim for compensation in respect of that decision ; and, if so required by the local planning authority or by any such person, shall afford to each of them an opportunity to appear before, and be heard by. a person appointed by the Secretary of State for the purpose.
- (2) In giving any direction under section 35 of this Act, the Secretary of State shall have regard to the provisions of the development plan for the area in which the land in question is situated, in so far as those provisions are material to the development of that land, and shall also have regard to the local circumstances affecting the proposed development, including the use which prevails generally in the case of contiguous or adjacent land, and to any other material considerations.
- (3) Where the Secretary of State gives a direction under section 35 of this Act, he shall give notice of the direction to the local planning authority to whose decision the direction relates, and to every person (if any) who made, and has not since withdrawn, a claim for compensation in respect of that decision.

#### *Deemed planning permission*

### **37 Development by local authorities and statutory undertakers with sanction of government department**

- (1) Where the sanction of a government department other than the Secretary of State is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers not being a local authority, that department may, on granting that sanction, direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the directions.
- (2) The provisions of this Act (except Parts VII and XII thereof) shall apply in relation to any planning permission deemed to be granted by virtue of directions under this section as if it had been granted by the Secretary of State on an application referred to him under section 32 of this Act.
- (3) For the purposes of this section development shall be taken to be sanctioned by a government department if—

- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
- (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
- (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
- (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
- (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,

and references in this section to the sanction of a government department shall be construed accordingly.

*Duration of planning permission*

### **38 Limit of duration of planning permission**

- (1) Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—
  - (a) five years beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or
  - (b) such other period (whether longer or shorter) beginning with the said date as the authority concerned with the terms of the planning permission may direct, being a period which the authority considers appropriate having regard to the provisions of the development plan and to any other material considerations.
- (2) If planning permission is granted without the condition required by subsection (1) of this section, it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.
- (3) Nothing in this section applies—
  - (a) to any planning permission granted by a development order;
  - (b) to any planning permission granted for a limited period ;
  - (c) to any planning permission granted under section 29 of this Act on an application relating to buildings or works completed, or a use of land instituted, before the date of the application ; or
  - (d) to any outline planning permission, as defined by section 39 of this Act.

### **39 Outline planning permission**

- (1) In this section and section 38 of this Act "outline planning permission " means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority or the Secretary of State of matters (referred to in this section as " reserved matters") not particularised in the application.

- (2) Subject to the provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the following effect—
  - (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and
  - (b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates—
    - (i) the expiration of five years from the date of the grant of outline planning permission; or
    - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- (3) If outline planning permission is granted without the conditions required by subsection (2) of this section, it shall be deemed to have been granted subject to those conditions.
- (4) The authority concerned with the terms of an outline planning permission may, in applying subsection (2) of this section, substitute, or direct that there be substituted, for the periods of three years, five years or two years referred to in that subsection such other periods respectively (whether longer or shorter) as they consider appropriate.
- (5) The said authority may, in applying the said subsection, specify, or direct that there be specified, separate periods under paragraph (a) of the subsection in relation to separate parts of the development to which the planning permission relates ; and, if they do so, the condition required by paragraph (b) of the subsection shall then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole.
- (6) In considering whether to exercise their powers under subsections (4) and (5) of this section, the said authority shall have regard to the provisions of the development plan and to any other material considerations.

#### **40 Provisions supplementary to ss. 38 and 39**

- (1) For the purposes of sections 38 and 39 of this Act, development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out.
- (2) In subsection (1) of this section " specified operation " means any of the following, that is to say—
  - (a) any work of construction in the course of the erection of a building;
  - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
  - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in the last preceding paragraph;
  - (d) any operation in the course of laying out or constructing a road or part of a road ;
  - (e) any change in the use of any land, where that change constitutes material development.

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*Status: This is the original version (as it was originally enacted).*

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- (3) In subsection (2)(e) of this section " material development" means any development other than—
- (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted ;
  - (b) development falling within any of paragraphs 1, 2, 3 and 5 to 9 of Schedule 6 to this Act, as read with Part III of that Schedule; and
  - (c) development of any class prescribed for the purposes of this subsection;
- and in this subsection " general development order " means a development order made as a general order applicable (subject to such exceptions as may be specified therein) to all land in Scotland.
- (4) The authority referred to in sections 38(1)(b) and 39(4) of this Act is the local planning authority or the Secretary of State, in the case of planning permission granted by them, and—
- (a) in the case of planning permission under section 37 of this Act is the department on whose direction planning permission is deemed to be granted; and
  - (b) in the case of planning permission granted on an appeal determined, under paragraph 1 or 4 of Schedule 7 to this Act, by a person appointed by the Secretary of State to determine the appeal, is that person.
- (5) For the purposes of section 39 of this Act, a reserved matter shall be treated as finally approved when an application for approval is granted or, in a case where the application is made to the local planning authority and there is an appeal to the Secretary of State against the authority's decision on the application and the Secretary of State or a person appointed by him under paragraph 1 or 4 of Schedule 7 to this Act to determine the appeal grants the approval, on the date of the determination of the appeal by the Secretary of State or that person.
- (6) Where a local planning authority grant planning permission, the fact that any of the conditions of the permission are required by the provisions of sections 38 or 39 of this Act to be imposed, or are deemed by those provisions to be imposed, shall not prevent the conditions being the subject of an appeal under section 33 of this Act against the decision of the authority.
- (7) In the case of planning permission (whether outline or other) having conditions attached to it by or under section 38 or 39 of this Act—
- (a) development carried out after the date by which the conditions of the permission require it to be carried out shall be treated as not authorised by the permission; and
  - (b) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission.

#### **41 Termination of planning permission by reference to time limit**

- (1) The following provisions of this section shall have effect where, by virtue of section 38 or 39 of this Act, a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular

period and that development has been begun within that period but the period has elapsed without the development having been completed.

- (2) If the local planning authority are of opinion that the development will not be completed within a reasonable period, they may serve a notice (in this section referred to as a " completion notice ") stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice, being a period of not less than twelve months after the notice takes effect.
- (3) A completion notice—
  - (a) shall be served on the owner and on the occupier of the land and on any other person who in the opinion of the local planning authority will be affected by the notice; and
  - (b) shall take effect only if and when it is confirmed by the Secretary of State, who may in confirming it substitute some longer period for that specified in the notice as the period at the expiration of which the planning permission is to cease to have effect.
- (4) If, within such period as may be specified in a completion notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the notice, shall afford to that person 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.
- (5) If a completion notice takes effect, the planning permission therein referred to shall at the expiration of the period specified in the notice, whether the original period specified under subsection (2) of this section or a longer period substituted by the Secretary of State under subsection (3) of this section, be invalid except so far as it authorises any development carried out thereunder up to the end of that period.
- (6) The local planning authority may withdraw a completion notice at any time before the expiration of the period specified therein as the period at the expiration of which the planning permission is to cease to have effect; and if they do so they shall forthwith give notice of the withdrawal to every person who was served with the completion notice.

#### *Revocation or modification of planning permission*

### **42 Power to revoke or modify planning permission**

- (1) If it appears to the local planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part of this Act, the authority, subject to the following provisions of this section, may by order revoke or modify the permission to such extent as (having regard to those matters) they consider expedient.
- (2) Except as provided in section 43 of this Act, an order under this section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.
- (3) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, the authority shall serve notice on the owner, on the

lessee and on the occupier of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person 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) The power conferred by this section to revoke or modify permission to develop land may be exercised—
- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
  - (b) where the permission relates to a change of the use of any land, at any time before the change has taken place:

Provided that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been carried out before the date on which the order was confirmed as aforesaid.

#### **43 Unopposed revocation or modification**

- (1) The following provisions shall have effect where the local planning authority have made an order under section 42 of this Act but have not submitted the order to the Secretary of State for confirmation by him, and—
  - (a) the owner, the lessee and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order; and
  - (b) it appears to the authority that no claim for compensation is likely to arise under section 153 of this Act on account of the order.
- (2) The authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify—
  - (a) the period (not being less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
  - (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this subsection) at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section and without being confirmed by the Secretary of State.
- (3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(a) of this section, and the notice shall include a statement to the effect that no compensation is payable under section 153 of this Act in respect of an order under section 42 of this Act which takes effect by virtue of this section and without being confirmed by the Secretary of State.
- (4) The authority shall send a copy of any advertisement published under subsection (2) of this section to the Secretary of State, not more than three days after the publication.
- (5) If within the period referred to in subsection (2) (a) of this section no person claiming to be affected by the order has given notice to the Secretary of State as aforesaid, and the Secretary of State has not directed that the order be submitted to him for



confirmation, the order shall, at the expiration of the period referred to in subsection (2) (b) of this section, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 42(2) of this Act.

- (6) This section does not apply to an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part of this Act or under Part IV or V thereof; nor does it apply to an order modifying any conditions to which a planning permission is subject by virtue of section 38 or 39 of this Act.

*Reference of certain matters to Planning Inquiry Commission or independent tribunal*

#### **44 Constitution of Planning Inquiry Commission**

- (1) The Secretary of State may constitute a Planning Inquiry Commission to inquire into and report on any matter referred to them under section 45 of this Act.
- (2) Any such commission shall consist of a chairman and not less than two nor more than four other members appointed by the Secretary of State.
- (3) The Secretary of State may pay to the members of any such commission such remuneration and allowances as he may with the consent of the Minister for the Civil Service determine, and may provide for each such commission such officers or servants, and such accommodation, as appears to him expedient to provide for the purpose of assisting the commission in the discharge of their functions.
- (4) The validity of any proceedings of any such commission shall not be affected by any vacancy among the members of the commission or by any defect in the appointment of any member.
- (5) In Part II of Schedule 1 to the House of Commons Disqualification Act 1957 (commissions, tribunals and other bodies all members of which are disqualified under that Act), in its application to the House of Commons of the Parliament of the United Kingdom, the following entry shall be inserted at the appropriate place in alphabetical order:—
- “A Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act 1972”.

#### **45 References to a Planning Inquiry Commission**

- (1) The following matters may, in the circumstances mentioned in subsection (2) of this section, be referred to a Planning Inquiry Commission, that is to say—
- (a) an application for planning permission which the Secretary of State has under section 32 of this Act directed to be referred to him instead of being dealt with by a local planning authority;
- (b) an appeal under section 33 of this Act (including that section as applied by or under any other provision of this Act);
- (c) a proposal that a government department should give a direction under section 37 of this Act that planning permission shall be deemed to be granted for development by a local authority or by statutory undertakers which is required by any enactment to be authorised by that department;
- (d) a proposal that development should be carried out by or on behalf of a government department.

- (2) Any of the matters mentioned in subsection (1) of this section may be referred to any such commission under this section if it appears expedient to the responsible Minister or Ministers that the question whether the proposed development should be permitted to be carried out should be the subject of a special inquiry on either or both of the following grounds—
- (a) there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation thereof cannot be made unless there is a special inquiry for the purpose ;
  - (b) the technical or scientific aspects of the proposed development are of so unfamiliar a character as to jeopardise a proper determination of that question unless there is a special inquiry for the purpose.
- (3) Two or more of the matters mentioned in subsection (1) of this section may be referred to the same commission under this section if it appears to the responsible Minister or Ministers that they relate to proposals to carry out development for similar purposes on different sites.
- (4) Where a matter referred to a commission under this section relates to a proposal to carry out development for any purpose at a particular site, the responsible Minister or Ministers may also refer to the commission the question whether development for that purpose should instead be carried out at an alternative site.
- (5) The responsible Minister or Ministers shall, on referring a matter to a commission under this section, state in the reference the reasons therefor and may draw the attention of the commission to any points which seem to him or them to be relevant to their inquiry.
- (6) A commission inquiring into a matter referred to them under this section shall—
- (a) identify and investigate the considerations relevant to, or the technical or scientific aspects of, that matter which in their opinion are relevant to the question whether the proposed development should be permitted to be carried out and assess the importance to be attached to those considerations or aspects;
  - (b) thereafter, if the applicant, in the case of a matter mentioned in subsection (1) (d), (b) or (c) of this section, or the local planning authority in any case so desire, afford to each of them, and, in the case of an application or appeal mentioned in the said subsection (1)(d) or (b), to any person who has made representations relating to the subject matter of the application or appeal which the authority are required to take into account under section 26(2) or (3) of this Act, an opportunity of appearing before and being heard by one or more members of the commission;
  - (c) report to the responsible Minister or Ministers on the matter referred to them.
- (7) Any such commission may, with the approval of the Secretary of State and at his expense, arrange for the carrying out (whether by the commission themselves or by others) of research of any kind appearing to them to be relevant to a matter referred to them for inquiry and report.
- (8) Schedule 8 to this Act shall have effect for the construction of references in this section and in section 46 of this Act to " the responsible Minister or Ministers ".

#### **46 Procedure on reference to a Planning Inquiry Commission**

- (1) A reference to a Planning Inquiry Commission of a proposal that development should be carried out by or on behalf of a government department may be made at any time and a reference of any other matter mentioned in section 45 of this Act may be made at any time before, but not after, the determination of the relevant application referred under section 32 of this Act or the relevant appeal under section 33 of this Act or, as the case may be, the giving of the relevant direction under section 37 of this Act, notwithstanding that an inquiry or other hearing has been held into the proposal by a person appointed by any Minister for the purpose.
- (2) Notice of the making of a reference to any such commission shall be published in the prescribed manner, and a copy of the notice shall be served on the local planning authority for the area in which it is proposed that the relevant development shall be carried out, and—
  - (a) in the case of an application for planning permission referred under section 32 of this Act or an appeal under section 33 of this Act, on the applicant and any person who has made representations relating to the subject matter of the application or appeal which the authority are required to take into account under section 26(2) or (3) of this Act;
  - (b) in the case of a proposal that a direction should be given under section 37 of this Act with respect to any development, on the local authority or statutory undertakers applying for sanction to carry out that development.
- (3) A Planning Inquiry Commission shall, for the purpose of complying with section 45(6)(b) of this Act, hold a local inquiry; and they may hold such an inquiry, if they think it necessary for the proper discharge of their functions, notwithstanding that neither the applicant nor the local planning authority desire an opportunity of appearing and being heard.
- (4) Where a Planning Inquiry Commission are to hold a local inquiry under subsection (3) of this section in connection with a matter referred to them, and it appears to the responsible Minister or Ministers, in the case of some other matter falling to be determined by a Minister of the Crown and required or authorised by an enactment other than this section to be the subject of a local inquiry, that the two matters are so far cognate that they should be considered together, he or, as the case may be, they may direct that the two inquiries be held concurrently or combined as one inquiry.
- (5) An inquiry held by such a commission under this section shall be treated for the purposes of the Tribunals and Inquiries Act 1971 as one held by a Minister in pursuance of a duty imposed by a statutory provision.
- (6) Subsections (4) to (9) of section 267 of this Act (power to summon and examine witnesses, and expenses at inquiries) shall apply to an inquiry held under subsection (3) of this section as they apply to an inquiry held under that section.
- (7) Subject to the provisions of this section and to any directions given to them by the responsible Minister or Ministers, a Planning Inquiry Commission shall have power to regulate their own procedure.

#### **47 Commissions to inquire into planning matters affecting Scotland and England**

- (1) The Ministers may constitute a Joint Planning Inquiry Commission to inquire into and report on any matter referred to them under this section ; and the matters which may be so referred are those which may, under section 45 of this Act or section 48 of the

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Town and Country Planning Act 1971, be referred to a Planning Inquiry Commission but which appear to the Ministers to involve considerations affecting both Scotland and England.

- (2) A Joint Planning Inquiry Commission shall consist of a chairman and not less than two nor more than four other members appointed by the Ministers.
- (3) The Ministers may pay to the members of any such commission such remuneration and allowances as they may with the consent of the Minister for the Civil Service determine, and may provide for each such commission such officers or servants, and such accommodation, as appears to them expedient to provide for the purpose of assisting the commission in the discharge of their functions.
- (4) The validity of any proceedings of any such commission shall not be affected by any vacancy among the members of the commission or by any defect in the appointment of any member.
- (5) In Part II of Schedule 1 to the House of Commons Disqualification Act 1957 (commissions, tribunals and other bodies all members of which are disqualified under that Act), in its application to the House of Commons of the Parliament of the United Kingdom, the following entry shall be inserted at the appropriate place in alphabetical order:—
 

“A Joint Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act 1972”.
- (6) In this section " the Ministers" means the Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England acting jointly; but their functions under subsection (3) of this section may, by arrangements made between them, be exercised by either acting on behalf of both.
- (7) Schedule 9 to this Act shall have effect with respect to the Joint Planning Inquiry Commissions and references to them under this section, and with respect to the proceedings of a commission on any such reference.

#### **48 Appeal to independent tribunal**

- (1) Provision may be made by a development order for securing that, in the case of decisions of a local planning authority of such classes as may be prescribed by the order, being decisions relating to the design or external appearance of buildings or other similar matters, any appeal under section 33 of this Act shall lie to an independent tribunal constituted in accordance with the provisions of that order, instead of to the Secretary of State; and in relation to any such appeal the provisions of that section (except, in subsection (5) thereof, the references to sections 24 and 26(3) of this Act) and the provisions of section 34 of this Act shall apply, subject to such adaptations and modifications as may be specified in the order as they apply in relation to appeals to the Secretary of State under the said section 33.
- (2) If any tribunal is constituted in accordance with subsection (1) of this section, the Secretary of State may pay to the chairman and members of the tribunal such remuneration, whether by way of salaries or by way of fees, and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as the Minister for the Civil Service may determine.

*Additional powers of control*

**49 Orders requiring discontinuance of use or alteration or removal of buildings or works**

- (1) If it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity), regard being had to the development plan and to any other material considerations—
  - (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land ; or
  - (b) that any buildings or works should be altered or removed,the local planning authority may by order require the discontinuance of that use, or impose such conditions as may be specified in the order on the continuance thereof, or require such steps as may be so specified to be taken for the alteration or removal of the buildings or works, as the case may be.
- (2) An order under this section may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be specified in the order; and the provisions of section 42 of this Act shall apply in relation to any planning permission granted by an order under this section as they apply in relation to planning permission granted by the local planning authority on an application made under this Part of this Act.
- (3) The power conferred by subsection (2) of this section shall include power, by an order under this section, to grant planning permission, subject to such conditions as may be specified in the order—
  - (a) for the retention, on the land to which the order relates, of buildings or works constructed or carried out before the date on which the order was submitted to the Secretary of State; or
  - (b) for the continuance of a use of that land instituted before that date ;and subsection (3) of section 29 of this Act shall apply to planning permission granted by virtue of this subsection as it applies to planning permission granted in accordance with subsection (2) of that section.
- (4) An order under this section shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (5) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, that authority shall serve notice on the owner, on the lessee and on the occupier of the land affected, and on any other person who in their opinion will be affected by the order; and if within the period specified in that behalf in the notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person 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.
- (6) Where an order under this section has been confirmed by the Secretary of State, the local planning authority shall serve a copy of the order on the owner, on the lessee and on the occupier of the land to which the order relates.

- (7) Where the requirements of an order under this section will involve the displacement of persons residing in any premises, it shall be the duty of the local planning authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement.
- (8) In the case of planning permission granted by an order under this section, the authority referred to in sections 38(1)(b) and 39(4) of this Act is the local planning authority making the order.

## **50 Agreements regulating development or use of land**

- (1) A local planning authority may enter into an agreement with any person interested in land in their area (in so far as the interest of that person enables him to bind the land) 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; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement.

- (2) An agreement made under this section with any person interested in land, may, if the agreement shall have been recorded in the appropriate Register of Sasines, be enforceable at the instance of the local planning authority against persons deriving title to the land from the person with whom the agreement was entered into:

Provided that no such agreement shall at any time be enforceable against a third party who shall have in bona fide onerously acquired right (whether completed by infestment or not) to the land prior to the agreement being recorded as aforesaid or against any person deriving title from such third party.

- (3) Nothing in this section or in any agreement made thereunder shall be construed—
- (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by any Minister or authority under this Act so long as those powers are exercised in accordance with the provisions of the development plan, or in accordance with any directions which may have been given by the Secretary of State as to the provisions to be included in such a plan ; or
  - (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a) of this subsection.

### *Determination whether planning permission required*

## **51 Applications to determine whether planning permission required**

- (1) If any person who proposes to carry out any operations on land, or to make any change in the use of land, wishes to have it determined whether the carrying out of those operations, or the making of that change, would constitute or involve development of the land, he may, either as part of an application for planning permission, or without any such application, apply to the local planning authority to determine that question.
- (2) The provisions of sections 21, 26(1), 28(1), 31(2) and (4) and 32 to 34 of this Act shall, subject to any necessary modifications, apply in relation to any application under this

section, and to the determination thereof, as they apply in relation to applications for planning permission and to the determination of such applications.

- (3) Where it is decided by the Secretary of State under any of the said provisions that any operations or use to which an application under this section relates would constitute or involve development, that decision shall not be final for the purposes of any appeal under the provisions of this Act relating to the enforcement of planning control, in relation to those operations or that use.

## PART IV

### ADDITIONAL CONTROL IN SPECIAL CASES

#### *Buildings of special architectural or historic interest*

#### **52 List of buildings of special architectural or historic interest**

- (1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved.
- (2) In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also—
  - (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
  - (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.
- (3) Before compiling or approving, with or without modifications, any list under this section, or amending any list thereunder the Secretary of State shall consult with such persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.
- (4) As soon as may be after any list has been compiled or approved under this section, or any amendments of such a list have been made, a copy of so much of the list as relates to the district of any local authority being the local planning authority or the local authority for the purposes of the Housing (Scotland) Acts 1966 to 1969, or of so much of the amendments as relates thereto, as the case may be, certified by or on behalf of the Secretary of State to be a true copy thereof, shall be deposited with the clerk of that authority.
- (5) As soon as may be after the inclusion of any building in a list under this section, whether on the compilation or approval of the list or by the amendment thereof, or as soon as may be after any such list has been amended by the exclusion of any building therefrom, the local planning authority concerned in whose district the building is situated, on being informed of the fact by the Secretary of State, shall serve a notice in

the prescribed form on every owner, lessee and occupier of the building, stating that the building has been included in, or excluded from, the list, as the case may be.

- (6) The Secretary of State shall keep available for public inspection, free of charge at reasonable hours and at a convenient place, copies of all lists and amendments of lists compiled, approved or made by him under this section ; and every authority with whose clerk copies of any list or amendments are deposited under this section shall similarly keep available copies of so much of any such list or amendment as relates to buildings within their area.
- (7) In this Act " listed building " means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of a building, shall be treated as part of the building.
- (8) Every building which immediately before 3rd August 1970 was subject to a building preservation order under section 27 of the Act of 1947 but was not then included in a list compiled or approved under section 28 of that Act, shall be deemed to be a listed building; but the Secretary of State may at any time direct, in the case of any building, that this subsection shall no longer apply to it and the local planning authority in whose district the building is situated, on being notified of the Secretary of State's direction, shall give notice of it to the owner, lessee and occupier of the building.
- (9) Before giving a direction under subsection (8) of this section in relation to a building, the Secretary of State shall consult with the local planning authority and with the owner, lessee and occupier of the building.

### **53 Control of works for demolition, alteration or extension of listed buildings**

- (1) Subject to this Part of this Act, if a person executes or causes to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, and the works are not authorised under this Part of this Act, he shall be guilty of an offence.
- (2) Works for the demolition of a listed building, or for its alteration or extension, are authorised under this Part of this Act only if—
  - (a) the local planning authority or the Secretary of State have granted written consent (in this Act referred to as "listed building consent") for the execution of the works and the works are executed in accordance with the terms of the consent and of any conditions attached to the consent under section 54 of this Act; and
  - (b) in the case of demolition, notice of the proposal to execute the works has been given to the Royal Commission and thereafter either—
    - (i) for a period of at least three months following the grant of listed building consent, and before the commencement of the works, reasonable access to the building has been made available to members or officers of the Commission for the purpose of recording it; or
    - (ii) the Commission have, by their Secretary or other officer of theirs with authority to act on the Commission's behalf for the purposes of this section, stated in writing that they have completed their recording of the building or that they do not wish to record it.



- (3) In subsection (2) of this section " the Royal Commission " means the Royal Commission on the Ancient and Historical Monuments of Scotland; but the Secretary of State may, by order provide that the said subsection shall, in the case of works executed or to be executed on or after such date as may be specified in the order, have effect with the substitution for the reference to the Royal Commission of a reference to such other body as may be so specified.
- (4) Without prejudice to subsection (1) of this section, if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent under section 54 of this Act, he shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £250, or both ; or
  - (b) on conviction on indictment to imprisonment for a term not exceeding twelve months or a fine, or both;
- and, in determining the amount of any fine to be imposed on a person convicted on indictment, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
- (6) In proceedings for an offence under this section it shall be a defence to prove that the works were urgently necessary in the interests of safety or health, or for the preservation of the building, and that notice in writing of the need for the works was given to the local planning authority as soon as reasonably practicable.

#### **54 Provisions supplementary to s. 53**

- (1) Section 53 of this Act shall not apply to works for the demolition, alteration or extension of—
- (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works; or
  - (b) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments; or
  - (c) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.

For the purposes of this subsection, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

- (2) Where, on an application in that behalf, planning permission is granted, or has been granted on or after 3rd August 1970, and—
- (a) the development for which the permission is or was granted includes the carrying out of any works for the alteration or extension of a listed building; and
  - (b) the planning permission or any condition subject to which it is or was granted is or was so framed as expressly to authorise the execution of the works (describing them),

the planning permission shall operate as listed building consent in respect of those works; but, except as provided by this subsection, the grant of planning permission

for any development shall not make it unnecessary for such consent to be obtained in respect of any works to which section 53 of this Act applies.

- (3) In considering whether to grant planning permission for development which consists in or includes works for the alteration or extension of a listed building, and in considering whether to grant listed building consent for any works, the local planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses.
- (4) Without prejudice to subsection (1) of section 26 of this Act, the conditions which may under that subsection be attached to a grant of planning permission shall, in the case of such development as is referred to in subsection (2) of this section, include conditions with respect to—
  - (a) the preservation of particular features of the building, either as part of it or after severance therefrom ;
  - (b) the making good, after the works are completed, of any damage caused to the building by the works;
  - (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.
- (5) Listed building consent may be granted either unconditionally or subject to conditions, which may include such conditions as are mentioned in subsection (4) of this section.
- (6) Part I of Schedule 10 to this Act shall have effect with respect to applications to local planning authorities for listed building consent, the reference of such applications to the Secretary of State and appeals against decisions on such applications ; and Part II of that Schedule shall have effect with respect to the revocation of listed building consent by a local planning authority or the Secretary of State.

## **55 Acts causing or likely to result in damage to listed buildings**

- (1) Where a building, not being a building excluded by section 54(1) of this Act from the operation of section 53 of this Act, is included in a list compiled or approved under section 52 of this Act, then, if any person who, but for this section, would be entitled to do so, does or permits the doing of any act which causes or is likely to result in damage to the building (other than an act for the execution of excepted works) and he does or permits it with the intention of causing such damage, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (2) In subsection (1) of this section " excepted works " means works authorised by planning permission granted or deemed to be granted in pursuance of an application under this Act and works for which listed building consent has been given under this Act.
- (3) Where a person convicted of an offence under this section fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £20 for each day on which the failure continues.

## **56 Building preservation notice in respect of building not listed**

- (1) If it appears to the local planning authority, in the case of a building in their district which is not a listed building, that it is of special architectural or historic interest and is in danger of demolition or of alteration in such a way as to affect its character as such, they may (subject to subsection (2) of this section) serve on the owner, lessee and occupier of the building a notice (in this section referred to as a "building preservation notice")—
  - (a) stating that the building appears to them to be of special architectural or historic interest and that they have requested the Secretary of State to consider including it in a list compiled or approved under section 52 of this Act; and
  - (b) explaining the effect of subsections (3) and (4) of this section.
- (2) A building preservation notice shall not be served in respect of an excepted building, that is to say—
  - (a) an ecclesiastical building which is for the time being used for ecclesiastical purposes ; or
  - (b) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments ; or
  - (c) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment.

For the purposes of this subsection, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.
- (3) A building preservation notice shall come into force as soon as it has been served on the owner, lessee and occupier of the building to which it relates and shall remain in force for six months from the date when it is served or, as the case may be, last served; but it shall cease to be in force if, before the expiration of that period, the Secretary of State either includes the building in a list compiled or approved under section 52 of this Act or notifies the local planning authority in writing that he does not intend to do so.
- (4) While a building preservation notice is in force with respect to a building, the provisions of this Act (other than section 55) shall have effect in relation to it as if the building were a listed building; and if the notice ceases to be in force (otherwise than by reason of the building being included in a list compiled or approved under the said section 52), the provisions of Part III of Schedule 10 to this Act shall have effect with respect to things done or occurring under the notice or with reference to the building being treated as listed.
- (5) If, following the service of a building preservation notice, the Secretary of State notifies the local planning authority that he does not propose to include the building in a list compiled or approved under section 52 of this Act, the authority—
  - (a) shall forthwith give notice of the Secretary of State's decision to the owner, lessee and occupier of the building; and
  - (b) shall not, within the period of twelve months beginning with the date of the Secretary of State's notification, serve another such notice in respect of the said building.
- (6) If it appears to the local planning authority to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner, lessee and occupier of the building to which it relates, affix the notice conspicuously to some object on the building; and this shall be treated for all the purposes of this

section and of Schedule 10 to this Act as service of the said notice, in relation to which subsection (1)(b) of this section shall be taken to include a reference to this subsection.

### *Trees*

#### **57 Planning permission to include appropriate provision for preservation and planting of trees**

It shall be the duty of the local planning authority—

- (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
- (b) to make such orders under section 58 of this Act as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

#### **58 Tree preservation orders**

- (1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their district, they may for that purpose make an order (in this Act referred to as a " tree preservation order ") with respect to such trees, groups of trees or woodlands as may be specified in the order; and, in particular, provision may be made by any such order—
  - (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give their consent subject to conditions;
  - (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
  - (c) for applying, in relation to any consent under the order, and to applications for such consent, any of the provisions of this Act failing within subsection (2) of this section, subject to such adaptations and modifications as may be specified in the order.
- (2) References in this Act to provisions thereof falling within this subsection are references to—
  - (a) the provisions of Part III of this Act relating to planning permission and to applications for planning permission, except sections 22, 23, 24, 25, 26(2) to (6), 31(3), 35, 36, 38 to 41 and 44 to 47 of this Act; and
  - (b) such of the provisions of Part IX of this Act as are therein stated to be provisions falling within this subsection;
  - (c) section 256 of this Act.
- (3) A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any such conditions as are mentioned in section 57(a) of this Act, as from the time when those trees are planted.
- (4) Except as provided under subsection (5)(c) of this section and in section 59 of this Act, a tree preservation order shall not take effect until it is confirmed by the Secretary of State, and the Secretary of State may confirm any such order either without modification or subject to such modifications as he considers expedient. As soon as

may be after a tree preservation order is so confirmed, it shall be recorded in the appropriate Register of Sasines by the local planning authority.

- (5) Provision may be made by regulations under this Act with respect to the form of tree preservation orders, and the procedure to be followed in connection with the submission and confirmation of such orders; and the regulations may (without prejudice to the generality of this subsection) make provision as follows—
- (a) that, before a tree preservation order is submitted to the Secretary of State for confirmation, notice of the making of the order shall be given to the owners, lessees and occupiers of land affected by the order and to such other persons, if any, as may be specified in the regulations;
  - (b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the Secretary of State ;
  - (c) that, if no objections or representations are so made, or if any so made are withdrawn, the order, instead of requiring the confirmation of the Secretary of State in accordance with subsection (4) of this section, may be confirmed (but without any modification), as an unopposed order, by the authority who made it; and
  - (d) that copies of the order, when confirmed by the Secretary of State or the authority, shall be served on such persons as may be specified in the regulations.
- (6) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, nothing in a tree preservation order shall prohibit the felling or lopping of any tree if such felling or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the local planning authority as soon as may be after the necessity for the operations arises, or if such felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament.
- (7) In relation to land in respect of which the Forestry Commissioners have made advances under section 4 of the Forestry Act 1967 or in respect of which there is in force a forestry dedication agreement entered into with the Commissioners under section 5 of that Act, a tree preservation order may be made only if—
- (a) there is not in force in respect of the land a plan of operations or other working plan approved by the Commissioners under such an agreement; and
  - (b) the Commissioners consent to the making of the order.
- (8) Where a tree preservation order is made in respect of land to which subsection (7) of this section applies, the order shall not have effect so as to prohibit, or to require any consent for, the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Forestry Commissioners, and for the time being in force, under such an agreement as is mentioned in that subsection or under a woodlands scheme made under the powers contained in the said Act of 1967.
- (9) In the preceding provisions of this section references to provisions of the Forestry Act 1967 include references to the corresponding provisions (replaced by that Act) in the Forestry Acts 1919 to 1951.
- (10) The preceding provisions of this section shall have effect subject to the provisions—

- (a) of section 2(4) of the Opencast Coal Act 1958 (land comprised in an authorisation under that Act which is affected by a tree preservation order); and
  - (b) of section 15 of the Forestry Act 1967 (licences under that Act to fell trees comprised in a tree preservation order).
- (11) Until subsection (5) of this section comes into operation under section 279 of this Act, the provisions of paragraphs 1 and 2 of Schedule 11 to this Act shall have effect; and on the coming into operation of subsection (5) of this section as aforesaid the said provisions shall accordingly cease to have effect.

## **59 Provisional tree preservation orders**

- (1) If it appears to a local planning authority that a tree preservation order proposed to be made by that authority should take effect immediately without previous confirmation, they may include in the order as made by them a direction that this section shall apply to the order.
- (2) Notwithstanding section 58(4) of this Act, an order which contains such a direction shall take effect provisionally on such date as may be specified therein and shall continue in force by virtue of this section until—
- (a) the expiration of a period of six months beginning with the date on which the order was made; or
  - (b) the date on which the order is confirmed or, in the case of an order which can be confirmed only by the Secretary of State, on which he notifies the authority who made the order that he does not propose to confirm it,
- whichever first occurs.
- (3) Provision shall be made by regulations under this Act for securing—
- (a) that the notices to be given of the making of a tree preservation order containing a direction under this section shall include a statement of the effect of the direction; and
  - (b) that where the Secretary of State, in the case of an order which can be confirmed only by him, within the period of six months referred to in subsection (2) of this section, notifies the authority that he does not propose to confirm the order, copies of that notice shall be served on the owners, lessees and occupiers of the land to which the order related.
- (4) Until subsections (1) to (3) of this section come into operation under section 279 of this Act, the provisions of paragraph 3 of Schedule 11 to this Act shall have effect; and on the coming into operation of subsections (1) to (3) of this section as aforesaid the said provisions shall accordingly cease to have effect.

## **60 Replacement of trees**

- (1) If any tree in respect of which a tree preservation order is for the time being in force, other than a tree to which the order applies as part of a woodland, is removed or destroyed in contravention of the order or is removed or destroyed or dies at a time when its felling is authorised only by virtue of the provisions of section 58(6) of this Act relating to felling where urgently necessary in the interests of safety, it shall be the duty of the owner of the land, unless on his application the local planning authority dispense with this requirement, to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

- (2) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.
- (3) The duty imposed by subsection (1) of this section on the owner of any land shall attach to the person who is from time to time the owner of the land and may be enforced as provided by section 99 of this Act and not otherwise.

### *Advertisements*

## **61 Control of advertisements**

- (1) Subject to the provisions of this section, provision shall be made by regulations under this Act for restricting or regulating the display of advertisements so far as appears to the Secretary of State to be expedient in the interests of amenity or public safety.
- (2) Without prejudice to the generality of subsection (1) of this section, any such regulations may provide—
  - (a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed, and the manner in which they are to be affixed to the land;
  - (b) for requiring the consent of the local planning authority to be obtained for the display of advertisements, or of advertisements of any class specified in the regulations;
  - (c) for applying, in relation to any such consent and to applications for such consent, any of the provisions of this Act falling within section 58(2) thereof, subject to such adaptations and modifications as may be specified in the regulations;
  - (d) for the constitution, for the purposes of the regulations, of such advisory committees as may be prescribed, by the regulations, and for determining the manner in which the expenses of any such committee are to be defrayed.
- (3) Regulations made for the purposes of this section may make different provision with respect to different areas, and in particular may make special provision with respect to areas defined for the purposes of the regulations as areas of special control, being either rural areas or areas other than rural areas which appear to the Secretary of State to require special protection on grounds of amenity; and, without prejudice to the generality of the preceding provisions of this subsection, the regulations may prohibit the display in any such area of all advertisements except advertisements of such classes (if any) as may be specified in the regulations.
- (4) Areas of special control for the purposes of regulations under this section may be defined by means of orders made or approved by the Secretary of State in accordance with the provisions of the regulations.
- (5) Where the Secretary of State is authorised by the regulations to make or approve any such order as is mentioned in subsection (4) of this section, the regulations shall provide for the publication of notice of the proposed order in such manner as may be prescribed by the regulations, for the consideration of objections duly made thereto, and for the holding of such inquiries or other hearings as may be so prescribed, before the order is made or approved.
- (6) Regulations made under this section may be made so as to apply to advertisements which are being displayed on the date on which the regulations come into force, or

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*Status: This is the original version (as it was originally enacted).*

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to the use for the display of the advertisements of any site which was being used for that purpose on that date; but any regulations made in accordance with this subsection shall provide for exempting therefrom—

- (a) the continued display of any such advertisement; and
- (b) the continued use for the display of advertisements of any such site,

during such period as may be prescribed in that behalf by the regulations, and different periods may be so prescribed for the purposes of different provisions of the regulations.

- (7) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, regulations made for the purposes of this section may provide that any appeal from the decision of the local planning authority, on an application for their consent under the regulations, shall be to an independent tribunal constituted in accordance with the regulations, instead of being an appeal to the Secretary of State; and subsection (2) of section 48 of this Act shall apply to any tribunal so constituted as it applies to any tribunal constituted in accordance with subsection (1) of that section.
- (8) Nothing in this section or in any regulations made thereunder shall be construed as authorising the restriction or regulation of the display of any advertisement by reason only of the subject matter or wording thereof.

## **62 Application for planning permission not needed for advertisements complying with regulations**

Where the display of advertisements in accordance with regulations made under section 61 of this Act involves development of land, planning permission for that development shall be deemed to be granted by virtue of this section, and no application shall be necessary in that behalf under Part III of this Act.

### *Waste land*

## **63 Proper maintenance of waste land**

- (1) If it appears to a local planning authority that the amenity of any land is seriously injured by reason of the ruinous or dilapidated condition of any building in their district or by the condition of any derelict, waste, neglected or other land in their district, then, subject to any directions given by the Secretary of State, the authority may serve on the owner, lessee and occupier of the building or land a notice requiring such steps for abating the injury as may be specified in the notice to be taken within such period as may be so specified.
- (2) No notice may be served under subsection (1) of this section with reference to any building which is—
  - (a) a building which is the subject of a scheme or order under the enactments for the time being in force with respect to ancient monuments, or
  - (b) a building for the time being included in a list of monuments published by the Secretary of State under any such enactment as aforesaid.
- (3) The provisions of section 88 of this Act shall, subject to any necessary modifications, apply in respect of a notice served under this section as they apply in respect of an enforcement notice served under section 84 of this Act.



### *Industrial development*

#### **64 Meaning of " industrial building "**

- (1) In this Part of this Act " industrial building " means a building used or designed for use—
- (a) for the carrying on of any process for or incidental to any of the following purposes, that is to say—
    - (i) the making of any article or of part of any article; or
    - (ii) the altering, repairing, ornamenting, finishing, cleaning, washing, freezing, packing or canning, or adapting for sale, or breaking up or demolition, of any article; or
    - (iii) without prejudice to the preceding sub-paragraphs, the getting, dressing or preparation for sale of minerals or the extraction or preparation for sale of oil or brine;
  - (b) for the carrying on of scientific research,  
being a process or research carried on in the course of a trade or business.
- (2) For the purposes of subsection (1) of this section, premises which—
- (a) are used or designed for use for providing services or facilities ancillary to the use of other premises for the carrying on of any such process or research as is mentioned in that subsection; and
  - (b) are or are to be comprised in the same building or the same curtilage as those other premises,
- shall themselves be treated as used or designed for use for the carrying on of such a process or, as the case may be, of such research.
- (3) In this section—
- " article " means an article of any description, including a ship or vessel;
  - " building " includes a part of a building ;
  - " scientific research " means any activity in the fields of natural or applied science for the extension of knowledge.

#### **65 Industrial development certificates**

- (1) Subject to the provisions of this section and of section 66 of this Act, an application to the local planning authority for permission to develop land by—
- (a) the erection thereon of an industrial building of one of the prescribed classes ;  
or
  - (b) a change of use v/hereby premises, not being an industrial building of one of the prescribed classes, will become such an industrial building,
- shall be of no effect unless a certificate (in this Act referred to as an " industrial development certificate ") is issued under this section by the Secretary of State, certifying that the development in question can be carried out consistently with the proper distribution of industry, and a copy of the certificate is furnished to the local planning authority together with the application.
- (2) An industrial development certificate shall be required for the purposes of an application for planning permission made as mentioned in section 29(1) of this Act if the circumstances are such that, in accordance with subsection (1) of this section, such a certificate would have been required if the application had been for

planning permission to construct the building, or to institute the use of land, which the application seeks permission to retain or continue, and the provisions of this section shall have effect in relation to that application accordingly.

- (3) In considering whether any development for which an industrial development certificate is applied for can be carried out consistently with the proper distribution of industry, the Secretary of State shall have particular regard to the need for providing appropriate employment in development areas.
- (4) An industrial development certificate shall not be required for the extension of an industrial building if the extension, taken by itself, would not be an industrial building of one of the prescribed classes, but (subject to the provisions of section 66 of this Act) an industrial development certificate shall be required for the extension of any building if the extension, taken by itself, would be such an industrial building.
- (5) The preceding provisions of this section shall have effect without prejudice to any provisions for restricting the granting of planning permission by local planning authorities which are included in a development order by virtue of section 28(1) of this Act.
- (6) In this section—

" the prescribed classes " means such classes or descriptions of industrial buildings as may be prescribed by regulations made for the purposes of this section by the Secretary of State;

" development area " means any area specified as such by an order made or having effect under section 1 of the Local Employment Act 1972 and any locality treated by virtue of subsection (5) of that section as included in a development area.

## **66 Exemption of certain classes of development**

- (1) Notwithstanding anything in section 65 of this Act, but subject to section 67 of this Act, an industrial development certificate shall not be required if the industrial floor space to be created by the development in question (in this section referred to as "the proposed development"), together with any other industrial floor space created or to be created by any related development, does not exceed 5,000 square feet, excluding, where an industrial development certificate has been issued in respect of any related development, any floor space created or to be created by that development or by development carried out, or for which planning permission has been granted, before the issue of that certificate.
- (2) Regulations made for the purposes of section 65 of this Act by the Secretary of State may direct that no industrial development certificate shall be required in respect of the erection, in any area prescribed by or under the regulations, of industrial buildings of any such class or description as may be so prescribed, or in respect of a change of use whereby premises in any such area, not being an industrial building of a class or description so prescribed, will become an industrial building of such a class or description.
- (3) In this section " industrial floor space " means floor space comprised in an industrial building or industrial buildings of any of the prescribed classes.
- (4) For the purposes of subsection (1) of this section development shall, in relation to an application for planning permission (in this section referred to as "the relevant application"), be taken to be " related development" if—

- (a) it related, or is to relate, to the same building as that to which the proposed development is to relate (in this subsection referred to as the "relevant building"); or
  - (b) it related, or is to relate, to a building which is, or is to be, contiguous or adjacent to the relevant building, and it was, or is to be, development comprised in, or for the purposes of, the same scheme or project or for the purposes of the same undertaking as the proposed development,
- and (in either case) it fulfils one or other of the conditions mentioned in subsection (5) of this section.
- (5) The said conditions are—
- (a) that it is development for which, before the date of the relevant application, planning permission has been granted by a planning decision made on or after 1st April 1960;
  - (b) that it is development which has been initiated on or after 1st April 1960 but before the date of the relevant application and is not development for which planning permission has been granted by a planning decision made on or after 1st April 1960;
  - (c) that it is development in respect of which an application to the local planning authority for planning permission either is pending on the date of the relevant application or is made on that date.
- (6) For the purposes of subsection (5)(c) of this section, an application is pending on a particular date if—
- (a) it is made before that date and not withdrawn ; and
  - (b) no planning decision on that application has been made before that date.
- (7) In subsection (4) of this section and in this subsection " building" does not include a part of a building; and any reference in subsection (4) of this section to development relating to a building is a reference to the erection, extension, alteration or re-erection of the building or a change of use of the whole or part of the building.
- (8) In this section " the prescribed classes" has the same meaning as in section 65 of this Act.

## **67 Power to vary exemption limit as to industrial floor space**

- (1) The Secretary of State may by order direct that subsection (1) of section 66 of this Act shall be amended by substituting, for the number of square feet specified in that subsection as originally enacted or as previously amended under this subsection, such number of square feet as may be specified in the order being not less than 1,000 square feet
- (2) Any amendment made by an order under this section may be made so as to have effect either in relation to the whole of Scotland or in relation only to a part of Scotland specified in the order.
- (3) Any amendment made by such an order shall have effect—
- (a) in relation to applications for planning permission relating to land in any area to which the order applies which are made on or after the date on which the order comes into operation ; and

- (b) in relation to applications relating to land in such an area which have been made before that date, other than any application on which a planning decision has been made before that date.
- (4) Where in accordance with subsection (3) of this section an amendment made by such an order has effect in relation to an application for planning permission made before the date on which the order comes into operation, so much of section 65(1) of this Act as requires a copy of an industrial development certificate to be furnished to the local planning authority together with the application shall have effect in relation to that application with the substitution, for the words " together with the application " , of the words " as soon as practicable after the certificate is issued " .
- (5) In this section any reference to land in any area to which an order under this section applies shall be construed as a reference to land of which any part is in that area.

## **68 Restrictions or conditions attached to certificates**

- (1) An industrial development certificate in respect of any development may be issued subject to such restrictions on the making of an application for planning permission for that development (whether as to the period within which, or the persons by whom, such an application may be made, or otherwise) as the Secretary of State considers appropriate having regard to the proper distribution of industry; and where an industrial development certificate in respect of any development is issued subject to any such restrictions, and an application for planning permission for that development is made which does not comply with those restrictions, the provisions of section 65 of this Act shall apply in relation to that application as if no such certificate had been issued.
- (2) Without prejudice to subsection (1) of this section, an industrial development certificate may be issued either unconditionally or subject to such conditions as the Secretary of State considers appropriate having regard to the proper distribution of industry; and any reference in this section to conditions attached to an industrial development certificate is a reference to conditions subject to which such a certificate is issued.
- (3) Without prejudice to the generality of subsection (2) of this section, conditions may be attached to an industrial development certificate—
  - (a) for requiring the removal of any building or the discontinuance of any use of land to which the certificate relates at the end of a specified period and the carrying out of any works required for the reinstatement of land at the end of that period;
  - (b) restricting the amount of office floor space (as defined in section 82 of this Act whether or not that section has ceased to have effect) to be contained in any building to which the certificate relates, or precluding it from containing any office floor space (as so defined);
 and conditions of the kind mentioned in paragraph (b) of this subsection may be framed so as to apply (either or both) to the building as originally erected or as subsequently extended or altered.
- (4) In so far as any of the conditions attached to an industrial development certificate are of such a description that (apart from this section) they could not have been imposed under this Act, this Act shall apply in relation to any application for planning permission for the purposes of which that certificate is required, and to any planning

permission granted on such an application, as if the powers conferred by this Act included power to impose conditions of that description.

- (5) Where conditions are attached to an industrial development certificate, and, on an application for planning permission for the purposes of which that certificate is required, planning permission is granted, the authority granting the permission shall grant it subject to those conditions, with or without other conditions.
- (6) Planning permission to which subsection (5) of this section applies shall not be invalid by reason only that the requirements of that subsection are not complied with; but where any such planning permission is granted without complying with the requirements of that subsection the planning permission shall be deemed to have been granted subject to the conditions attached to the industrial development certificate, or (if any other conditions were imposed by the authority granting the permission) to have been granted subject to the conditions attached to the certificate in addition to the other conditions.

#### **69 Provisions as to conditions imposed under s. 68**

- (1) This section applies to any condition subject to which planning permission is granted in accordance with the provisions of section 68 of this Act, or subject to which planning permission is by virtue of that section deemed to have been granted, whether it is a condition which could have been imposed apart from that section or not
- (2) If the planning permission is or was granted by the local planning authority, the Secretary of State shall not be required to entertain an appeal under section 33 of this Act from the decision of the local planning authority, in so far as that decision relates or related to any condition to which this section applies.
- (3) If any condition imposed by an authority granting planning permission is inconsistent with any condition to which this section applies, the last-mentioned condition shall prevail so far as it is inconsistent with the condition so imposed.

#### **70 Provision for cases where certificate withheld**

- (1) Where such an application as is mentioned in subsection (1) or (2) of section 65 of this Act is, by virtue of those subsections, of no effect by reason that the requirements of those subsections are not fulfilled, the local planning authority shall consider whether, if those requirements had been fulfilled, they would nevertheless have refused the permission sought by the application, either in respect of the whole or in respect of part of the land to which the application relates; and if they are of the opinion that they would so have refused that permission, they shall serve on the applicant a notice in writing to that effect.
- (2) Where a notice is served under subsection (1) of this section in respect of the whole or part of any land, it shall operate, for the purposes of sections 35 and 36 of this Act, as if the application for planning permission had been an effective application and the notice had been a planning decision of the local planning authority refusing that permission in respect of that land or that part thereof, as the case may be; and the provisions of those sections (if in those circumstances they would have been applicable) shall have effect accordingly.

### *Office development*

#### **71 Meaning of " office premises "**

- (1) Subject to the provisions of this section, in these provisions, " office premises" means premises falling within either of the following descriptions, that is to say—
  - (a) premises whose sole or principal use is to be use as an office or for office purposes;
  - (b) premises to be occupied together with premises falling within the preceding paragraph and to be so occupied wholly or mainly for the purposes of the activities to be carried on in the last-mentioned premises.
- (2) Where, in relation to an application for planning permission for the erection of a building, or in relation to a grant of such planning permission, it falls to be determined, for the purposes of subsection (1) of this section, what is to be the sole or principal use of any premises to be contained in the building, regard shall be had—
  - (a) in the case of an application for planning permission, to the proposed use (as indicated in the application) of the building or of different parts of the building; and
  - (b) in the case of a grant of planning permission, to the purposes specified in the planning permission as those for which the building, or different parts of the building, may be used.
- (3) Where, in relation to an application for planning permission for the extension or alteration of a building, or in relation to a grant of such planning permission, it falls to be determined, for the purposes of subsection (1) of this section, what is to be the sole or principal use of any premises which are to be added to the building or altered within it (in this subsection referred to as " the new premises " ), regard shall be had—
  - (a) in the case of an application for planning permission, to the proposed use (as indicated in the application) of the new premises ; and
  - (b) in the case of a grant of planning permission, to the purposes specified in the planning permission as those for which the new premises may be used.
- (4) For the purposes of the application of these provisions in relation to development in so far as it consists of a change in the use of land, " office premises " (subject to the following provisions of this section) means premises falling within either of the following descriptions, that is to say—
  - (a) premises whose sole or principal use is as an office or for office purposes;
  - (b) premises occupied together with premises falling within the preceding paragraph and so occupied wholly or mainly for the purposes of the activities carried on in the last-mentioned premises;and for the purposes of paragraph (a) of this subsection any question as to sole or principal use, in relation to premises contained in a building, shall be determined by reference to those premises alone and not by reference to the building taken as a whole.
- (5) In this section " office purposes " includes the purposes of administration, clerical work, handling money, telephone and telegraph operating and the operation of computers, and " clerical work " includes writing, book-keeping, sorting papers, filing, typing, duplicating, punching cards or tapes, machine calculating, drawing and the editorial preparation of matter for publication.

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*Status: This is the original version (as it was originally enacted).*

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- (6) The Secretary of State may by order provide that premises of any description specified in the order, or premises used or to be used for any purposes so specified, shall not be office premises for the purposes of these provisions.
- (7) In this section and in sections 72 to 83 of this Act " these provisions" means the provisions of this section and of those sections.

## **72 Office development permits**

- (1) Subject to these provisions, an application to the local planning authority for planning permission to carry out, on land within an area to which these provisions apply, any development to which these provisions apply, that is to say, any development of land which consists of or includes—
  - (a) the erection of a building containing office premises; or
  - (b) the extension or alteration of a building by the addition of, or the conversion of premises into, office premises; or
  - (c) a change of use whereby premises which are not office premises become office premises,

shall be of no effect unless a permit (in these provisions referred to as an " office development permit") in respect of that development is issued under these provisions by the Secretary of State, and a copy of the permit is furnished to the local planning authority together with the application.

- (2) An office development permit shall be required for the purposes of an application for planning permission made as mentioned in section 29(1) of this Act if the circumstances are such that, in accordance with subsection (1) of this section, such a permit would have been required if the application had been for planning permission to construct or carry out the building or works, or to institute the use of land, which the application seeks permission to retain or continue or (as the case may be) seeks permission to retain or continue without complying with a condition previously imposed, and subsections (1) and (3) of this section shall have effect in relation to that application accordingly.
- (3) In exercising his discretion to issue or withhold office development permits, the Secretary of State shall have particular regard to the need for promoting the better distribution of employment in Great Britain.
- (4) The areas to which these provisions apply are any area which is for the time being designated for the purposes of this subsection by an order made by the Secretary of State.

## **73 Exemption by reference to office floor space**

- (1) Notwithstanding anything in section 72 of this Act, an office development permit shall not be required for the purposes of an application for planning permission to carry out any development (in this section referred to as " the proposed development") if the office floor space to be created by the proposed development, together with any office floor space created or to be created by any related development, does not exceed the prescribed exemption limit.
- (2) For the purposes of subsection (1) of this section development shall, in relation to an application for planning permission (in this section referred to as " the relevant application " ), be taken to be " related development" if—

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*Status: This is the original version (as it was originally enacted).*

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- (a) it related, or is to relate, to the same building as that to which the proposed development is to relate (in this subsection referred to as the "relevant building"); or
  - (b) it related, or is to relate, to a building which is, or is to be, contiguous or adjacent to the relevant building, and it was, or is to be, development comprised in, or for the purposes of, the same scheme or project or for the purposes of the same undertaking as the proposed development,
- and (in either case) it fulfils one or other of the conditions mentioned in subsection (3) of this section and is not excluded by subsection (4) or (5) of this section.
- (3) The said conditions, in relation to land within an area to which these provisions apply, are—
- (a) that it is development for which, before the date of the relevant application, planning permission has been granted by a planning decision made on or after the specified date;
  - (b) that it is development (not falling within the preceding paragraph) which has been initiated on or after the specified date but before the date of the relevant application and is not development for which planning permission was (whether before or after the passing of this Act) granted by a planning decision made before the specified date;
  - (c) that it is development in respect of which an application to the local planning authority for planning permission either is pending on the date of the relevant application or is made on that date,
- and in this subsection "the specified date", in relation to an area, means such date (not being earlier than the date on which the order comes into operation) as may be specified in the order designating that area as an area to which these provisions apply.
- (4) Where, before the date of the relevant application, an office development permit has been issued in respect of development which, apart from this subsection, would be related development for the purposes of subsection (1) of this section—
- (a) the development in respect of which the permit was issued; and
  - (b) any other development which was carried out before the issue of that permit, or for which planning permission was granted by a planning decision made before the issue of that permit,
- shall not be taken to be related development for those purposes.
- (5) Development in respect of which there has been issued by the Secretary of State an industrial development certificate with conditions attached to it by virtue of section 68(3)(b) of this Act shall not be taken to be related development for the purposes of subsection (1) of this section.
- (6) In this section "the prescribed exemption limit", subject to subsection (7) of this section, means 3,000 square feet; any reference to development relating to a building is a reference to development consisting of or including the erection, extension or alteration of the building or a change of use of the whole or part of the building; and any reference to an application pending on a particular date is a reference to an application made before that date and not withdrawn, where no planning decision on that application has been made before that date.
- (7) The Secretary of State may by order direct that such number of square feet (whether greater or less than 3,000 but not less than 1,000) as may be specified in the order shall be the prescribed exemption limit for the purposes of this section, either generally or



in relation to any particular area to which these provisions apply in accordance with section 72(4) of this Act or in relation to any particular part of such an area.

#### **74 Mixed industrial and office development**

- (1) Subject to subsection (2) of this section, these provisions shall have effect without prejudice to the operation of sections 65 and 66 of this Act; and, where these provisions and those sections are applicable to the same application for planning permission, the requirements of both must be complied with.
- (2) Compliance with section 72(1) of this Act shall not be required in respect of an application for planning permission for the development of land in any manner specified in section 65(1) of this Act if—
  - (a) no office premises will result from the development except such as are comprised within the curtilage of an industrial building and are used or designed for use for providing services or facilities ancillary to the use of other premises in the same building or curtilage; and
  - (b) there has been issued by the Secretary of State and furnished to the local planning authority with the application a copy of an industrial development certificate with conditions attached to it by virtue of section 68(3)(W) of this Act.

#### **75 Restrictions or conditions attached to office development permits**

- (1) An office development permit in respect of any development may be issued subject to such restrictions on the making of an application for planning permission for that development (whether as to the period within which, or the persons by whom, such an application may be made, or otherwise) as the Secretary of State considers appropriate in the exercise of his discretion as mentioned in section 72(3) of this Act; and, where an office development permit in respect of any development is issued subject to any such restrictions, and an application for planning permission for that development is made which does not comply with those restrictions, these provisions shall apply in relation to that application as if no such permit had been issued.
- (2) Without prejudice to subsection (1) of this section, an office development permit may be issued either unconditionally or subject to such conditions as the Secretary of State considers appropriate in the exercise of his discretion as mentioned in section 72(3) of this Act; and any reference in these provisions to conditions attached to an office development permit is a reference to conditions subject to which such a permit is issued.
- (3) In so far as any of the conditions attached to an office development permit are of such a description that (apart from this section) they could not have been imposed under this Act, this Act shall apply in relation to any application for planning permission for the purposes of which that permit is required, and to any planning permission granted on such an application, as if the powers conferred by this Act included power to impose conditions of that description.
- (4) Where conditions are attached to an office development permit, and, on an application for planning permission for the purposes of which that permit is required, planning permission is granted, the authority granting the permission shall grant it subject to those conditions, with or without other conditions.

- (5) Planning permission to which subsection (4) of this section applies shall not be invalid by reason only that the requirements of that subsection are not complied with; but where any such planning permission is granted without complying with the requirements of that subsection the planning permission shall be deemed to have been granted subject to the conditions attached to the office development permit, or (if any other conditions were imposed by the authority granting the permission) to have been granted subject to the conditions attached to the permit in addition to the other conditions.

**76 Planning permission for erection of building where no office development permit required**

- (1) The provisions of this section shall, subject to subsection (4) of this section, have effect with respect to any planning permission for the erection of a building on land which is within a controlled area when the planning permission is granted and was also within such an area when the application for planning permission was made.
- (2) If the case is the following, that is to say—
- (a) either the proposed erection of the building is not development to which these provisions apply or it is such development but no office development permit is required for it; and
  - (b) the building will have a floor space of twice, or more than twice, the prescribed exemption limit,
- the planning permission for the erection of the building shall be granted subject to the condition specified in subsection (3) of this section (in addition to any other conditions imposed by the authority granting the permission).
- (3) The said condition is that the use of the building, whether as originally erected or as subsequently extended or altered, shall be restricted so that (whether in consequence of a change of use or otherwise) it does not at any time contain office premises having an aggregate office floor space which exceeds the prescribed exemption limit.
- (4) In the following two cases this section shall not apply—
- (a) where the planning permission is in respect of a building which is wholly residential; and
  - (b) where the planning permission is subject to conditions by virtue of section 68(5) or (6) of this Act and those conditions either restrict the office floor space which the building may contain or preclude it from containing any office floor space.

**77 Planning permission for alteration or extension of building where no office development permit required**

- (1) The provisions of this section shall, subject to subsection (4) of this section, have effect with respect to any planning permission for the alteration or extension of a building on land which is within a controlled area when the planning permission is granted and was also within such an area when the application for planning permission was made, but shall have effect only in the case of a building erected under a planning permission granted on or after 8th December 1969.
- (2) If the case is the following, that is to say—

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- (a) either the erection of the building was not development to which these provisions (or Part I of the Act of 1965) applied, or it was such development but no office development permit was required for it; and
- (b) either the proposed alteration or extension is not development to which these provisions apply or it is such development but no office development permit is required for it; and
- (c) there will result from the proposed alteration or extension a building with an aggregate floor space of twice, or more than twice, the prescribed exemption limit,

the planning permission for the alteration or extension shall be granted subject to the condition specified in subsection (3) of this section (in addition to any other conditions imposed by the authority granting the permission).

- (3) The said condition is that the use of the building as altered or extended, or as subsequently further altered or extended, shall be restricted so that (whether in consequence of a change of use or otherwise) it does not at any time contain office premises having an aggregate office floor space which exceeds the prescribed exemption limit.
- (4) In the following two cases this section shall not apply—
  - (a) where the planning permission is in respect of a building which, after its alteration or extension, will be wholly residential; and
  - (b) where the planning permission is subject to conditions by virtue of section 68(5) or (6) of this Act and those conditions either restrict the office floor space which the building as extended or altered may contain or preclude it from containing any office floor space.

## **78 Planning permission for erection of two or more buildings where no office development permit required**

- (1) The provisions of this section shall have effect with respect to any planning permission for development involving the erection of two or more buildings on land which is within a controlled area when the planning permission is granted and was also within such an area when the application for planning permission was made, except in a case where all the buildings are exempt from this section.
- (2) Any one of the said buildings shall be exempt from this section if—
  - (a) it is wholly residential; or
  - (b) the planning permission is subject to conditions by virtue of section 68(5) or (6) of this Act and those conditions either restrict the office floor space which the building may contain or preclude it from containing any office floor space.
- (3) If the aggregate floor space of the buildings proposed to be erected (leaving out of account any which are exempt from this section) is twice, or more than twice, the prescribed exemption limit, and either the erection of the buildings is not development to which these provisions apply or it is such development but no office development permit is required for it, the planning permission shall be granted subject to the condition specified in subsection (4) of this section (in addition to any other conditions imposed by the authority granting the permission).
- (4) The said condition is that the use of each one of the buildings (excluding any which are exempt from this section) shall be restricted so that (whether in consequence of a change of use or otherwise) it does not at any time contain office premises having

an aggregate floor space which exceeds the limit for that building specified in the condition, which limit shall (subject to subsection (5) of this section) be a floor space bearing such proportion to the building's total floor space as the prescribed exemption limit bears to the aggregate floor space of all the buildings (excluding any which are exempt from this section) for whose erection the planning permission is granted.

- (5) The authority granting the planning permission may in doing so specify in the said condition, as it applies to any building, a limit differing from the one provided by subsection (4) of this section, but not so that the total of the limits for all the buildings to which the condition applies exceeds the prescribed exemption limit.
- (6) If after the grant of the planning permission a further application for planning permission is made in respect of all or any of the buildings to which the condition specified in subsection (4) of this section applies, and the further application involves a departure from the terms of the said condition as applying to any building, the application shall be subject to section 72(1) of this Act notwithstanding anything in these provisions exempting development from the requirements of that section in particular cases.

## **79 Provisions supplementary to ss. 76 to 78**

- (1) Any planning permission with respect to which section 76, 77 or 78 of this Act has effect shall not be invalid by reason only that the requirements of section 76(2), 77(2) or 78(3) of this Act, as the case may be, are not complied with; but in that case the planning permission shall be deemed to have been granted subject to the condition specified in section 76(3), 77(3) or 78(4) of this Act, as the case may be, or (if any other conditions are imposed by the authority granting the permission) to have been granted subject to the condition so specified in addition to the other conditions, and references in those sections to a condition imposed thereunder shall be construed accordingly as including references to a condition deemed to be imposed.
- (2) In sections 76, 77 and 78 of this Act—
  - " controlled area " means an area to which these provisions apply, or, as respects any time before the commencement of this Act, Part I of the Act of 1965 applied;
  - " the prescribed exemption limit " means that number of square feet which, at the time when the planning permission in question is granted, is for the purposes of section 73 of this Act the prescribed exemption limit in relation to the land to which the planning permission relates, whether—
    - (a) by virtue of subsection (6) of that section; or
    - (b) if an order under subsection (7) of that section is for the time being in force and applies to the area, or part of an area, in which that land is situated, by virtue of that order;
  - " wholly residential " in relation to a building, means for use exclusively as a dwellinghouse or comprising only units of accommodation for such use.

## **80 Provisions as to conditions imposed or implied in pursuance of these provisions**

- (1) This section applies to any condition subject to which planning permission is granted in accordance with these provisions or subject to which planning permission is by virtue of these provisions deemed to have been granted, whether or not it is a condition which could have been imposed apart from these provisions.

- (2) If the planning permission is or was granted by the local planning authority, the Secretary of State shall not be required to entertain an appeal under section 33 of this Act from the decision of the local planning authority, in so far as that decision relates or related to any condition to which this section applies.
- (3) Where planning permission is granted subject to a condition to which this section applies, and it appears to the authority granting the permission that the condition could have been imposed apart from these provisions and would have been imposed if these provisions had not been enacted, the decision granting the permission may include a certificate to that effect; and, where such a certificate is included in a decision of the local planning authority—
  - (a) the Secretary of State shall not be required to entertain an appeal from the decision in so far as it includes the certificate; but
  - (b) subject to the preceding paragraph, section 33 of this Act shall have effect in relation to the certificate as it has effect in relation to any other part of the decision.
- (4) If any condition imposed by an authority granting planning permission is inconsistent with any condition to which this section applies, the last-mentioned condition shall prevail in so far as it is inconsistent with the condition so imposed.
- (5) Where on an application made as mentioned in section 29(1) of this Act (as modified by section 72(2) of this Act) planning permission is granted (either unconditionally or subject to conditions) for a building to be retained, or a use of a building to be continued, without complying with a condition to which this section applies (that condition being one subject to which a previous planning permission was granted or is deemed to have been granted), nothing in sections 75 to 79 of this Act or in the preceding provisions of this section shall be construed as preventing the subsequent planning permission from operating so as to extinguish or modify that condition, as the case may be.

## **81 Annual report**

As soon as may be after the end of March in each year the Secretary of State shall prepare a report on the performance of his functions under these provisions, and shall lay the report before Parliament.

## **82 Interpretation of these provisions**

- (1) In these provisions—
  - " the Act of 1965 " means the Control of Office and Industrial Development Act 1965;
  - " building " includes any structure ;
  - " building contract " means a contract (other than a lease) which is made in relation to land whereby a person undertakes to erect or extend a building on that land in the course of the carrying on by him of a business consisting wholly or mainly of the execution of building operations, or of building operations and engineering operations;
  - " erection ", in relation to a building, includes re-erection;
  - " premises " means a part of a building;

" these provisions " has the meaning assigned to it by section 71(7) of this Act.

- (2) In these provisions " office floor space " means gross floor space comprised in office premises; and for the purposes of these provisions the amount of any such space shall be ascertained by external measurement of that space, whether the office premises in question are or are to be bounded (wholly or partly) by external walls of a building or not.
- (3) In these provisions any reference to the granting of planning permission for the carrying out of any development of land is a reference to the granting of planning permission for that development—
  - (a) either in respect of that land taken by itself or in respect of that land together with other land; and
  - (b) either on an ordinary application or on an outline application (that is to say, an application for planning permission subject to subsequent approval on any matters).
- (4) In these provisions any reference to a building containing office premises includes a reference to a building of which every part consists or is to consist of office premises; and in these provisions any reference to the addition of office premises includes a reference to the addition of office premises together with other premises.
- (5) In these provisions any reference to land within any area to which these provisions apply or, as respects any time before the commencement of this Act, the Act of 1965 applied, shall be construed as a reference to land of which any part is within the area in question.
- (6) In these provisions any reference to an application made as mentioned in section 29(1) of this Act includes a reference to an application which by virtue of section 85(7) or 91(6) of this Act is deemed to have been made for such planning permission as is mentioned in the said section 85(7) or, as the case may be, the said section 91(6).

### **83 Temporary operation of these provisions**

- (1) Unless Parliament otherwise determines, these provisions (other than this section) shall cease to have effect at the end of the period of seven years beginning with 5th August 1965.
- (2) Where immediately before the end of that period any planning permission has effect subject to a condition subject to which the planning permission is by virtue of these provisions deemed to have been granted, the planning permission shall, as from the end of that period, have effect free from that condition.
- (3) Where immediately before the end of that period any planning permission has effect subject to a condition imposed by the authority granting the permission in circumstances where that authority was required by these provisions to impose that condition, then unless the condition is the subject of a certificate under section 80(3) of this Act, the planning permission shall, as from the end of that period, have effect free from that condition.
- (4) Subject to the preceding provisions of this section, at the end of that period section 38(2) of the Interpretation Act 1889 (effect of repeals) shall apply as if these provisions had, as from the end of that period, been repealed by another Act.

## PART V

### ENFORCEMENT OF CONTROL UNDER PARTS III AND IV

#### *Development requiring planning permission*

#### **84 Power to serve enforcement notice**

- (1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1964, then, subject to any directions given by the Secretary of State and to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may serve a notice under this section (in this Act referred to as an "enforcement notice") requiring the breach to be remedied.
- (2) There is a breach of planning control if development has been carried out, whether before or after the commencement of this Act, without the grant of planning permission required in that behalf in accordance with Part III of this Act, or if any conditions or limitations subject to which planning permission was granted have not been complied with.
- (3) Where an enforcement notice relates to a breach of planning control consisting in—
  - (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or
  - (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land ; or
  - (c) the making without planning permission of a change of use of any building to use as a single dwelling-house,it may be served only within the period of four years from the date of the breach.
- (4) If any dispute arises under subsection (3) of this section as to the date on which the breach of planning control occurred, the onus of proof as to that date shall rest on the person claiming the benefit of that subsection.
- (5) An enforcement notice shall be served on the owner, lessee and occupier of the land to which it relates and on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.
- (6) Where planning permission has effect subject to a condition to which section 80 of this Act applies, and by reason of anything done in a particular part of a building that condition is contravened, any enforcement notice relating to the contravention shall be taken to be served on the owner, lessee and occupier of the land to which it relates if it is served on the owner, lessee and occupier of that part of the building, whether it is also served on any other person or not.
- (7) An enforcement notice shall specify—
  - (a) the matters alleged to constitute a breach of planning control;
  - (b) the steps required by the authority to be taken in order to remedy the breach, that is to say steps for the purpose of restoring the land to its condition before the development took place or (according to the particular circumstances of the breach) of securing compliance with the conditions or limitations subject to which planning permission was granted; and

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- (c) the period for compliance with the notice, that is to say the period (beginning with the date when the notice takes effect) within which those steps are required to be taken.
- (8) The steps which may be required by an enforcement notice to be taken include the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations.
- (9) Subject to section 85 of this Act, an enforcement notice shall take effect at the end of such period, not being less than twenty-eight days after the service of the notice, as may be specified in the notice.
- (10) The local planning authority may withdraw an enforcement notice (without prejudice to their power to serve another) at any time before it takes effect; and, if they do so, they shall forthwith give notice of the withdrawal to every person who was served with the notice.
- (11) The validity of a notice purporting to be an enforcement notice shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both; and any reference in such a notice to non-compliance with conditions or limitations (whether both expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions, or with limitations, or both with conditions and limitations, as the case may require.

## **85 Appeal against enforcement notice**

- (1) A person on whom an enforcement notice is served, or any other person having an interest in the land may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
  - (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged ;
  - (b) that the matters alleged in the notice do not constitute a breach of planning control;
  - (c) in the case of a notice which, by virtue of section 84(3) of this Act, may be served only within the period of four years from the date of the breach of planning control to which the notice relates, that that period has elapsed at the date of service;
  - (d) in the case of a notice not falling within paragraph (c) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1965;
  - (e) that the enforcement notice was not served as required by section 84(5) of this Act;
  - (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control;
  - (g) that the specified period for compliance with the notice falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of the appeal and state the facts on which it is based; and on any such appeal the Secretary of State shall, if either the appellant



or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

- (3) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (4) On an appeal under this section—
  - (a) the Secretary of State may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not material;
  - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 84(5) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
- (5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the enforcement notice or for varying the terms of the notice in favour of the appellant; and the Secretary of State may—
  - (a) grant planning permission for the development to which the enforcement notice relates or, as the case may be, discharge any condition or limitation subject to which planning permission for that development was granted;
  - (b) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use thereof and to any planning permission relating to the land.
- (6) In considering whether to grant planning permission under subsection (5) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject-matter of the enforcement notice, and to any other material considerations; and any planning permission granted by him under that subsection may—
  - (a) include permission to retain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
  - (b) be granted subject to such conditions as the Secretary of State thinks fit;and where under that subsection he discharges a condition or limitation, he may substitute for it any other condition or limitation.
- (7) Where an appeal against an enforcement notice is brought under this section, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (5) of this section, the following provisions shall have effect—
  - (a) any planning permission granted thereunder shall be treated as granted on the said application;
  - (b) in relation to a grant of planning permission or a determination under that subsection, the Secretary of State's decision shall be final: and
  - (c) for the purposes of section 31 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.

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- (8) On an appeal under this section against an enforcement notice relating to anything done in contravention of a condition to which section 69 or 80 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.
- (9) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.
- (10) The validity of an enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) to (e) of subsection (1) of this section.
- (11) Subsection (10) of this section shall not apply to proceedings brought under section 86 of this Act against a person who—
  - (a) has held an interest in the land since before the enforcement notice was served under section 84 of this Act; and
  - (b) did not have the enforcement notice served on him thereunder; and
  - (c) satisfies the court that—
    - (i) he did not know and could not reasonably have been expected to know that the enforcement notice had been served ; and
    - (ii) his interests have been substantially prejudiced by the failure to serve him.

## **86 Penalties for non-compliance with enforcement notice**

Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person, without the grant of planning permission, uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the use is so continued, or on conviction on indictment to a fine.

## **87 Power to stop further development pending proceedings on enforcement notice**

- (1) Where in respect of any land the local planning authority have served an enforcement notice, they may at any time before the notice takes effect serve a further notice (in this Act referred to as a " stop notice ") referring to, and having annexed to it a copy of, the enforcement notice and prohibiting any person on whom the stop notice is served from carrying out or continuing any specified operations on the land, being operations either alleged in the enforcement notice to constitute a breach of planning control or so closely associated therewith as to constitute substantially the same operations.
- (2) The operations which may be the subject of a stop notice shall include the deposit of refuse or waste materials on land where that is a breach of planning control alleged in the enforcement notice.

- (3) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be concerned with the carrying out or continuance of any operations thereon.
- (4) A stop notice—
- (a) shall specify the date (not being earlier than three nor later than fourteen days from the day on which the notice is first served on any person) when it is to take effect;
  - (b) in relation to any person served with it, shall have effect as from that date or the third day after the date of service on him, whichever is the later; and
  - (c) shall, without prejudice to subsection (7) of this section, cease to have effect when the enforcement notice takes effect or is withdrawn or quashed.
- (5) If while a stop notice has effect in relation to him a person carries out, or causes or permits to be carried out, any operations prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the offence is continued after conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the offence is continued, or on conviction on indictment to a fine.
- (6) A stop notice shall not be invalid by reason that the enforcement notice to which it relates was not served as required by section 84(5) of this Act if it is shown that the local planning authority took all such steps as were reasonably practicable to effect proper service.
- (7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons who were served with the stop notice ; and the stop notice shall cease to have effect as from the date of service of the notice under this subsection.
- (8) Where a person (in this subsection called "the contractor ") is under contract to another person (in this subsection called " the developer ") to carry out any operations on land and—
- (a) a stop notice takes effect (whether in relation to the developer or the contractor, or both) prohibiting the carrying out or continuance of those operations; and
  - (b) the operations are countermanded, or discontinued by the contractor accordingly,
- then, unless and in so far as the contract makes provision explicitly to the contrary of this subsection, the developer shall be under the same liability in contract as if the operations had been countermanded or discontinued on instructions given by him in breach of the contract.

This subsection applies only to contracts entered into before the end of 1969.

## **88 Execution and cost of works required by enforcement notice**

- (1) If, within the period specified in an enforcement notice for compliance therewith, or within such extended period as the local planning authority may allow, any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken, the local planning authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so; and if that person, having been

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entitled to appeal to the Secretary of State failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken in accordance with the notice by the local planning authority.

- (2) Any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with an enforcement notice served in respect of any breach of planning control (as defined in section 84(2) of this Act) and any sums paid by the owner or lessee of any land under subsection (1) of this section in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken, shall be recoverable from the person by whom the breach of planning control was committed.
- (3) Regulations made under this Act may provide that, in relation to any steps required to be taken by an enforcement notice, either or both of the enactments specified in subsection (4) of this section shall apply, subject to such adaptations and modifications as may be specified in the regulations.
- (4) The said enactments are the following provisions of the Water (Scotland) Act 1946, that is to say—
  - (a) section 57 (which limits the liability of persons holding premises as agents or trustees in respect of the expenses recoverable under Part III of that Act); and
  - (b) section 68 (which confers power to require the occupier of premises to permit works to be executed by the owner of the premises).

## **89 Enforcement notice to have effect against subsequent development**

- (1) Compliance with an enforcement notice, whether in respect of—
  - (a) the demolition or alteration of any building or works; or
  - (b) the discontinuance of any use of land,
 or in respect of any other requirements contained in the enforcement notice, shall not discharge the enforcement notice.
- (2) Without prejudice to subsection (1) of this section, any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III of this Act; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
- (3) Without prejudice to subsection (1) of this section, if any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered.
- (4) A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £100.

## **90 Certification of established use**

- (1) For the purposes of this Part of this Act, a use of land is established if—

- (a) it was begun before the beginning of 1965 without planning permission in that behalf and has continued since the end of 1964 ; or
  - (b) it was begun before the beginning of 1965 under a planning permission in that behalf granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1964; or
  - (c) it was begun after the end of 1964 as the result of a change of use not requiring planning permission and there has been, since the end of 1964, no change of use requiring planning permission.
- (2) Where a person having an interest in land claims that a particular use of it has become established, he may apply to the local planning authority for a certificate (in this Act referred to as an " established use certificate ") to that effect:  

Provided that no such application may be made in respect of the use of land as a single dwellinghouse, or of any use not subsisting at the time of the application.
- (3) An established use certificate may be granted (either by the local planning authority or, under section 91 of this Act, by the Secretary of State)—
  - (a) either for the whole of the land specified in the application, or for a part of it;
  - (b) in the case of an application specifying two or more uses, either for all those uses or for some one or more of them.
- (4) On an application to them under this section, the local planning authority shall, if and so far as they are satisfied that the applicant's claim is made out, grant to him an established use certificate accordingly; and if and so far as they are not so satisfied, they shall refuse the application.
- (5) Where an application is made to a local planning authority for an established use certificate, then unless within such period as may be prescribed by a development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the authority give notice to the applicant of their decision on the application, then, for the purposes of section 91(2) of this Act. the application shall be deemed to be refused.
- (6) Schedule 12 to this Act shall have effect with respect to established use certificates and applications therefor and to appeals under section 91 of this Act.
- (7) An established use certificate shall, as respects any matters stated therein, be conclusive for the purposes of an appeal to the Secretary of State against an enforcement notice served in respect of any land to which the certificate relates, but only where the notice is served after the date of the application on which the certificate was granted.
- (8) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for an established use certificate or on an appeal arising out of such an application—
  - (a) knowingly or recklessly makes a statement which is false in a material particular; or
  - (b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any document which is false in a material particular; or
  - (c) with intent to deceive, withholds any material information,he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

## **91 Grant of certificate by Secretary of State on referred application or appeal against refusal**

- (1) The Secretary of State may give directions requiring applications for established use certificates to be referred to him instead of being dealt with by local planning authorities; and, on any such application being referred to him in accordance with such directions, section 90(4) of this Act shall apply in relation to the Secretary of State as it applies in relation to the local planning authority in the case of an application determined by them.
- (2) Where an application is made to a local planning authority for an established use certificate and is refused, or is refused in part, the applicant may by notice under this subsection appeal to the Secretary of State; and on any such appeal the Secretary of State shall—
  - (a) if and so far as he is satisfied that the authority's refusal is not well-founded, grant to the appellant an established use certificate accordingly or, as the case may be, modify the certificate granted by the authority on the application; and
  - (b) if and so far as he is satisfied that the authority's refusal is well-founded, dismiss the appeal.
- (3) On an application referred to him under subsection (1) of this section or on an appeal to him under subsection (2) of this section, the Secretary of State may, in respect of any use of land for which an established use certificate is not granted (either by him or by the local planning authority), grant planning permission for that use or, as the case may be, for the continuance of that use without complying with some condition subject to which a previous planning permission was granted.
- (4) Before determining an application or appeal under this section the Secretary of State shall, if either the applicant or appellant (as the case may be) or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) In the case of any use of land for which the Secretary of State has power to grant planning permission under this section, the applicant or appellant shall be deemed to have made an application for such planning permission; and any planning permission so granted shall be treated as granted on the said application.
- (6) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.

### *Listed buildings*

## **92 Power to serve listed building enforcement notice**

- (1) Where it appears to the local planning authority that any works have been, or are being, executed to a listed building in their district and are such as to involve a contravention of section 53(1) or (4) of this Act, then, subject to any directions given by the Secretary of State, they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, serve a notice—
  - (a) specifying the alleged contravention; and
  - (b) requiring such steps as may be specified in the notice for restoring that building to its former state or, as the case may be, for bringing it to the state it

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would have been in if the terms and conditions of any listed building consent for the works had been complied with, to be taken within such period as may be so specified.

- (2) A notice under this section is in this Act referred to as a " listed building enforcement notice ".
- (3) A listed building enforcement notice shall be served on the owner, on the lessee and on the occupier of the building to which it relates and on any other person having an interest in the building, being an interest which in the opinion of the authority is materially affected by the notice.
- (4) Subject to section 93 of this Act, a listed building enforcement notice shall take effect at the end of such period, not being less than twenty-eight days after the service of the notice, as may be specified in the notice.
- (5) The local planning authority may withdraw a listed building enforcement notice (without prejudice to their power to serve another) at any time before it takes effect; and if they do so, they shall forthwith give notice of the withdrawal to every person who was served with the notice.
- (6) Every local planning authority shall keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district in respect of which a listed building enforcement notice has been served.

### **93 Appeal against listed building enforcement notice**

- (1) A person on whom a listed building enforcement notice is served, or any other person having an interest in the building to which it relates, may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
  - (a) that the building is not of special architectural or historic interest;
  - (b) that the matters alleged to constitute a contravention of section 53 of this Act do not involve such a contravention ;
  - (c) that the works were urgently necessary in the interests of safety or health, or for the preservation of the building;
  - (d) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
  - (e) that the notice was not served as required by section 92(3) of this Act;
  - (f) that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
  - (g) that the period specified in the notice as the period within which any steps required thereby are to be taken falls short of what should reasonably be allowed;
  - (h) that the steps required by the notice to be taken would not serve the purpose of restoring the character of the building to its former state.
- (2) An appeal under this section shall be made by notice in writing to the Secretary of State, which shall indicate the grounds of appeal and state the facts on which it is based; and on any such appeal the Secretary of State shall, if either the appellant or the local

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planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

- (3) Where an appeal is brought under this section the notice shall be of no effect pending the final determination or withdrawal of the appeal.
- (4) On an appeal under this section.—
  - (a) the Secretary of State may correct any informality, defect or error in the notice if he is satisfied that the informality, defect or error is not material;
  - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 92(3) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if he is satisfied that the person has not been substantially prejudiced by the failure to serve him.
- (5) On the determination of an appeal under this section the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the listed building enforcement notice or for varying the terms of the notice in favour of the appellant, and the Secretary of State may—
  - (a) grant listed building consent for the works to which the notice relates or, as the case may be, discharge any condition subject to which such consent was granted and substitute any other condition, whether more or less onerous;
  - (b) in so far as any works already executed constitute development for which planning permission is required, grant such permission in respect of the works;
  - (c) if he thinks fit, exercise his power under section 52 of this Act to amend any list compiled or approved thereunder by removing from it the building to which the appeal relates or his power under subsection (8) of that section to direct that that subsection shall no longer apply to the building.
- (6) Any planning permission granted by the Secretary of State under subsection (5) of this section shall be treated as granted on an application for the like permission under Part III of this Act, and any listed building consent granted by him thereunder shall be treated as granted on an application for the like consent under Part I of Schedule 10 to this Act; and—
  - (a) in relation to the grant thereunder either of planning permission or of listed building consent, the Secretary of State's decision shall be final;
  - (b) for the purposes of section 31 of this Act a decision of the Secretary of State to grant planning permission shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.
- (7) The validity of a listed building enforcement notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) or (e) of subsection (1) of this section.
- (8) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.

#### **94 Penalties for non-compliance with listed building enforcement notice**

- (1) Subject to the provisions of this section, where a listed building enforcement notice has been served in respect of any building and any steps required by the notice to be taken have not been taken within the period allowed for compliance with the notice,



the person responsible for the contravention mentioned in section 92(1) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine.

- (2) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the notice, he shall be guilty of a further offence and be liable—
  - (a) on summary conviction to a fine not exceeding £50 for each day following his first conviction on which any of the requirements of the notice remain unfulfilled ; or
  - (b) on conviction on indictment to a fine.
- (3) Any reference in this or the next following section to the period allowed for compliance with a listed building enforcement notice is a reference to the period specified in the notice as that within which the steps specified in the notice are required thereby to be taken, or such extended period as the local planning authority may allow for taking them.

## **95 Execution and cost of works required by listed building enforcement notice**

- (1) If, within the period allowed for compliance with a listed building enforcement notice, any steps required by the notice to be taken have not been taken, the authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
- (2) Any expenses incurred by the owner, lessee or occupier of a building for the purpose of complying with a listed building enforcement notice, and any sums paid by the owner or lessee of a building under subsection (1) of this section in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken, shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.
- (3) The provisions of section 88(3) and (4) of this Act shall apply in relation to a listed building enforcement notice as they apply in relation to an enforcement notice; and any regulations made by virtue of this subsection may provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1) of this section.

## **96 Enforcement by, or by direction of, the Secretary of State**

- (1) If it appears to the Secretary of State, after consultation with the local planning authority, to be expedient that a listed building enforcement notice should be served in respect of any land, he may give directions to the local planning authority requiring them to serve such a notice, or may himself serve such a notice; and any notice so served by the Secretary of State shall have the like effect as a notice served by the local planning authority.
- (2) In relation to a listed building enforcement notice served by the Secretary of State, the provisions of sections 94(3) and 95 of this Act shall apply as if for any reference therein to the local planning authority there were substituted a reference to the Secretary of State.

## **97 Works for preservation of unoccupied listed building in cases of urgency**

If it appears to a local planning authority that any works are urgently necessary for the preservation of any unoccupied building situated in their district which—

- (a) is included in a list compiled or approved under section 52 of this Act; and
- (b) is not an excepted building as defined in section 56(2) of this Act,

they may, after giving to the owner of the building not less than seven days' notice in writing of the proposed execution of the works, take such steps as they consider appropriate for executing the works.

### *Trees*

## **98 Penalties for non-compliance with tree preservation order**

- (1) If any person, in contravention of a tree preservation order, cuts down or wilfully destroys a tree, or tops or lops a tree in such a manner as to be likely to destroy it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £250 or twice the sum which appears to the court to be the value of the tree, whichever is the greater.
- (2) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1) of this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50.
- (3) If, in the case of a continuing offence under this section, the contravention is continued after the conviction, the offender shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding £2 for each day on which the contravention is so continued.

## **99 Enforcement of duties as to replacement of trees**

- (1) If it appears to the local planning authority that the provisions of section 60 of this Act, or any conditions of a consent given under a tree preservation order which require the replacement of trees, are not complied with in the case of any tree or trees, that authority may, at any time within two years from the date on which the failure to comply with the said provisions or conditions came to their knowledge, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.
- (2) Subject to the following provisions of this section, a notice under this section shall take effect at the end of such period, not being less than twenty-eight days after the service of the notice, as may be specified in the notice.
- (3) A person on whom a notice under this section is served may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds—
  - (a) that the provisions of the said section 60 or the conditions aforesaid are not applicable or have been complied with;
  - (b) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified therein;
  - (c) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;

- (d) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose ;
- and the provisions of section 85(2), (3) and (4)(a) of this Act, and of so much of section 85(5) of this Act as enables the Secretary of State to give directions, shall apply in relation to any such appeal as they apply in relation to an appeal against an enforcement notice.
- (4) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under subsection (3) of this section.
- (5) In section 88 of this Act, and in regulations in force under that section, references to an enforcement notice and an enforcement notice served in respect of any breach of planning control shall include references to a notice under this section; and in relation to such a notice the reference in subsection (2) of that section to the person by whom the breach of planning control was committed shall be construed as a reference to any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

#### *Other controls*

### **100 Enforcement of orders under s. 49**

- (1) Where, by virtue of an order under section 49 of this Act, the use of land for any purpose is required to be discontinued, or any conditions are imposed on the continuance thereof, then if any person, without the grant of planning permission in that behalf, uses the land for that purpose or, as the case may be, uses the land for that purpose in contravention of those conditions, or causes or permits the land to be so used, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine ; and if the use is continued after the conviction, he shall be guilty of a further offence and liable—
- (a) on summary conviction to a fine not exceeding £50 for each day on which the use is so continued; or
- (b) on conviction on indictment to a fine.
- (2) If, within the period specified in that behalf in an order under section 49 of this Act, any steps required by that order to be taken for the alteration or removal of any buildings or works have not been taken, the local planning authority may, and shall if so required by directions of the Secretary of State, enter on the land and take those steps.

### **101 Enforcement of control as to advertisements**

- (1) The matters for which provision may be made by regulations under section 61 of this Act shall include provision for enabling the local planning authority to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being so used in contravention of the regulations, and for that purpose for applying any of the provisions of this Part of this Act with respect to enforcement notices or the provisions of section 166 of this Act, subject to such adaptations and modifications as may be specified in the regulations.
- (2) Without prejudice to any provisions included in regulations made under section 61 of this Act by virtue of subsection (1) of this section, if any person displays an advertisement in contravention of the provisions of the regulations he shall be guilty

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of an offence and liable on summary conviction to a fine of such amount as may be prescribed by the regulations, not exceeding £100 and, in the case of a continuing offence. £5 for each day during which the offence continues after conviction.

- (3) For the purposes of subsection (2) of this section, and without prejudice to the generality thereof, a person shall be deemed to display an advertisement if—
- (a) the advertisement is displayed on land of which he is the owner or occupier; or
  - (b) the advertisement gives publicity to his goods, trade, business or other concerns :

Provided that a person shall not be guilty of an offence under that subsection by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

## PART VI

### ACQUISITION AND APPROPRIATION OF LAND AND RELATED PROVISIONS

#### *Acquisition and appropriation of land*

#### **102 Compulsory acquisition of land in connection with development and for other planning purposes**

- (1) The Secretary of State may authorise a local authority to whom this section applies to acquire compulsorily any land within their area if he is satisfied—
- (a) that the land is required in order to secure or assist the treatment as a whole, by development, redevelopment or improvement, or partly by one and partly by another method, of the land or of any area in which the land is situated; or
  - (b) that it is expedient in the public interest that the land should be held together with land so required; or
  - (c) that the land is required for development or redevelopment, or both, as a whole for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of the redevelopment or improvement, or both, of another area as a whole; or
  - (d) that it is expedient to acquire the land immediately for . a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- (2) Where under subsection (1) of this section the Secretary of State has power to authorise a local authority to whom this section applies to acquire any land compulsorily he may, after the requisite consultation, authorise the land to be so acquired by another authority, being a local authority within the meaning of this Act.
- (3) Before giving an authorisation under subsection (2) of this section, the Secretary of State shall—
- (a) where the land is in a county, consult with the county council;
  - (b) where the land is in a large burgh, consult with the town council;
  - (c) where the land is in a small burgh, consult with the town council and with the county council within whose area the burgh is situated.

- (4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory acquisition of land under this section and accordingly shall have effect as if this section had been in force immediately before the commencement of that Act.
- (5) The local authorities to whom this section applies are the councils of counties, large burghs and small burghs.

### **103 Compulsory acquisition of land by Secretary of State for the Environment**

- (1) The Secretary of State for the Environment may acquire compulsorily any land necessary for the public service.
- (2) The power of acquiring land compulsorily under this section shall include power to acquire a servitude or other right over land by the grant of a new right:  
  
Provided that this subsection shall not apply to a servitude or other right over any land which would for the purposes of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 form part of a common or open space.
- (3) The said Act of 1947 shall apply to any compulsory acquisition by the Secretary of State for the Environment under this section as it applies to a compulsory acquisition by another Minister in a case falling within section 1(1) of that Act.

### **104 Compulsory acquisition of listed building in need of repair**

- (1) Where it appears to the Secretary of State, in the case of a building to which this section applies, that reasonable steps are not being taken for properly preserving it, the Secretary of State may authorise the local planning authority for the district in which the building is situated to acquire compulsorily under this section the building and any land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.
- (2) Where it appears to the Secretary of State, in the case of a building to which this section applies, that reasonable steps are not being taken for properly preserving it, he may be authorised under this section to acquire compulsorily the building and any land comprising or contiguous or adjacent to it which appears to him to be required for the purpose mentioned in subsection (1) of this section.
- (3) This section applies to any listed building, not being an excepted building as defined in section 56(2) of this Act.
- (4) The Secretary of State shall not make or confirm a compulsory purchase order for the acquisition of any building by virtue of this section unless he is satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose.
- (5) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory acquisition of land under this section and accordingly shall have effect—
  - (a) as if this section had been in force immediately before the commencement of that Act; and

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- (b) as if references therein to the Minister of Transport and to the enactments specified in section 1(1)(b) of that Act included respectively references to the Secretary of State and to the provisions of this section.
- (6) Any person having an interest in a building which it is proposed to acquire compulsorily under this section may, within twenty-eight days after the service of the notice required to be served under paragraph 3(b) of Schedule 1 to the said Act of 1947, apply to the sheriff for an order prohibiting further proceedings on the compulsory purchase order; and, if the sheriff is satisfied that reasonable steps have been taken for properly preserving the building, he shall make an order accordingly.
- (7) Any person aggrieved by the decision of the sheriff on an application under subsection (6) of this section may appeal against the decision to the Court of Session, but on a question of law only.

#### **105 Repairs notice as preliminary to compulsory acquisition under s. 104**

- (1) Neither a local planning authority nor the Secretary of State shall start the compulsory purchase of a building under section 104 of this Act unless at least two months previously they have served on the owner of the building, and not withdrawn, a notice under this section (in this section referred to as a "repairs notice")—
  - (a) specifying the works which they consider reasonably necessary for the proper preservation of the building; and
  - (b) explaining the effect of sections 104 to 107 of this Act.
- (2) Where a local planning authority or the Secretary of State have served a repairs notice, the demolition of the building thereafter shall not prevent them from being authorised under section 104 of this Act to acquire compulsorily the site of the building, if the Secretary of State is satisfied that he would have confirmed or, as the case may be, would have made a compulsory purchase order in respect of the building had it not been demolished.
- (3) A local planning authority or the Secretary of State may at any time withdraw a repairs notice served by them; and if they do so, they shall forthwith give notice of the withdrawal to the person who was served with the notice.
- (4) For the purposes of this section a compulsory acquisition 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.

#### **106 Compensation on compulsory acquisition of listed building**

Subject to section 107 of this Act, for the purpose of assessing compensation in respect of any compulsory acquisition of land including a building which, immediately before the date of the compulsory purchase order, was listed, it shall be assumed that listed building consent would be granted for any works for the alteration or extension of the building, or for its demolition, other than works in respect of which such consent has been applied for before the date of the order and refused by the Secretary of State, or granted by him subject to conditions, the circumstances having been such that compensation thereupon became payable under section 160 of this Act.

## **107 Minimum compensation in case of listed building deliberately left derelict**

- (1) A local planning authority proposing to acquire a building compulsorily under section 104 of this Act, if they are satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or re-development of the site or any adjoining site, may include in the compulsory purchase order as submitted to the Secretary of State for confirmation an application for a direction for minimum compensation ; and the Secretary of State, if he is so satisfied, may include such a direction in the order as confirmed by him.
- (2) Subject to the provisions of this section, where the Secretary of State acquires a building compulsorily under section 104 of this Act, he may, if he is satisfied as mentioned in subsection (1) of this section, include a direction for minimum compensation in the compulsory purchase order.
- (3) The notice required to be served in accordance with paragraph 3(b) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (notices stating effect of compulsory purchase order or, as the case may be, draft order) shall, without prejudice to so much of that paragraph as requires the notice to state the effect of the order, include a statement that the authority have made application for a direction for minimum compensation or, as the case may be, that the Secretary of State has included such a direction in the draft order prepared by him in accordance with paragraph 7 of that Schedule and shall in either case explain the meaning of the expression " direction for minimum compensation " .
- (4) A direction for minimum compensation, in relation to a building compulsorily acquired, is a direction that for the purpose of assessing compensation it is to be assumed, notwithstanding anything to the contrary in the Land Compensation (Scotland) Act 1963 or this Act, that planning permission would not be granted for any development or re-development of the site of the building and that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair ; and if a compulsory purchase order is confirmed or made with the inclusion of such a direction, the compensation in respect of the compulsory acquisition shall be assessed in accordance with the direction.
- (5) Where a local planning authority include in a compulsory purchase order made by them an application for a direction for minimum compensation, or the Secretary of State includes such a direction in a draft compulsory purchase order prepared by him. any person having an interest in the building may, within twenty-eight days after the service of the notice required by paragraph 3(b) of Schedule 1 to the said Act of 1947, apply to the sheriff for an order that the local planning authority's application for a direction for minimum compensation be refused or, as the case may be, that such a direction be not included in the compulsory purchase order as made by the Secretary of State; and if the sheriff is satisfied that the building has not been deliberately allowed to fall into disrepair for the purpose mentioned in subsection (1) of this section, he shall make the order applied for.
- (6) A person aggrieved by the decision of the sheriff on an application under subsection (5) of this section may appeal against the decision to the Court of Session, but on a question of law only.
- (7) The rights conferred by subsections (5) and (6) of this section shall not prejudice those conferred by section 104(6) and (7) of this Act.

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## **108 Extinction of rights over land compulsorily acquired**

- (1) Subject to the provisions of this section, upon the completion by the acquiring authority of a compulsory acquisition of land under this Part of this Act, all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land and all other rights or servitudes in or relating to that land shall be extinguished, and any such apparatus shall vest in the acquiring authority.
- (2) Subsection (1) of this section shall not apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking.
- (3) In respect of any right or apparatus not falling within subsection (2) of this section, subsection (1) of this section shall have effect subject—
  - (a) to any direction given by the acquiring authority before the completion of the acquisition that subsection (1) of this section 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.
- (4) Any person who suffers loss by the extinguishment of a right or servitude 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 Land Compensation (Scotland] Act 1963.

## **109 Acquisition of land by agreement**

- (1) A local planning authority may, with the consent of the Secretary of State, acquire by agreement—
  - (a) any land which they require for any purpose for which a local planning authority may be authorised to acquire land under section 102 of this Act;
  - (b) any building appearing to them to be of special architectural or historic interest; and
  - (c) any land comprising or contiguous or adjacent to such a building which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.
- (2) The Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923, shall be incorporated with this section, and in construing those Acts as so incorporated this section shall be deemed to be the special Act and references to the promoters of the undertaking or to the company shall be construed as references to the authority authorised to acquire the land under this section.



## **110 Acquisition of land for purposes of exchange**

Without prejudice to the generality of the powers conferred by the preceding provisions of this Part of this Act, any power of a local authority to acquire land thereunder, whether compulsorily or by agreement, shall include power to acquire land required for giving in exchange for land appropriated under section 111 of this Act.

## **111 Appropriation of land forming part of common or open space**

- (1) Any local authority may be authorised, by an order made by that authority and confirmed by the Secretary of State, to appropriate for any purpose for which that authority can be authorised to acquire land under any enactment any land for the time being held by them for other purposes, being land which is or forms part of a common or open space (including any such land which is specially regulated by any enactment, whether public general or local or private).
- (2) Paragraph 11 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (special provision with respect to compulsory purchase orders under that Act relating to land forming part of a common or open space) shall apply to an order under this section authorising the appropriation of land as it applies to a compulsory purchase order under that Act.
- (3) Section 163 of the Local Government (Scotland) Act 1947 (general provisions as to the appropriation of land by local authorities) shall not apply to land which a local authority have power to appropriate under subsection (1) of this section.
- (4) Where land appropriated under this section was acquired under an enactment incorporating the Lands Clauses Acts, any works executed on the land after the appropriation has been effected shall, for the purposes of section 6 of the Railways Clauses Consolidation (Scotland) Act 1845, be deemed to have been authorised by the enactment under which the land was acquired.
- (5) On an appropriation of land by a local authority under this section, where—
  - (a) the authority is not an authority to whom Part II of the Act of 1959 applies; or
  - (b) the land was immediately before the appropriation held by the authority for the purposes of a grant-aided function within the meaning of the Act of 1959, or is appropriated by the authority for the purposes of such a function,there shall be made in the accounts of the local authority such adjustments as the Secretary of State may direct.
- (6) On an appropriation under this section which does not fall within subsection (5) of this section, there shall be made such adjustment of accounts as is required by section 25(1) of the Act of 1959.

*Powers exercisable in relation to land held for planning purposes, and other related powers*

## **112 Appropriation of land held for planning purposes**

- (1) Where any land has been acquired or appropriated by a local planning authority for planning purposes and is for the time being held by the authority for the purposes for which it was so acquired or appropriated, the authority (subject to the following provisions of this section) may appropriate the land for any purpose for which they

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are or may be authorised in any capacity to acquire land by virtue of or under any enactment not contained in this Part of this Act.

- (2) The consent of the Secretary of State shall be requisite to any appropriation under this section by an authority which is not an authority to whom Part II of the Act of 1959 applies; and any such consent may be given either in respect of a particular appropriation or in respect of appropriations of any class, and may be given either subject to or free from any conditions or limitations.
- (3) For the purposes of subsection (2) of section 24 of the Act of 1959 (consent of Ministers to appropriations in certain cases) the power of appropriation conferred by subsection (1) of this section shall (except in respect of any exercise thereof in circumstances falling within subsection (2) of this section) be deemed to be a power in relation to which subsection (1) of that section has effect.
- (4) In relation to any appropriation under this section subsections (5) and (6) of section 111 of this Act shall have effect as they have effect in relation to appropriations under those sections respectively.
- (5) In relation to any such land as is mentioned in subsection (1) of this section, this section shall have effect to the exclusion of the provisions of any enactment, other than this Act, by virtue of or under which the local planning authority are or may be authorised to appropriate land held by them.

### **113 Disposal of land held for planning purposes**

- (1) Where any land has been acquired or appropriated by a local planning authority for planning purposes, and is for the time being held by the authority for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as may appear to them to be expedient in order to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out thereon, whether by themselves or by any other person, or to secure the erection, construction or carrying out thereon of any buildings or works appearing to them to be needed for the proper planning of the area of the authority.
- (2) The consent of the Secretary of State shall be requisite to any disposal under this section—
  - (a) by an authority which is not an authority to whom Part II of the Act of 1959 applies; or
  - (b) of land acquired or appropriated for planning purposes for a reason mentioned in section 102(1)(a) to (c) of this Act;
 and any such consent may be given either in respect of a particular disposal or in respect of disposals of any class, and may be given either subject to or free from any conditions or limitations.
- (3) Subject to the provisions of subsection (6) of this section, any land disposed of under this section shall not, except with the consent of the Secretary of State, be disposed of otherwise than at the best price or on the best terms that can reasonably be obtained.
- (4) For the purposes of subsections (2) and (3) of section 27 of the Act of 1959 (consent of Ministers to disposals in certain cases), any disposal of land under this section shall be deemed to be a disposal which, apart from that section, could not be effected except with the consent of a Minister; and for the purposes of subsection (4) of that section

(disposals for a price less than the best reasonably obtainable) the power of disposal conferred by subsection (1) of this section shall (except in respect of any exercise thereof in circumstances falling within subsection (2) of this section) be deemed to be a power in relation to which subsection (1) of that section has effect.

- (5) Where representations are made to the Secretary of State—
- (a) that a local planning authority have refused to dispose of any land under this section to any person or to agree with him as to the manner in which, or the terms or conditions on or subject to which, it is to be disposed of to him; and
  - (b) that the refusal constitutes unfair discrimination against that person or is otherwise oppressive,

the Secretary of State may cause the representations to be intimated to the authority; and after considering any statement in writing made to him by the authority, the Secretary of State may, if he thinks fit, cause a public local inquiry to be held and after considering the report of the person appointed to hold the inquiry (if any), may, if it appears to him that the representations are well founded and that it is expedient as mentioned in subsection (1) of this section that the authority should dispose of the land under this section to that person, require the authority to offer to dispose of it to him, and give directions as to the manner of the disposal and as to all or any of the terms or conditions on or subject to which it is to be offered to him.

- (6) In relation to land acquired or appropriated for planning purposes for a reason mentioned in section 102(1)(a) to (c) of this Act the powers conferred by this section on a local planning authority, and on the Secretary of State in respect of the giving of consent to disposals under this section, shall be so exercised as to secure, so far as may be practicable, to persons who were living or carrying on business or other activities on any such land which the authority have acquired as mentioned in subsection (1) of this section, who desire to obtain accommodation on such land, and who are willing to comply with any requirements of the authority as to the development and use of such land, an opportunity to obtain thereon accommodation suitable to their reasonable requirements, on terms settled with due regard to the price at which any such land has been acquired from them.

In this subsection "development" includes redevelopment.

- (7) Where land is disposed of under this section by a local planning authority to any person for the erection of a church or other building for religious worship or buildings ancillary thereto, then, unless the parties otherwise agree, such disposal shall be by way of feu.
- (8) In relation to any such land as is mentioned in subsection (1) of this section, this section shall have effect to the exclusion of the provisions of any enactment, other than this Act, by virtue of or under which the local planning authority are or may be authorised to dispose of land held by them.

#### **114 Development of land held for planning purposes**

- (1) The functions of a local planning authority shall include power for the authority, notwithstanding any limitation imposed by law on the capacity of the authority by virtue of its constitution, to erect, construct or carry out any building or work on any land to which this section applies, not being a building or work for the erection, construction or carrying out of which, whether by that authority or by any other person, statutory power exists by virtue of, or could be conferred under, an alternative enactment.

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- (2) This section applies to any land which has been acquired or appropriated by a local planning authority for planning purposes and is for the time being held by the authority for the purposes for which it was so acquired or appropriated.
- (3) The consent of the Secretary of State shall be requisite to any exercise by a local planning authority of the power conferred on them by subsection (1) of this section; and any such consent may be given either in respect of a particular operation or in respect of operations of any class, and either subject to or free from any conditions or limitations.
- (4) Where a local planning authority propose to carry out any operation which they would have power to carry out by virtue only of subsection (1) of this section, they shall notify the Secretary of State of their proposal, and the Secretary of State may direct such advertisement by the authority as appears to him to be requisite for the purposes of subsection (3) of this section.
- (5) The functions of a local planning authority shall include power for the authority, notwithstanding any such limitation as is mentioned in subsection (1) of this section, to repair, maintain and insure any buildings or works on land to which this section applies, and generally to deal therewith in a proper course of management.
- (6) Nothing in this section shall be construed as authorising any act or omission on the part of a local planning authority which is actionable at the instance of any person on any ground other than such a limitation as is mentioned in subsection (1) of this section.
- (7) In this section " alternative enactment" means any enactment which is not contained in this Part of this Act or in section 5, 8, 13(1) or 14 of the Local Employment Act 1972.

## **115 Special provisions as to features and buildings of architectural and historic interest**

- (1) In the exercise of the powers of appropriation, disposal and development conferred by the provisions of sections 112, 113 and 114(1) of this Act, a local planning authority shall have regard to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings ; and the Secretary of State shall not give his consent to the appropriation or disposal thereunder of any land comprising a listed building, or to the erection, construction or carrying out of any building or work on any such land, unless either—
  - (a) the consent is given subject to such conditions or limitations as in the opinion of the Secretary of State will secure the preservation of the listed building; or
  - (b) the Secretary of State, after giving the requisite notice of the application for his consent, is satisfied that the purpose which the local planning authority seek to achieve by the proposed exercise of their powers is one which ought in the public interest to be carried out, and that the carrying out of that purpose, whether by the use of the land in question or otherwise, either—
    - (i) would be prevented by the preservation of the listed building; or
    - (ii) would be so affected by the preservation thereof that, notwithstanding the desirability of preserving the building, it is inexpedient to do so.
- (2) For the purposes of subsection (1)(b) of this section the requisite notice of an application for the consent of the Secretary of State is a notice which—
  - (a) contains such particulars of the appropriation, disposal or operation for which his consent is sought as appear to him to be requisite ; and

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- (b) not less than twenty-eight days before he gives his decision on the application, is published in the Edinburgh Gazette and, in each of two successive weeks, in one or more newspapers circulating in the locality in which the land is situated.
- (3) In this section " preservation ", in relation to a building means the preservation thereof either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and "development " includes redevelopment.
- (4) This section is without prejudice to the provisions of section 262(5) of this Act.

#### **116 Management etc. of listed buildings acquired by local planning authority or Secretary of State**

- (1) Where a local planning authority acquire any building or other land under section 104(1) or 109(1)(b) of this Act, they may make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation.
- (2) Where the Secretary of State acquires any building or other land under section 104(2) of this Act, subsection (3) of section 5 of the Historic Buildings and Ancient Monuments Act 1953 (management, custody and disposal), except so much of it as refers to subsection (4) of that section, shall apply in relation thereto as it applies in relation to property acquired under that section.

#### **117 Power to override servitudes and other rights**

- (1) The erection, construction or carrying out, or maintenance, of any building or work on land which has been acquired or appropriated by a local planning authority for planning purposes, whether done by the local planning authority or by a person deriving title from them, is authorised by virtue of this section if it is done in accordance with planning permission, notwithstanding that it involves interference with an interest or right to which this section applies, or involves a breach of a restriction as to the use of land arising by virtue of any deed or contract:

Provided that nothing in this subsection shall authorise interference with any right of way or right of laying down, erecting continuing or maintaining apparatus on, under or over land, being a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking.

- (2) This section applies to the following interests and rights, that is to say, any servitude, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (3) In respect of any interference or breach in pursuance of subsection (1) of this section, compensation shall be payable under section 61 of the Lands Clauses Consolidation (Scotland) Act 1845 or under section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 to 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 the compensation is to be estimated in connection with a purchase under those Acts or the injury arises from the execution of works on land acquired under those Acts.
- (4) Where a person deriving title from the local planning authority by whom the land in question was acquired or appropriated is liable to pay compensation by virtue of

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subsection (3) of this section, and fails to discharge that liability, the liability shall be enforceable against the local planning authority:

Provided that nothing in this subsection shall be construed as affecting any agreement between the local planning authority and any other person for indemnifying the local planning authority against any liability under this subsection.

- (5) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the instance of any person on any ground other than such an interference or breach as is mentioned in subsection (1) of this section.

## **118 Provisions as to churches and burial grounds**

- (1) Any land, consisting of a church or other building used or formerly used for religious worship, or the site thereof, or a burial ground, which has been acquired by a Minister, a local planning authority or statutory undertakers under this Part of this Act or compulsorily under any other enactment, or which has been appropriated by a local planning authority for planning purposes, may, subject to the following provisions of this section—

- (a) in the case of land 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,

notwithstanding anything in any enactment relating to churches or such other buildings as aforesaid or to burial grounds or any obligation or restriction imposed under any deed or agreement or otherwise as respects that church or other building or burial ground:

Provided that this subsection shall not have effect as respects any such land as aforesaid 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.

- (2) Provision shall be made by any regulations made for the purposes of the proviso to subsection (1) of this section—
- (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;
  - (b) for enabling the personal representatives or relatives of any deceased person themselves to undertake the removal and reinterment of the remains of the deceased, and 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 with any directions given in any case by the Secretary of State, after consultation with the church authorities in the case of a church or churchyard, with respect to the manner of removal, and the place and manner of reinterment of any human remains, and the disposal of any monuments;
  - (d) with regard to such incidental and consequential matters (including the closing of registers) as appear to the Secretary of State to be expedient for the purposes of the regulations.

- (3) Subject to the provisions of any such regulations, no authority shall be required for the removal and reinterment in accordance with the regulations of any human remains, or for the removal or disposal of any monuments.
- (4) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the instance of any person on any ground other than contravention of any such enactment, obligation or restriction as is mentioned in subsection (1) of this section.
- (5) In 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, and includes part of a burial ground; and "monument" includes a tombstone or other memorial and any fixtures or furnishings.

### **119 Use and development of land for open spaces**

- (1) Any land being, or forming part of, a common or open space, which has been acquired by a Minister, a local authority or statutory undertakers under this Part of this Act or compulsorily under any other enactment, or which has been appropriated by a local planning authority for planning purposes, may—
  - (a) in the case of land 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,notwithstanding anything in any enactment relating to land of that kind, or in any enactment by which the land is specially regulated.
- (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 instance of any person on any ground other than contravention of any such enactment as is mentioned in subsection (1) of this section.

### **120 Displacement of persons from land acquired or appropriated**

- (1) Where any land has been acquired or appropriated for planning purposes and is for the time being held by a local planning authority for the purposes for which it was acquired or appropriated, and the carrying out of redevelopment on the land will involve the displacement of persons residing in premises thereon, it shall be the duty of the authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacements from time to time becoming necessary as the redevelopment proceeds.
- (2) Section 168 of the Housing (Scotland) Act 1966 (obligations as to the provision of housing accommodation where land is acquired under statutory powers) shall not have effect in relation to an acquisition by a local planning authority under section 102 of this Act.
- (3) If the Secretary of State certifies that possession of a house which has been acquired or appropriated by a local planning authority for planning purposes, and 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 Rent (Scotland) Act 1971

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shall prevent the acquiring or appropriating authority from obtaining possession of the house.

- (4) Where any land has been acquired by a Minister or a local planning authority under this Part of this Act, or has been appropriated by a local planning authority for planning purposes, and possession of any building on the land is required by that Minister or the local planning authority in question, as the case may be, for the purposes for which the land was acquired or appropriated, then, at any time after the tenancy of the occupier has expired or has been determined, the Minister or local planning authority in question may serve a notice on the occupier of the building requiring him to remove therefrom within a period of twenty-one days; and on the expiry of that period a certified copy of the notice to remove shall be sufficient warrant for ejection against the occupier or any party in his right in the event of non-compliance with the notice.
- (5) Where any land has been acquired by a Minister or a local planning authority under this Part of this Act, or has been appropriated by a local planning authority for planning purposes, that Minister, or the local planning authority in question, as the case may be—
  - (a) may pay to any person who is displaced in the carrying out of redevelopment on the land such reasonable allowance as he or they think fit towards his expenses in removing; and
  - (b) may pay to a person carrying on any business in a building from which he is so displaced such reasonable allowance as he or they think fit towards the loss which, in his or their opinion, that person will sustain by reason of the disturbance to his business consequent on his having to quit the building.
- (6) In estimating loss for the purposes of paragraph (b) of subsection (5) of this section, the Minister or local planning authority in question shall have regard to the period for which the premises occupied by the person referred to in that paragraph might reasonably have been expected to be available for the purpose of that person's business, and to the availability of other premises suitable for that purpose.

#### *Supplementary provisions*

### **121 Modification of incorporated enactments for purposes of Part VI**

- (1) Where it is proposed that land should be acquired compulsorily under section 102 or 103 of this Act, and a compulsory purchase order relating to that land is submitted to the confirming authority in accordance with Part I of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, or, as the case may be, is made in draft by the Secretary of State for the Environment in accordance with Part II of that Schedule, the confirming authority or that Secretary of State, as the case may be, may disregard for the purposes of that Schedule any objection to the order or draft which, in the opinion of that authority or Secretary of State, amounts in substance to an objection to the provisions of the development plan defining the proposed use of that or any other land.
- (2) Where a compulsory purchase order authorising the acquisition of any land under section 102 of this Act is submitted to the Secretary of State in accordance with Part I of Schedule 1 to the said Act of 1947, then if the Secretary of State—
  - (a) is satisfied that the order ought to be confirmed so far as it relates to part of the land comprised therein ; but



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- (b) has not for the time being determined whether it ought to be confirmed so far as it relates to any other such land,
- he may confirm the order so far as it relates to the land mentioned in paragraph (a) of this subsection, and give directions postponing consideration of the order, so far as it relates to any other land specified in the directions, until such time as may be so specified.
- (3) Where the Secretary of State gives directions under subsection (2) of this section, the notices required by paragraph 6 of Schedule 1 to the said Act of 1947 to be published and served shall include a statement of the effect of the directions.
- (4) In construing the Lands Clauses Acts and section 6 of the Railways Clauses Consolidation (Scotland) Act 1845, as incorporated by virtue of paragraph 1 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, in relation to any of the provisions of this Part of this Act-
- (a) references to the execution of the works or to the construction of the railway shall be construed as including references to any erection, construction or carrying out of buildings or works authorised by section 117 of this Act;
  - (b) in relation to the erection, construction or carrying out of any buildings or works so authorised, references in section 6 of the said Act of 1845 to the company shall be construed as references to the person by whom the buildings or works in question are erected, constructed or carried out; and
  - (c) references to the execution of the works shall be construed as including also references to any erection, construction or carrying out of buildings or works on behalf of a Minister or statutory undertakers on land acquired by that Minister or those undertakers, where the buildings or works are erected, constructed or carried out for the purposes for which the land was acquired.

## **122 Interpretation of Part VI**

- (1) In this Part of this Act any reference to the acquisition of land for planning purposes is a reference to the acquisition thereof under section 102 or 109 of this Act and any reference to the appropriation of land for planning purposes is a reference to the appropriation thereof for purposes for which land can be or could have been acquired under those sections.
- (2) In relation to a local planning authority or body corporate, nothing in sections 117 to 119 of this Act shall be construed as authorising any act or omission on their part in contravention of any limitation imposed by law on their capacity by virtue of the constitution of the authority or body.
- (3) Any power conferred by section 118 or 119 of this Act to use land in a manner therein mentioned shall be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not.

## PART VII

### COMPENSATION FOR PLANNING DECISIONS RESTRICTING NEW DEVELOPMENT

#### *Unexpended balance of established development value*

#### **123 Scope of Part VII**

- (1) The provisions of this Part of this Act shall have effect for enabling compensation to be claimed in respect of planning decisions whereby permission for the carrying out of new development of land to which this section applies is refused or is granted subject to conditions.
- (2) This section applies to any land in respect of which planning permission is refused or is granted subject to conditions, by a planning decision if, at the time of the planning decision, that land, or part of that land, has an unexpended balance of established development value.
- (3) In accordance with the proviso to subsection (2) of section 29 of this Act, that subsection does not apply for the purposes of this Part of this Act.

#### **124 Derivation of unexpended balance from claims under Part V of Act of 1947**

- (1) In determining, for the purposes of this Part of this Act, whether land has an unexpended balance of established development value, regard shall be had to claims made, in pursuance of Part V of the Act of 1947, for payments under the scheme provided for by section 55 of that Act (that is to say, the scheme which, but for the provisions of section 2 of the Town and Country Planning Act 1953, would have fallen to be made under the said section 55, providing for payments in respect of interests in land depreciated in value by virtue of the provisions of the Act of 1947).
- (2) Where such a claim was made in respect of an interest in land, that claim shall for the purposes of this Part of this Act be taken to have been established in respect of that land under Part V of the Act of 1947 if an amount was determined under the said Part V as being the development value of the interest to which the claim related, and payment in respect of that interest would not have been excluded—
  - (a) by section 60 of the Act of 1947 (which excluded claims where the development value was small in proportion to the area, or to the restricted value, of the land); or
  - (b) by any of sections 79 to 82 of that Act (which related to certain land belonging to local authorities, development corporations and statutory undertakers, and to land held on charitable trusts); or
  - (c) by section 81 of that Act as applied by regulations under section 86 of that Act (which related to the National Coal Board).
- (3) In this Part of this Act " established claim " means a claim which by virtue of subsection (2) of this section is to be taken to have been established as therein mentioned, and references to the establishment of a claim shall be construed accordingly; and " the claim area ", in relation to an established claim, means the land in respect of which the claim is by virtue of that subsection to be taken to have been established.
- (4) References in this Part of this Act to the benefit of an established claim—

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- (a) in relation to any time before the passing of the Town and Country Planning Act 1953, whether before or after the making of the claim, or before or after the establishment thereof, shall be construed as references to the prospective right, under and subject to the provisions of the scheme referred to in subsection (1) of this section, to receive a payment in respect of the interest in land to which the claim related; and
  - (b) in relation to any time after the passing of the said Act of 1953, shall be construed as references to such prospective right to the satisfaction of the claim as subsisted by virtue of section 2 of that Act immediately before 1st January 1955 (being the date of the commencement of the Act of 1954);
- and references to part of the benefit of an established claim shall be construed accordingly.
- (5) References in this Part of this Act to the amount of an established claim are references to the amount determined under Part V of the Act of 1947 as being the development value of the interest in land to which the claim related.
  - (6) In this section any reference to Part V of the Act of 1947 includes a reference to the provisions of the said Part V as modified by Schedule 1 to the Act of 1954.

## **125 Original unexpended balance of established development value**

- (1) In this Part of this Act "original unexpended balance of established development value in relation to any land, means the unexpended balance of established development value which that land had immediately after the time when, in accordance with section 127 of this Act, the adjustment of claim holdings is deemed to have been completed.
- (2) For the purposes of this Part of this Act land shall be taken to have had such a balance if, immediately after the time referred to in subsection (1) of this section—
  - (a) there were subsisting one or more claim holdings whose area consisted of that land, or included that land together with other land; and
  - (b) there was not subsisting any claim holding whose area consisted of part only of that land, whether with or without other land.
- (3) Where subsection (2) of this section applies, there shall be attributed to the land referred to in that subsection—
  - (a) the value of any claim holding having an area consisting of that land ; and
  - (b) such fraction of the value of any claim holding whose area included that land as attached to that land,and the original unexpended balance of established development value of that land shall be taken to have been an amount equal to eight-sevenths of the amount or aggregate amount so attributed.

## **126 Claim holdings, their areas and values**

- (1) Subject to the provisions of this section and of section 127 of this Act, in this Part of this Act—
  - (a) "claim holding" means the benefit of an established claim, references to the area of a claim holding are references to the land which, in relation to the established claim constituting that holding, is the claim area, and references

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to the value of a claim holding are references to the amount of the established claim constituting that holding; and

- (b) references to the fraction of the value of a claim holding which attached to a part of the area of the holding are references to so much of the amount of the established claim of which that holding represents the benefit or part of the benefit (in this section referred to as "the relevant established claim") as was properly attributable to that part of the area of the holding.

(2) In the case of a claim holding where—

- (a) the area of the holding is the same as the claim area of the relevant established claim ; but
- (b) the value of the claim holding is, by virtue of the adjustment of claim holdings, less than the amount of the relevant established claim,

the amount of any such fraction as is referred to in subsection (1)(b) of this section shall be treated as reduced proportionately.

(3) In the case of a claim holding where—

- (a) the area of the holding consists of part only of the claim area of the relevant established claim; and
- (b) the value of the holding is, by virtue of the adjustment of claim holdings, less or greater than so much of the amount of the relevant established claim as was properly attributable to the area of the holding.

the amount of any such fraction as is referred to in subsection (1)(b) of this section shall be treated as reduced, or (as the case may be) increased, proportionately.

(4) For the purposes of this section, the part of the amount of the relevant established claim which was properly attributable to any land forming part of the claim area shall be taken to have been so much of the amount of that claim as might reasonably be expected to have been attributed to that land if the authority determining that amount had been required to apportion it, in accordance with the same principles as applied to its determination, between that land and the residue of the claim area.

## **127 Adjustment of claim holdings**

- (1) The provisions of Schedule 13 to this Act shall have effect for the purposes of this Part of this Act; and any reference in this Part of this Act to the adjustment of claim holdings is a reference to the operation of those provisions.
- (2) For the purposes of this Part of this Act the adjustment of claim holdings shall be deemed to have been completed on 1st January 1955.

## **128 General provision for continuance of original unexpended balance**

Where in accordance with section 125 of this Act land had an original unexpended balance of established development value, then, subject to the following provisions of this Part of this Act, that land shall be taken—

- (a) to have continued to have that balance until the commencement of this Act; and
- (b) to continue to have that balance at all times thereafter.

### **129 Reduction or extinguishment of balance in consequence of compensation**

- (1) Where at any time compensation becomes payable under this Part of this Act, or became payable under Part II of the Act of 1954, in respect of depreciation of the value of an interest in land by a planning decision, then, for the purpose of determining whether that land or any part thereof has or had an unexpended balance of established development value at any subsequent time, the amount of the compensation shall be deducted from the original unexpended balance of established development value of that land, and the original unexpended balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) Subsection "(1) of this section shall have effect subject to the provisions of this Part of this Act relating to the recovery of compensation on subsequent development.

### **130 Reduction or extinguishment of balance on initiation of new development**

- (1) Where in accordance with section 125 of this Act land had an original unexpended balance of established development value, and at any time on or after 1st July 1948 (whether before or after the commencement of this Act) any new development of that land is or was initiated, then (subject to the following provisions of this section) for the purpose of determining whether that land or any part thereof has or had an unexpended balance of established development value at any subsequent time—
  - (a) if the development relates or related only to that land, the value of that development (ascertained, with reference to that subsequent time, in accordance with the provisions of Schedule 14 to this Act); or
  - (b) if the development relates or related to that land together with other land, so much of the value of that development (so ascertained) as is or was attributable to that land,shall be deducted from the original unexpended balance of established development value of that land, and the original unexpended balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) Subsection (1) of this section shall not apply to any land if, in respect of any interest therein, a payment has become or becomes payable under section 56 of the Act of 1947 (which provided for payments in respect of certain war-damaged land).
- (3) For the purposes of subsection (1) of this section no account shall be taken of any development initiated before 1st January 1955, if a development charge under Part VI of the Act of 1947 was determined to be payable in respect thereof, or would have fallen to be so determined but for any exemption conferred by regulations under that Part of that Act, or by any provisions of Part VII of that Act.

### **131 Reduction or extinguishment of balance on acquisition of land under compulsory powers**

- (1) Where in the case of—
  - (a) a compulsory acquisition to which this section applies; or
  - (b) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,any of the land in which the interest acquired or sold subsists or subsisted has or had an unexpended balance of established development value immediately before the

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relevant date (in this section referred to as " the relevant balance ") the following provisions of this section shall have effect for the purpose of determining whether that land or any part thereof has or had an unexpended balance of established development value at any subsequent time.

- (2) This section applies—
  - (a) to every compulsory acquisition of an interest in land in pursuance of a notice to treat served on or after 30th October 1958, whether before or after the commencement of this Act; and
  - (b) to every compulsory acquisition of an interest in land, in pursuance of a notice to treat served on or after 1st January 1955 but before the said 30th October, by an authority possessing compulsory purchase powers, being at that time a government department or local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act 1919, or a person or body of persons to whom that Act applied as it applied to such a department or authority.
- (3) Unless, immediately after the acquisition or sale, there is or was outstanding some interest (other than an excepted interest) in the land to which some person other than the acquiring authority is or was entitled, the original unexpended balance of established development of that land shall be treated as having been extinguished immediately before the subsequent time referred to in subsection (1) of this section.
- (4) If, immediately after the acquisition or sale, there is or was such an outstanding interest (other than an excepted interest) as is mentioned in subsection (3) of this section, there shall be deducted from the said original balance an amount equal to any part of the relevant balance which is or was not attributable to any such outstanding interest, and the original unexpended balance of established development value of the land or the part thereof in question shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (5) For the purposes of this section any question as to the portion of the relevant balance which is or was attributable to an interest in land—
  - (a) in relation to a compulsory acquisition to which this section applies, shall be determined in accordance with the provisions of Schedule 1S to this Act; and
  - (b) in relation to a sale of an interest in land by agreement in circumstances corresponding to such an acquisition, shall be determined in accordance with the provisions of that Schedule as those provisions would apply if the sale had been a compulsory acquisition in pursuance of a notice to treat served on the relevant date.
- (6) Any reference in this section or in section 132 of this Act to a sale of an interest in land by agreement in circumstances corresponding to a compulsory acquisition to which this section applies is a reference to a sale thereof—
  - (a) to an authority possessing compulsory purchase powers, in pursuance of a contract made on or after 30th October 1958, whether before or after the commencement of this Act; or
  - (b) to such an authority possessing compulsory purchase powers as is mentioned in subsection (2)(b) of this section, in pursuance of a contract made on or after 1st January 1955 but before the said 30th October.
- (7) In this section " the relevant date " means the date of service of the notice to treat or the date of the contract in pursuance of which the interest was sold, as the case may be, and " excepted interest" means the interest of any such person as is mentioned in

section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (which relates to persons having no greater interest than as tenant for a year or from year to year).

### **132 Reduction or extinguishment of balance in consequence of severance or injurious affection**

- (1) Where in connection with—
  - (a) a compulsory acquisition to which section 131 of this Act applies; or
  - (b) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,  
compensation is or was payable, or an amount is or was included in the purchase price, in respect of an interest in land other than the relevant land (in this section referred to as "the interest affected"), for damage sustained by reason that the relevant land is or was severed from other land held therewith, or that any other land (whether held with the relevant land or not) is or was injuriously affected, then (subject to the following provisions of this section) for the purpose of determining whether that other land or any part thereof has or had an unexpended balance of established development value at any subsequent time, there shall be deducted from the original unexpended balance of established development value of that other land an amount calculated in accordance with the following provisions of this section, and the original unexpended balance of that land, or of the part thereof in question, as the case may be, shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) In the case of an acquisition or sale in pursuance of a notice to treat served, or contract made, on or after 30th October 1958, the amount to be deducted, as mentioned in subsection (1) of this section, shall be the amount (if any) by which the compensation payable, or amount included in the purchase price, as therein mentioned exceeds or exceeded the compensation which would have been so payable, or the amount which would have been so included, if the extent of the damage sustained in respect of the other land in question had fallen to be ascertained on the assumption that planning permission would not be granted for any new development of that land, but would be granted for any development thereof other than new development.
- (3) The following provisions of this section shall have effect with respect to any such acquisition or sale as is mentioned in subsection (1) of this section, being an acquisition or sale in pursuance of a notice to treat served, or contract made, before 30th October 1958; and any such acquisition or sale is hereinafter referred to as an acquisition or sale to which this subsection applies.
- (4) No such deduction as is mentioned in subsection (1) of this section shall be made in the case of an acquisition or sale to which subsection (3) of this section applies unless—
  - (a) where it was a compulsory acquisition, an amount was paid by way of compensation as mentioned in the said subsection (1);
  - (b) the amount which was so paid, or, in the case of a sale by agreement, was included in the purchase price as mentioned in the said subsection (1) (hereafter in this section referred to as "the sum paid for severance or injurious affection") exceeded the loss of immediate value of the interest affected; and
  - (c) where it was a sale by agreement, the other land in question was held with the relevant land,
- (5) Subject to subsection (4) of this section, the amount to be deducted as mentioned in subsection (1) of this section, in the case of an acquisition or sale to which

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subsection (3) of this section applies, shall be the amount by which the sum paid for severance or injurious affection exceeded the loss of immediate value of the interest affected.

(6) The following provisions of this subsection shall have effect, in the case of an acquisition or sale to which subsection (3) of this section applies, where so much (if any) of the sum paid for severance or injurious affection as was attributable to the loss of immediate value of the interest affected was less than the depreciation in restricted value of that interest, that is to say—

- (a) the amount of the difference shall be ascertained; and
- (b) for the purpose of determining whether, at any time after the acquisition or sale, the land in which the interest affected subsisted or any part thereof had or has an unexpended balance of established development value (whether or not that land or any part thereof would apart from this subsection have had an original unexpended balance of established development value) a claim holding with an area consisting of that land and a value equal to seven-eighths of the amount of the difference shall be deemed to have subsisted immediately after the time when the adjustment of claim holdings was completed.

(7) In this section—

" the loss of immediate value " means the amount (if any) by which the difference in the value of the interest affected, immediately before and immediately after the acquisition or sale, exceeded the loss of development value;

" the loss of development value " means the amount (if any) by which the value of the interest affected immediately before the acquisition or sale, if calculated on the assumption that, until such time as the land in which that interest subsisted might reasonably be expected to become ripe for new development, no use whatever could be made of that land, would have exceeded the value of that interest immediately after the acquisition or sale if calculated on the like assumption;

" the depreciation in restricted value " means the amount (if any) by which the value of the interest affected, immediately after the acquisition or sale, would have been less than the value of that interest immediately before the acquisition or sale, if both values were calculated on the assumption that planning permission would not be granted for any new development of that land, but would be granted for any development thereof other than new development;

" the relevant land ", in relation to an acquisition or sale, means the land in which the interest acquired or sold subsisted.

### **133 Supplementary provisions as to deductions from original balance**

(1) Where, immediately after the time when the adjustment of claim holdings was completed, any land taken as a whole had an original unexpended balance of established development value, and at any time thereafter (whether before or after the commencement of this Act) an act or event occurs or has occurred in relation to part of that land such that, in accordance with any of the preceding provisions of this Part of this Act, an amount is required to be deducted from the original unexpended balance of that part of that land for the purpose of determining whether it has or had an unexpended balance of established development value at any subsequent time, then (without prejudice to the operation of any of the preceding provisions of this Part



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of this Act with respect to any part of the land taken separately) the land taken as a whole shall be treated as not having (or as not having had) any such balance at that subsequent time.

- (2) Where in accordance with any of the preceding provisions of this Part of this Act an amount is required to be deducted from the original unexpended balance of established development value of any land, there shall be attributed to the various parts of that land so much of that amount as might reasonably be expected to have been attributed thereto if the authority determining the amount had been required to apportion it between those parts in accordance with the same principles as applied to its determination.
- (3) Where two or more acts or events occur or have occurred in relation to the same land (whether before or after the commencement of this Act) such that, in accordance with any of the preceding provisions of this Part of this Act, an amount is required to be deducted from the original unexpended balance of established development value of that land or any part thereof, those provisions shall apply cumulatively, and the requisite deduction from the original unexpended balance of established development value of that land shall be made by reference to each of those acts or events.

#### **134 Provision of information relating to unexpended balance**

- (1) Subject to the provisions of this section, the Secretary of State shall, on application being made to him by any person, and may if he thinks fit without any such application, issue a certificate in the prescribed form with respect to any land stating whether any of that land had an original unexpended balance of established development value, and, if so—
  - (a) giving a general statement of what was taken by the Central Land Board, for the purposes of Part V of the Act of 1947, to be the state of that land on 1st July 1948; and
  - (b) specifying (subject to any outstanding claims under Part I or Part V of the Act of 1954) the amount of that original balance.
- (2) Any such certificate issued with respect to any land may, if the Secretary of State thinks fit, contain additional information with respect to acts or events in consequence of which, in accordance with any of the preceding provisions of this Part of this Act, an amount is required to be deducted from the original unexpended balance of established development value of any of that land.
- (3) Where, at any time on or after 1st January 1955 (whether before or after the commencement of this Act), a notice to treat has been served with a view to the compulsory acquisition of an interest in land by an authority possessing compulsory purchase powers, that authority may apply to the Secretary of State for, and shall be entitled to the issue of, a certificate showing the unexpended balance of established development value (if any) of any of that land immediately before the service of that notice.
- (4) Where the issue of a certificate under this section with respect to any land involves a new apportionment, or, in the case of a certificate under subsection (3) of this section, involves the calculation of a deduction from the original unexpended balance of established development value by virtue of section 130 of this Act, then—
  - (a) except in the case of a certificate under subsection (3) of this section, or of a certificate which the Secretary of State proposes to issue without any application being made for it, the certificate shall not be issued otherwise than

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- on the application of a person who is for the time being entitled to an interest in that land ;
- (b) before issuing the certificate, the Secretary of State shall give notice in writing to any person entitled to an interest in land appearing to him to be an interest which will be substantially affected by the apportionment or calculation, giving particulars of the proposed apportionment or calculation, and stating that objections or other representations with respect thereto may be made to the Secretary of State within the period of thirty days from the date of the notice; and
  - (c) the certificate shall not be issued before the end of that period, and if within that period an objection to the proposed apportionment or calculation has been made by any person to whom notice has been given under paragraph (b) of this subsection, or by any other person who establishes that he is entitled to an interest in land which is substantially affected by the apportionment or calculation, and that objection has not been withdrawn, subsection (5) of this section shall have effect.
- (5) Where by virtue of subsection (4)(c) of this section this subsection is to have effect, then—
- (a) if within a further period of thirty days the person by whom any such objection was made requires the dispute to be referred to the Lands Tribunal, the dispute shall be so referred, and the certificate shall not be issued until either the Tribunal has decided the matter or the reference to the Tribunal has been withdrawn ;
  - (b) the certificate may be issued before the end of the said further period if every such objection has been withdrawn;
  - (c) the certificate shall be issued at the end of that further period, notwithstanding that every such objection has not been withdrawn, if no requirement has within that period been made under paragraph (a) of this subsection.
- (6) Where, on a reference to the Lands Tribunal under this section, it is shown that a new apportionment relates partly to the same matters as a previous apportionment, and is consistent with that previous apportionment in so far as it relates to those matters, the Tribunal shall not vary the new apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.
- (7) A certificate under subsection (3) of this section shall be conclusive evidence of the unexpended balance shown there in ; and a certificate under subsection (1) of this section shall be sufficient proof of any facts stated therein unless the contrary is shown.
- (8) An application for a certificate under this section shall be made in such form and manner as may be prescribed, and shall be accompanied by sufficient particulars, including a map if necessary, to enable the land to be identified, and, where a new apportionment will be involved, particulars of the nature of the applicant's interest, and such information as to the nature of any other interest in the land, and as to the name and address of the person entitled to that other interest, as may be known to the applicant.
- (9) On any application under subsection (1) of this section the applicant shall pay in the prescribed manner a fee of twenty-five new pence, and, if the application involves a new apportionment, the certificate shall not be issued until the applicant has paid in the prescribed manner a further fee of seventy-five new pence.

- (10) In this section " new apportionment" means an apportionment which relates wholly or partly to any matter to which no previous apportionment related.

### *Right to compensation*

#### **135 General provision as to right to compensation**

Subject to the provisions of this Part of this Act, a person shall be entitled to compensation under this Part of this Act in respect of a planning decision whereby planning permission for the carrying out of new development of land is refused, or is granted subject to conditions, if—

- (a) at the time of the decision he is entitled to an interest in any land to which the decision relates which has an unexpended balance of established development value; and
- (b) the value of that interest, or, in the case of an interest extending to other land, the value of that interest in so far as it subsists in such land as is referred to in the preceding paragraph, is depreciated by the decision.

#### **136 Planning decisions not ranking for compensation**

- (1) Compensation under this Part of this Act shall not be payable—
  - (a) in respect of the refusal of planning permission for any development which consists of or includes the making of any material change in the use of any buildings or other land; or
  - (b) in respect of any decision made on an application in pursuance of regulations under section 61 of this Act for consent to the display of advertisements.
- (2) Compensation under this Part of this Act shall not be payable in respect of the imposition, on the granting of planning permission to develop land, of any condition relating to—
  - (a) the number or disposition of buildings on any land;
  - (b) the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction;
  - (c) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land ;
  - (d) the use of any buildings or other land ; or
  - (e) the location or design of any means of access to a highway, or the materials to be used in the construction of any such means of access,or in respect of any conditions subject to which permission is granted for the winning and working of minerals.

In this subsection " means of access to a highway " does not include a service road.

- (3) Compensation under this Part of this Act shall not be payable in respect of the application to any planning permission of any of the conditions referred to in sections 38 and 39 of this Act or in respect of the imposition of any condition to which section 69 or 80 of this Act applies.
- (4) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land, if the reason or one of the reasons stated for the refusal

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is that development of the kind proposed would be premature by reference to either or both of the following matters, that is to say—

- (a) the stages indicated, in the structure plan or local plan for the area in which the land is situated, as the stages by which development is to be carried out;
- (b) any existing deficiency in the provision of water supplies or sewerage services, and the period within which any such deficiency may reasonably be expected to be made good:

Provided that this subsection shall not apply if the planning decision refusing the permission is made on an application made more than seven years after the date of a previous planning decision whereby permission to develop the same land was refused for the same reason, or for reasons which included the same reason.

In this subsection, the reference to the structure plan or local plan for the area in which the land is situated is a reference to the structure plan or local plan for that area as approved by the Secretary of State, or, if the plan so approved has been amended by the Secretary of State, to that plan as so amended.

- (5) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land, if the reason or one of the reasons stated for the refusal is that the land is unsuitable for the proposed development on account of its liability to flooding or to subsidence.
- (6) For the purposes of this section, a planning decision whereby permission to develop land is granted subject to a condition prohibiting development on a specified part of that land shall be treated as a decision refusing the permission with respect to that part of the land.

### **137 No compensation if certain other development permitted**

- (1) Compensation under this Part of this Act shall not be payable in respect of a planning decision whereby permission is refused for the development of land if, notwithstanding that refusal, there is available with respect to that land planning permission for development to which this section applies:

Provided that, where such permission is available with respect to part only of the land, this section shall have effect only in so far as the interest subsists in that part

- (2) Where a claim for compensation under this Part of this Act is made in respect of an interest in any land, planning permission for development to which this section applies shall be taken for the purposes of this section to be available with respect to that land or a part thereof if, immediately before the Secretary of State gives notice of his determination in respect of that claim, there is in force with respect to that land, or that part thereof, a grant of, or an undertaking by the Secretary of State to grant, planning permission for some such development, subject to no conditions other than such as are mentioned in section 136(2) of this Act.
- (3) This section applies to any development of a residential, commercial or industrial character, being development which consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof.

### **138 Further exclusions from compensation**

- (1) Where an interest in any land has (whether before or after the commencement of this Act) been compulsorily acquired by, or sold to, an authority possessing compulsory purchase powers (not being statutory undertakers or the National Coal Board), that authority, and any person deriving title from that authority under a conveyance made by that authority on or at any time after 1st July 1948, shall not be entitled to compensation under this Part of this Act in respect of a planning decision made after the service of the notice to treat, or after the making of the contract of sale, as the case may be, by reason that the value of that interest, or of any interest created (whether directly or indirectly) out of that interest, is depreciated by the decision.
- (2) Subsection (1) of this section shall apply to land which has at any time on or after 1st July 1948 (whether before or after the commencement of this Act) been appropriated by a local authority for a purpose for which the authority could have been authorised to acquire the land compulsorily, as it applies to land in which an interest has been acquired as mentioned in that subsection, with the substitution, for the reference to the service of the notice to treat, of a reference to the appropriation.
- (3) Where at the relevant date any land was or is operational land of statutory undertakers, or land of the National Coal Board of a class specified in regulations made under section 86 of the Act of 1947 or under section 259 of this Act, the statutory undertakers or the National Coal Board, as the case may be, and any person deriving title from those undertakers or that Board, shall not be entitled to compensation under this Part of this Act, in respect of a planning decision made after the relevant date, by reason that the value of any interest in that land is depreciated by that decision.

In this subsection " the relevant date ", in relation to land which was such operational land or land of the National Coal Board as is mentioned in this subsection on 1st January 1955, means that day, and, in relation to land which (whether before or after the commencement of this Act) became or becomes such operational land or land of the National Coal Board on a date subsequent to the said 1st January, means that subsequent date.

- (4) A person shall not be entitled to compensation under this Part of this Act in respect of depreciation of the value of an interest in land by a planning decision if he is entitled to compensation by virtue of section 154 of this Act in respect of depreciation of the value of that interest by that decision.
- (5) A creditor in a heritable security shall not be entitled to compensation under this Part of this Act in respect of his interest as creditor:

Provided that this subsection shall be without prejudice to the operation of any regulations made under section 151 of this Act.

### **139 Grant of planning permission treated as subject to notional condition**

- (1) The provisions of this section shall have effect where—
  - (a) on an application for planning permission for the carrying out of new development of land, a planning decision is made whereby the permission is granted, whether unconditionally or subject to conditions; and
  - (b) the Secretary of State certifies that he is satisfied that particular buildings or works to which the application related were included therein only because the applicant had reason to believe that permission for the other development to which the application related (in this section referred to as " the principal

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development") would not have been granted except subject to a condition requiring the erection or construction of those buildings or works.

- (2) Where subsection (1) of this section applies, then for the purposes of this Part of this Act—
- (a) the application shall be deemed to have included, in place of those buildings or works, such other development of the land on which the buildings or works were to be erected or constructed as might reasonably have been expected to have been included having regard to the principal development; and
  - (b) the permission shall be deemed to have been granted for the principal development subject to a condition requiring the erection or construction of those buildings or works.

#### **140 Notice under s. 70 treated as planning decision**

Where a notice under section 70(1) of this Act is served in respect of the whole or part of any land, the provisions of this Part of this Act shall have effect as if the application, in consequence of which the notice is served, had been an effective application for planning permission, and as if the notice had been a planning decision of the local planning authority refusing that permission in respect of that land or that part thereof, as the case may be.

#### *Measure of compensation*

#### **141 General provisions as to amount of compensation**

- (1) Where a person is entitled to compensation under this Part of this Act in respect of depreciation by a planning decision of the value of an interest in land, the amount of the compensation, subject to the following provisions of this section, shall be whichever is the lesser of the following amounts, that is to say—
- (a) the amount by which the value of that interest (if it is an interest subsisting only in land to which this section applies), or (if it is an interest extending to other land) the amount by which the value of the interest in so far as it subsists in land to which this section applies, is depreciated by the decision; and
  - (b) the amount of the unexpended balance of established development value, immediately before the decision, of so much of the land in which the interest subsists as is land to which this section applies.
- (2) Land to which this section applies, in relation to a planning decision, is land which—
- (a) constitutes or forms part of the decision area ; and
  - (b) at the time of the decision has an unexpended balance of established development value.
- (3) If, in the case of any land to which this section applies, compensation is payable under this Part of this Act in respect of two or more interests in that land by reason of the same planning decision, and the aggregate amount of compensation payable apart from this subsection in respect of those interests would exceed the amount mentioned in paragraph (b) of subsection (1) of this section, the amount mentioned in that paragraph shall be allocated between those interests in proportion to the depreciation of the value of each of them respectively, and the amount of the compensation payable in respect of any of those interests shall be the sum so allocated to that interest.

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- (4) Where the land constituting the decision area, taken as a whole, does not satisfy both of the following conditions, that is to say—
- (a) that at the time of the decision it has an unexpended balance of established development value; and
  - (b) that every interest subsisting therein, the value of which is depreciated by the decision, subsists in the whole of that land,

the provisions of subsection (5) of this section shall have effect for the purpose of assessing the compensation payable under this Part of this Act in respect of any interest subsisting in that land or any part thereof.

- (5) Where this subsection applies in relation to an interest in land—
- (a) the depreciation of the value of the interest by the planning decision shall first be ascertained with reference to the whole of the land which constitutes or forms part of the decision area and is land in which that interest subsists;
  - (b) the land referred to in paragraph (a) of this subsection shall then be treated as divided into as many parts as may be requisite to ensure that each such part consists of land which either satisfies both of the conditions mentioned in subsection (4) of this section or is not land which, at the time of the decision, has an unexpended balance of established development value; and
  - (c) the depreciation of the value of the interest, ascertained in accordance with paragraph (a) of this subsection, shall then be apportioned between those parts, according to the nature of those parts and the effect of the planning decision in relation to each of them,

and the amount of the compensation shall be the aggregate of the amounts which would be payable by virtue of the preceding provisions of this section if the planning decision had been made separately with respect to each of those parts.

- (6) In this section " the decision area " in relation to a planning decision means the aggregate of the land to which the decision relates.

## **142 Assessment of depreciation**

- (1) For the purposes of this Part of this Act, the value of an interest in land, or of an interest in so far as it subsists in particular land, shall be taken to be depreciated by a planning decision (in this section referred to as " the relevant decision ") if, and to the extent to which, that value, calculated in accordance with the following provisions of this section, falls short of what that value, so calculated, would have been if the relevant decision had been a decision to the contrary effect.
- (2) Subject to the following provisions of this section, any such value shall for the purposes of this section be calculated—
- (a) as at the time of the relevant decision; but
  - (b) as affected by that decision, by any grant of planning permission made after that decision and in force immediately before the Secretary of State gives notice of his determination on the claim for compensation in respect of that decision, and by any undertaking to grant planning permission so in force; and
  - (c) on the assumption that, after the relevant decision, and apart from any such permission or undertaking as is mentioned in paragraph (b) of this subsection, planning permission would not be granted for any new development of the land in question, but would be granted for any development thereof other than new development.

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- (3) If in consequence of another planning decision or of an order, being a decision or order made—
- (a) before the relevant decision ; and
  - (b) either in respect of the whole or part of the land to which the relevant decision relates, or in respect of land which includes the whole or part of that land,
- compensation to which this subsection applies has become or becomes payable in respect of that other planning decision or that order, the calculation to be made under this section shall be made as if that other planning decision had been a decision to the contrary effect, or that order had not been made, as the case may be.
- (4) Subsection (3) of this section applies—
- (a) to any compensation payable under this Part of this Act, or under Part II or Part V of the Act of 1954; and
  - (b) to so much of any compensation payable under section 153 of this Act or under the provisions of that section as applied by section 154 of this Act, and so much of any compensation to which Part IV of the Act of 1954 applied, as is or was payable in respect of loss or damage consisting of depreciation of the value of an interest in land.
- (5) In this section " a decision to the contrary effect"—
- (a) in relation to a decision refusing permission, means a decision granting the permission subject to such condition (if any) of a description falling within subsection (2) of section 136 of this Act as the authority making the decision might reasonably have been expected to impose if the permission had not been refused; and
  - (b) in relation to a decision granting the permission subject to conditions, means a decision granting the permission applied for subject only to such of those conditions (if any) as fell within subsection (2) of that section.

*Claims for, and payment of, compensation*

**143 General provisions as to claims for compensation**

- (1) Compensation under this Part of this Act shall not be payable unless a claim for it is duly made to the Secretary of State in accordance with the provisions of this section.
- (2) A claim for compensation under this Part of this Act shall not have effect unless it is made before the end of the period of six months beginning with the date of the planning decision to which it relates:
 

Provided that the Secretary of State may in any particular case (either before, on or after the date on which the time for claiming would otherwise have expired) allow an extended, or further extended, period for making such a claim.
- (3) Regulations made under this section may—
  - (a) require claims for compensation under this Part of this Act to be made in such manner as may be prescribed;
  - (b) require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in the land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed;



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- (c) require the local planning authority to furnish the Secretary of State with such information (if any) as may be specified in, or in accordance with, the regulations, being information appearing to the Secretary of State to be relevant to the exercise of his powers under the provisions of Part III of this Act relating to the review of planning decisions where compensation is claimed.
- (4) Where a claim is received by the Secretary of State under this section—
- (a) if it appears to the Secretary of State that the development to which the planning decision related was not new development, or that at the time of the planning decision no part of the land to which the claim relates had an unexpended balance of established development value, or that compensation is excluded by section 136 or 137 of this Act, the Secretary of State shall notify the claimant accordingly, stating on which of those grounds it appears to him that compensation is not payable;
  - (b) unless the claim is withdrawn, the Secretary of State shall give notice of the claim to every other person (if any) appearing to him to have an interest in the land to which the planning decision related.

#### **144 Effect on claims of direction under s. 35**

- (1) Where, in accordance with section 36(3) of this Act, the Secretary of State gives notice of a direction under section 35 of this Act to a person who has made a claim for compensation in respect of the planning decision to which that direction relates, that person, if he does not withdraw the claim, may, at any time within thirty days after the service on him of the Secretary of State's notice, give notice to the Secretary of State modifying the claim.
- (2) Subject to any modification by virtue of a notice given by a claimant under subsection (1) of this section, where the Secretary of State gives a direction under section 35 of this Act in respect of a decision of a local planning authority, any claim made in respect of that decision shall have effect as if it had been made in respect of the decision which, by virtue of the direction, is substituted for the decision of the authority, or, as the case may be, as if it had been made in respect of the decision of the authority as modified by the direction.

#### **145 Determination of claims**

- (1) Provision shall be made by regulations under this section—
- (a) for requiring claims for compensation under this Part of this Act to be determined by the Secretary of State in such manner as may be prescribed by the regulations;
  - (b) for regulating the practice and procedure to be followed in connection with the determination of such claims;
  - (c) for requiring the Secretary of State, on determining any such claim, to give notice of his determination to the claimant, and to every other person (if any) who has made, and not withdrawn, a claim for compensation under this Part of this Act in respect of the same planning decision, and, if his determination includes an apportionment, to give particulars of the apportionment to any other person entitled to an interest in land appearing to the Secretary of State to be an interest substantially affected by the apportionment.

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- (2) Subject to subsection (3) of this section, provision shall be made by regulations under this section—
- (a) for enabling the claimant or any other person to whom notice of the Secretary of State's determination has been given in accordance with subsection (1) of this section, if he wishes to dispute the determination, and any other person to whom particulars of an apportionment included in that determination have been so given, or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require the determination, or, as the case may be, the apportionment, to be referred to the Lands Tribunal;
  - (b) for enabling the claimant and every other person to whom notice of any determination or apportionment has been given as mentioned in paragraph (a) of this subsection to be heard by the Tribunal on any reference under this section of that determination or apportionment, as the case may be; and
  - (c) for requiring the Tribunal, on any such reference, either to confirm or to vary the Secretary of State's determination or the apportionment, as the case may be, and to notify the parties of the decision of the Tribunal.
- (3) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment relates wholly or partly to the same matters as a previous apportionment, and is consistent with that previous apportionment in so far as it relates to those matters, the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

#### **146 Payment of compensation**

Where compensation is determined under section 145 of this Act to be payable, the Secretary of State shall pay the compensation to the person entitled thereto in accordance with the preceding provisions of this Part of this Act.

#### *Subsequent recovery of compensation*

#### **147 Apportionment of, and recording of notice relating to, compensation**

- (1) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, the Secretary of State determines that compensation is payable and that the amount of the compensation exceeds £20, the Secretary of State shall (if it appears to him to be practicable to do so) apportion the amount of the compensation between different parts of the land to which the claim for compensation relates, and shall include particulars of the apportionment in the notice of his determination under section 145 of this Act.
- (2) In carrying out an apportionment under subsection (1) of this section the Secretary of State shall divide the land into parts, and shall distribute the compensation between those parts, according to the way in which the different parts of the land appear to him to be differently affected by the planning decision.
- (3) On a reference to the Lands Tribunal under section 145 of this Act, unless the decision of the Tribunal will not affect the amount of the compensation or any apportionment thereof by the Secretary of State, the preceding provisions of this section shall apply with the substitution, for references to the Secretary of State, of references to the Lands Tribunal.

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- (4) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, compensation has become payable of an amount exceeding £20, the Secretary of State shall cause notice of that fact, specifying the planning decision and the land to which the claim for compensation relates, and the amount of the compensation and any apportionment thereof under this section and referring to the provisions of sections 148 to 150 of this Act, to be recorded in the appropriate Register of Sasines, and shall send a copy of the notice to the local planning authority.
- (5) In relation to compensation specified in a notice recorded under this section, references in this Part of this Act to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed in accordance with the following provisions, that is to say—
  - (a) if the notice does not include an apportionment under the preceding provisions of this section, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;
  - (b) if the notice includes such an apportionment, the compensation shall be treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part of the land.

#### **148 Recovery of compensation on subsequent development**

- (1) No person shall carry out any new development to which this section applies, on land in respect of which a notice (hereafter in this Part of this Act referred to as a "compensation notice") is recorded under section 147 of this Act, until such amount (if any) as is recoverable under this section in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State.
- (2) Subject to the following provisions of this section, this section applies to any new development—
  - (a) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof; or
  - (b) which consists in the winning and working of minerals; or
  - (c) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State reasonable that this section should apply.
- (3) This section shall not apply to any development by virtue of subsection (2)(c) of this section if, on an application made to him for the purpose, the Secretary of State has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply thereto.
- (4) Where the compensation specified in the compensation notice became payable in respect of the imposition of conditions on the granting of permission to develop land, this section shall not apply to the development for which that permission was granted.

## **149 Amount recoverable, and provisions for payment or remission thereof**

- (1) Subject to the following provisions of this section, the amount recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice—
  - (a) if the land on which the development is to be carried out (in this subsection referred to as "the development area ") is identical with, or includes (with other land) the whole of, the land comprised in the compensation notice, shall be the amount of compensation specified in that notice;
  - (b) if the development area forms part of the land comprised in the compensation notice, or includes part of that land together with other land not comprised in that notice, shall be so much of the amount of the compensation specified in that notice as is attributable to land comprised in that notice and falling within the development area.
- (2) Where, in the case of any land in respect of which a compensation notice has been recorded, the Secretary of State is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or part of any amount otherwise recoverable under section 148 of this Act.
- (3) Where, in connection with the development of any land, an amount becomes recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice, then, except where, and to the extent that, payment of that amount has been remitted under subsection (2) of this section, no amount shall be recoverable under section 148 of this Act in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.
- (4) No amount shall be recoverable under section 148 of this Act in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 244 of this Act.
- (5) An amount recoverable under section 148 of this Act in respect of any compensation shall be payable to the Secretary of State, and—
  - (a) shall be so payable either as a single capital payment or as a series of instalments of capital and interest combined, or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Secretary of State may direct, after taking into account any representations made by the person by whom the development is to be carried out; and
  - (b) except where the amount is payable as a single capital payment, shall be secured by that person to the satisfaction of the Secretary of State (whether by heritable or other security, personal bond or otherwise).
- (6) If any person initiates any new development to which section 148 of this Act applies in contravention of subsection (1) of that section, the Secretary of State may serve a notice on him specifying the amount appearing to the Secretary of State to be the amount recoverable under that section in respect of the compensation in question, and requiring him to pay that amount to the Secretary of State within such period, not being less than three months after the service of the notice, as may be specified in the notice.
- (7) Where, after a compensation notice in respect of any land has been recorded, any amount recoverable under this section in respect of the compensation specified in the notice, or any part of such amount, has been paid to the Secretary of State, or

circumstances arise under which by virtue of any provision of this Act no amount is so recoverable in respect of the land specified in the notice or any part of that land, the Secretary of State shall cause to be recorded in the appropriate Register of Sasines a notice of that fact, specifying the land to which such fact relates, and, in the case of any notice of the fact that part only of any such amount has been so paid, stating whether the balance has been secured to the satisfaction of the Secretary of State or has been remitted by him under subsection (2) of this section, and shall send a copy thereof to the local planning authority.

### **150 Amount recovered not to be deducted from unexpended balance**

- (1) Where an amount has become recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice, the following provisions of this section shall have effect for the purpose of determining any question as to the unexpended balance of established development value of any land at any subsequent time.
- (2) Except where, and to the extent that, payment of that amount has been remitted under section 149 of this Act, so much (if any) of that compensation as is attributable to that land shall, for the purpose mentioned in subsection (1) of this section, be treated as not having become payable, and accordingly (notwithstanding anything in section 129 of this Act) shall not be deducted from that balance.

#### *Supplementary provisions*

### **151 Provision for diversion of payments**

- (1) Regulations made under this section may make provision as to the exercise of the right to claim compensation under this Part of this Act, and as to the person to whom such compensation or any part thereof is to be paid, and as to the application of any such compensation or any part thereof, in cases where, apart from this section, the right to claim the compensation is exercisable by reference to—
  - (a) a claim holding which is subject to an assignation in security, or which was so subject at a time specified in the regulations ; or
  - (b) an interest in land which is subject to a ground annual or a heritable security or a trust, or which was so subject at a time specified in the regulations; or
  - (c) an interest in land which is the interest of a vassal or a lessee.
- (2) Any regulations made under this section may provide—
  - (a) for such conditions as may be prescribed to be attached to the paying by virtue of the regulations of any such compensation as aforesaid or any part thereof;
  - (b) for the application, in a case where any compensation, or any part thereof, is by virtue of the regulations to be paid to a superior or to the creditor in a ground annual, of all or any of the provisions of section 25 of the War Damage Act, 1943 (which relates to the rights of superiors and creditors in ground annuals as to payments for war damage) subject to such adaptations and modifications as may be prescribed; and
  - (c) for any disputes, or any disputes of such classes as may be prescribed, arising out of the regulations to be referred to the Lands Tribunal for determination by that Tribunal.
- (3) In this section, " claim holding " has the same meaning as in section 126 of this Act.

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## **152 Calculation of value**

- (1) In calculating value for any of the purposes of this Part of this Act—
- (a) rules (2) to (4) of the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall apply with the necessary modifications; and
  - (b) if the interest to be valued is subject to a heritable security, it shall be treated as if it were not subject to the security:

Provided that rule (3) of those rules shall not apply for the purposes of Schedule 14 to this Act and that the value of an interest, as calculated for the purposes of section 142 of this Act, may be a minus quantity.

## **PART VIII**

### COMPENSATION FOR OTHER PLANNING RESTRICTIONS

#### *Revocation or modification of planning permission*

## **153 Compensation where planning permission revoked or modified**

- (1) Where planning permission is revoked or modified by an order under section 42 of this Act, (other than an order which takes effect by virtue of section 43 of this Act and without being confirmed by the Secretary of State), 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 a person interested in the land—
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification ; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,
- the local planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any work carried out before the grant of the permission which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that permission.
- (4) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted for development of the land of any class specified in Schedule 6 to this Act.
- (5) In this Part of this Act any reference to an order under section 42 of this Act includes a reference to an order under the provisions of that section as applied by section 49(2) of this Act.

#### **154 Application of s. 153 to special cases of refusal or conditional grant of planning permission**

- (1) The provisions of this section shall have effect where—
  - (a) planning permission for the development of land has been granted by a development order; and
  - (b) that permission is withdrawn, whether by the revocation or amendment of the order or by the issue of directions under powers in that behalf conferred by the order; and
  - (c) on an application made in that behalf under Part III of this Act, planning permission for that development is refused, or is granted subject to conditions other than those previously imposed by the development order.
- (2) In any case falling within subsection (1) of this section, the provisions of section 153 of this Act shall apply as if the planning permission granted by the development order—
  - (a) had been granted by the local planning authority under Part III of this Act; and
  - (b) had been revoked or modified by an order under section 42 of this Act,and the provisions of section 155 (except subsection (5)(b) thereof) and of sections 156 and 157 of this Act shall apply as if references therein to an order under section 42 of this Act were references to (the planning decision whereby the planning permission in question is refused, or is granted subject to conditions other than those previously imposed by the development order.
- (3) This section shall not apply in relation to planning permission for the development of operational land of statutory undertakers.
- (4) No compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.

#### **155 Recording and apportionment of compensation for depreciation**

- (1) Where compensation becomes payable under the preceding provisions of this Part of this Act, and includes compensation for depreciation of an amount exceeding £20, the local planning authority shall (if it appears to them to be practicable to do so) apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates, and give particulars of any such apportionment to the claimant and to every other person (if any) entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.
- (2) In carrying out an apportionment under subsection (1) of this section, the local planning authority shall divide the land into parts, and shall distribute the compensation for depreciation between those parts, according to the way in which different parts of the land appear to the authority to be differently affected by the order in consequence of which the compensation is payable.
- (3) Section 145(2) of this Act, and any regulations made by virtue thereof, shall have effect with respect to any such apportionment (subject to any necessary modifications) as they have effect with respect to an apportionment under section 147(1) of this Act.
- (4) On a reference to the Lands Tribunal by virtue of subsection (3) of this section, subsections (1) and (2) of this section, so far as they relate to the making of an apportionment, shall apply with the substitution, for references to the local planning authority, of references to the Lands Tribunal.

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- (5) Where compensation becomes payable under the preceding provisions of this Part of this Act, and includes compensation for depreciation exceeding £20, the local planning authority shall cause notice of that fact in the prescribed form, specifying the land to which the compensation relates and the amount of the compensation for depreciation and any apportionment thereof under this section, to be recorded in the appropriate Register of Sasines, and shall send a copy of the notice to the Secretary of State; and subsection (5) of section 147 of this Act shall have effect with respect to such compensation for depreciation as it has effect with respect to compensation under Part VII of this Act, subject, however, to any necessary modifications, and, in particular, with the substitution for references to the compensation mentioned in that section, of references to the compensation for depreciation specified in the notice.
- (6) In this section and in section 156 of this Act " compensation for depreciation " means so much of any compensation payable under the preceding provisions of this Part of this Act as is payable in respect of loss or damage consisting of depreciation of the value of an interest in land.

#### **156 Contribution by Secretary of State towards compensation in certain cases**

- (1) Where a copy of the notice under section 155 of this Act is given to the Secretary of State in consequence of the making of an order under section 42 of this Act, and the circumstances are such that, if the permission revoked or modified by the order had been refused, or, as the case may be, had been granted as so modified, at the time when it was granted, compensation under Part VII of this Act could have been claimed and would have been payable by the Secretary of State, the Secretary of State may, subject to the provisions of this section, pay to the local planning authority a contribution of the amount appearing to him to be the amount of compensation which would have been so payable by him under Part VII of this Act.
- (2) The amount of any such contribution shall not exceed—
  - (a) the amount of the compensation for depreciation paid by the local planning authority; or
  - (b) the unexpended balance of established development value, at the date of the making of the order, of the land in respect of which that compensation was paid.
- (3) Regulations made under this section shall make provision, in relation to cases where the Secretary of State proposes to pay a contribution under this section—
  - (a) for requiring the Secretary of State to give notice of his proposal to persons entitled to such interests as may be prescribed in the land to which the proposal relates, and to such other persons (if any) as may be determined in accordance with the regulations to be affected by the proposal;
  - (b) for enabling persons to whom notice of the proposal is given to object to the proposal, on the grounds that compensation would not have been payable as mentioned in subsection (1) of this section, or that the amount of the compensation so payable would have been less than the amount of the proposed contribution ;
  - (c) for enabling any person making such an objection to require the matter in dispute to be referred to the Lands Tribunal for determination; and
  - (d) where a contribution under this section is paid, for applying (with any necessary modifications) the provisions of Part VII of this Act as to the reduction or extinguishment of the unexpended balance of established



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development value of land, as if the contribution had been a payment of compensation under that Part of this Act.

### **157 Recovery, on subsequent development, of compensation under s. 153**

- (1) In relation to notices recorded under the provisions of section 147 of this Act, as applied by the preceding provisions of this Part of this Act, sections 148 and 149 of this Act shall have effect as they have effect in relation to compensation notices recorded as therein mentioned:

Provided that, in a case where the compensation under section 153 of this Act specified in such a notice became payable in respect of an order modifying planning permission, the said sections shall not apply to development in accordance with that permission as modified by the order.

- (2) Subject to subsection (3) of this section, any sum recovered by the Secretary of State under section 148 of this Act, as applied by subsection (1) of this section, shall be paid to the local planning authority who paid the compensation to which that sum relates.
- (3) In paying any such sum to the local planning authority, the Secretary of State shall deduct therefrom—
- (a) the amount of any contribution paid by him under section 156 of this Act in respect of the compensation to which the sum relates;
  - (b) the amount of any grant paid by him under Part XIII of this Act in respect of that compensation ;

Provided that, if the sum recovered by the Secretary of State is an instalment of the total sum recoverable, or is recovered by reference to development of part of the land in respect of which the compensation was payable, any deduction to be made under paragraph (d) or paragraph (b) of this subsection shall be a deduction of such amount as the Secretary of State may determine to be the proper proportion of the amount referred to in that paragraph.

- (4) For the purposes of sections 148 and 149 of this Act, in their application by virtue of this section to compensation calculated under section 153 of this Act, the expression "new development" shall include—
- (a) any development of a class specified in paragraph 1 or 3 of Schedule 6 to this Act which is carried out otherwise than subject to the Condition set out in Schedule 16 to this Act; and
  - (b) any development excluded by subsection (2) of section 263 of this Act from that Schedule in its application to any determination to which subsection (1) of the said section 263 applies.

*Other restrictions*

### **158 Compensation for planning decisions restricting development other than new development**

- (1) The provisions of this section shall have effect where, on an application for planning permission to carry out development of any class specified in Part II of Schedule 6 to this Act, the Secretary of State, either on appeal or on the reference of the application to him for determination, refuses the permission or grants it subject to conditions.

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- (2) 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 value of the interest of any person in the land is less than it would have been if the permission had been granted, or had been granted unconditionally, as the case may be, the local planning authority shall pay to that person compensation of an amount equal to the difference.
- (3) In determining, for the purposes of subsection (2) of this section, whether or to what extent the value of an interest in land is less than it would have been if the permission had been granted, or had been granted unconditionally—
- (a) it shall be assumed that any subsequent application for the like planning permission would be determined in the same way ; but
  - (b) if, in the case of a refusal of planning permission, the Secretary of State, on refusing that permission, undertook to grant planning permission for some other development of the land in the event of an application being made in that behalf, regard shall be had to that undertaking; and
  - (c) no account shall be taken of any prospective use which would contravene the condition set out in Schedule 16 to this Act.
- (4) Where, on such an application as is mentioned in subsection (1) of this section, planning permission is granted by the Secretary of State subject to conditions for regulating the design or external appearance of buildings, or the size or height of buildings, 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 the compensation (if any) payable under this section.
- (5) Where, in the case of an application for planning permission to carry out any such development as is mentioned in subsection (1) of this section, 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 preceding provisions of this section shall have effect as if the application had been an effective application for planning permission, and as if that permission had been refused, as mentioned in subsection (1) of this section, in respect of that land or that part thereof, as the case may be.
- (6) For the purposes of subsection (1) of this section—
- (a) paragraph 3 of Schedule 6 to this Act 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 7 of that Schedule shall not apply to any such building.
- (7) For the purposes of this section the conditions referred to in sections 38 and 39 of this Act shall be disregarded and no compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.
- (8) No compensation shall be payable under this section in respect of an interest in land in respect of which a purchase notice is served.

## **159 Compensation in respect of orders under s. 49**

- (1) The provisions of this section shall have effect where an order is made under section 49 of this Act, requiring a use of land to be discontinued, or imposing conditions on

the continuance thereof, or requiring any buildings or works on land to be altered or removed.

- (2) 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 any person has suffered damage in consequence of the order by depreciation of the value of an interest in the land to which he is entitled, or by being disturbed in his enjoyment of the land, that authority shall pay to that person compensation in respect of that damage.
- (3) Without prejudice to subsection (2) of this section, any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.
- (4) Any compensation payable to a person under this section by virtue of such an order as is mentioned in subsection (1) of this section shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

#### **160 Compensation for refusal of consent to alteration, etc. of listed building**

- (1) The provisions of this section shall have effect where an application is made for listed building consent for the alteration or extension of a listed building and—
  - (a) either the works do not constitute development or they do so but the development is such that planning permission therefor is granted by a development order; and
  - (b) the Secretary of State, either on appeal or on the reference of the application to him, refuses such consent or grants it subject to conditions.
- (2) 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 value of the interest of any person in the land is less than it would have been if listed building consent had been granted, or had been granted unconditionally, as the case may be, the local planning authority shall pay to that person compensation of an amount equal to the difference.
- (3) In determining, for the purposes of subsection (2) of this section, whether or to what extent the value of an interest in land is less than it would have been if the permission had been granted, or had been granted unconditionally—
  - (a) it shall be assumed that any subsequent application for the like consent would be determined in the same way; but
  - (b) if, in the case of a refusal of listed building consent, the Secretary of State, on refusing that consent, undertook to grant such consent for some other works to the building in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (4) No compensation shall be payable under this section in respect of an interest in land in respect of which a purchase notice is served, whether under section 169, 177 or 179 of this Act, being a purchase notice which takes effect.

#### **161 Compensation where listed building consent revoked or modified**

- (1) Where listed building consent is revoked or modified by an order under paragraph 9 of Schedule 10 to this Act (other than an order which takes effect by virtue of paragraph 11 of that Schedule and without being confirmed by the Secretary of State), then if

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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 a person interested in the building—

- (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification ; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the authority shall pay to that person compensation in respect of that expenditure, loss or damage.

- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
- (3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any works carried out before the grant of the listed building consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

## **162 Compensation for loss or damage caused by service of building preservation notice**

- (1) The provisions of this section shall have effect as respects compensation where a building preservation notice is served.
- (2) The local planning authority shall not be under any obligation to pay compensation under section 160 of this Act, in respect of any refusal of listed building consent or its grant subject to conditions, unless and until the building is included in a list compiled or approved by the Secretary of State under section 52 of this Act; but this subsection shall not prevent a claim for such compensation being made before the building is so included.
- (3) If the building preservation notice ceases to have effect without the building having been included in a list so compiled or approved, then, subject to a claim in that behalf being made to the local planning authority within the time and in the manner prescribed by regulations under this Act, any person who at the time when the notice was served had an interest in the building shall be entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (4) The loss or damage in respect of which compensation is payable under subsection (3) of this section shall include a sum payable in respect of a breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect thereto.

## **163 Compensation in respect of tree preservation orders**

The matters for which provision may under section 58 of this Act be made by a tree preservation order include the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the order, or of the grant of any such consent subject to conditions.

## **164 Compensation in respect of requirement as to replanting of trees**

- (1) The provisions of this section shall have effect where a requirement is imposed by the local planning authority or the Secretary of State by or under a tree preservation order for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order.
- (2) If the Forestry Commissioners decide not to make any advance under section 4 of the Forestry Act 1967 in respect of the replanting and come to that decision on the ground that the requirement frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry, the local planning authority exercising functions under the tree preservation order shall be liable, on the making of a claim in accordance with this section, to pay compensation in respect of such loss or damage, if any, as is caused or incurred in consequence of compliance with the requirement.
- (3) The Forestry Commissioners shall, at the request of the person under a duty to comply with the requirement, give a certificate stating whether they have decided not to make any such advance and, if so, the grounds of their decision.
- (4) A claim for compensation under this section must be served on the local planning authority within twelve months from the date on which the requirement was imposed, or where an application has been made to the Secretary of State for the determination of any question relating to the reasonableness of a requirement, from the date of the decision of the Secretary of State on the application, but subject in either case to such extension of that period as the local planning authority may allow.
- (5) Any question of disputed compensation under this section shall be determined in accordance with section 70 of the Countryside (Scotland) Act 1967.
- (6) Section 67 of the Countryside (Scotland) Act 1967 (grants to local authorities) shall have effect in relation to the expenditure of a local planning authority in or in connection with paying compensation under this section as it has effect in relation to the expenditure mentioned in that section.

## **165 Compensation for restrictions on advertising**

Where, for the purpose of complying with any regulations made under section 61 of this Act, works are carried out by any person—

- (a) for removing an advertisement which was being displayed on 16th August 1948; or
- (b) for discontinuing the use for the display of advertisements of a site used for that purpose on that date,

that person shall, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, be entitled to recover from that authority compensation in respect of any expenses reasonably incurred by him in that behalf.

## **166 Compensation for loss due to stop notice**

- (1) Where a stop notice under section 87 of this Act ceases to have effect, a person who, at the time when it was first served, had an interest in the land to which it relates shall, in any of the circumstances mentioned in subsection (2) of this section, be entitled to be

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compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice.

- (2) A person shall be entitled to compensation under subsection (1) of this section in respect of a prohibition contained in a stop notice in any of the following circumstances:—
- (a) the enforcement notice is quashed on any of the grounds mentioned in section 85(1)(b), (c), (d) or (e) of this Act;
  - (b) the allegation in the enforcement notice on which the prohibition in the stop notice is dependent is not upheld by reason that the enforcement notice is varied on one of those grounds;
  - (c) the enforcement notice is withdrawn by the local planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates or for its retention or continuance without compliance with a condition or limitation subject to which a previous planning permission was granted;
  - (d) the stop notice is withdrawn.
- (3) A prohibition in a stop notice shall be treated for the purposes of subsection (2) of this section as dependent on an allegation in an enforcement notice if and to the extent that the operations to which the prohibition in the stop notice relates are the same as those alleged in the enforcement notice to constitute a breach of planning control or are so closely associated therewith as to constitute substantially the same operations.
- (4) A claim for compensation under this section shall be made to the local planning authority within the time and in the manner prescribed by regulations under this Act.
- (5) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition or of any liability arising by virtue of section 87(8) of this Act.

#### *Supplementary provisions*

### **167 General provisions as to compensation for depreciation under Part VIII**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation which, under the preceding provisions of this Part of this Act, other than section 163, 164 or 166, is payable in respect of depreciation of the value of an interest in land.
- (3) In relation to the assessment of compensation payable under section 153 of this Act, the value of any interest may be a minus quantity.
- (4) Where an interest in land is subject to a heritable security—
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security ;

- (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security); and
- (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security, or, if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.

### **168 Determination of claims for compensation**

- (1) Except in so far as may be otherwise provided by section 164(5) of this Act, by any tree preservation order or by any regulations made under this Act, any question of disputed compensation under this Part of this Act shall be referred to and determined by the Lands Tribunal.
- (2) In relation to the determination of any such question, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications and to the provisions of any regulations made under this Act.

## **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.

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- (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—

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- (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.
- (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 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

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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.

*Interests of owner-occupiers affected by planning proposals*

## **181 Scope of these provisions**

- (1) The provisions of sections 182 to 196 of this Act shall have effect in relation to land which—
  - (a) is land indicated in a structure plan in force either as land which may be required for the purposes of any functions of a government department, local authority or statutory undertakers, or of the National Coal Board, or as land which may be included in an action area ; or



- (b) is land allocated for the purposes of any such functions by a local plan in force, or is land defined in such a plan as the site of proposed development for the purposes of any such functions; or
  - (c) is land indicated in a development plan (otherwise than by being dealt with in a manner mentioned in the preceding paragraphs) as land on which a road is proposed to be constructed or land to be included in a road as proposed to be improved or altered; or
  - (d) is land authorised by a special enactment to be compulsorily acquired, or land falling within the limits of deviation within which powers of compulsory acquisition conferred by a special enactment are exercisable; or
  - (e) is land on or adjacent to the line of a road proposed to be constructed, improved or altered, as indicated in an order or scheme which has come into operation under the provisions of the Trunk Roads Act 1946 or the Special Roads Act 1949, being land in relation to which a power of compulsory acquisition conferred by section 13 of the Restriction of Ribbon Development Act 1935, as read with any of the following enactments, that is to say, section 4 of the Trunk Roads Act 1936, section 5 of the Trunk Roads Act 1946, and sections 9, 10 and 14 of the Special Roads Act 1949, may become exercisable, as being land required for purposes of construction, improvement or alteration as indicated in the order or scheme; or
  - (f) is land shown on plans approved by a resolution of a local highway authority as land comprised in the site of a road as proposed to be constructed, improved or altered by that authority; or
  - (g) is land in respect of which a compulsory purchase order is in force, where the appropriate authority have power to serve, but have not served, notice to treat in respect of the land; or
  - (h) is land on which the Secretary of State proposes to provide a trunk road or a special road and has given to the local planning authority written notice of his intention to provide the road, together with maps or plans sufficient to identify the proposed route of the road.
- (2) Paragraph (a) of subsection (1) of this section shall not apply to land situated in an area for which a local plan is in force, where that plan—
- (a) allocates any land in the area for the purposes of such functions as are mentioned in that paragraph; or
  - (b) defines any land in the area as the site of proposed development for the purposes of any such functions.
- (3) Interests qualifying for protection under these provisions are either—
- (a) interests in hereditaments or parts of hereditaments; or
  - (b) interests in agricultural units or parts of agricultural units.
- (4) An interest in the whole or part of a hereditament shall be taken to be an interest qualifying for protection under these provisions if, on the date of service of a notice under section 182 of this Act in respect thereof, either—
- (a) the annual value of the hereditament does not exceed such amount as may be prescribed for the purposes of this paragraph by an order made by the Secretary of State, and the interest in question is the interest of an owner-occupier of the hereditament; or
  - (b) in a case not falling within the preceding paragraph, the interest in question is the interest of a resident owner-occupier of the hereditament.

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- (5) An interest in the whole or part of an agricultural unit shall be taken to be an interest qualifying for protection under these provisions if, on the date of service of a notice under section 182 of this Act in respect thereof, it is the interest of an owner-occupier of the unit.
- (6) In this section and in the said sections 182 to 196 " these provisions " means the provisions of this section and of those sections, " the specified descriptions" means the descriptions contained in subsection (1) (a) to (h) of this section and " blight notice " means a notice served under section 182 or 190 of this Act.

## **182 Power to serve blight notice**

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in land of any of the specified descriptions, and a person claims that—
- (a) he is entitled to an interest in that hereditament or unit; and
  - (b) the interest is one which qualifies for protection under these provisions; and
  - (c) since the relevant date he has made reasonable endeavours to sell that interest; and
  - (d) he has been unable to sell it except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were comprised in land of any of the specified descriptions,

he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, these provisions.

- (2) Subsection (1) of this section shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the entirety of a hereditament or agricultural unit:

Provided that this subsection shall not enable any person—

- (a) if he is entitled to an interest in the entirety of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of his interest in part of the hereditament or unit; or
- (b) if he is entitled to an interest only in part of a hereditament or agricultural unit, to make or serve any such claim or notice in respect of his interest in less than the entirety of that part.

- (3) In this section " the relevant date "—
- (a) in relation to land indicated, allocated or defined as mentioned in paragraph (a), (b) or (c) of subsection (1) of section 181 of this Act, means the date (whether before or after the commencement of this Act) on which the development plan, or the amendment of the development plan, by virtue of which the land was first so indicated, allocated or defined came into operation;
  - (b) in relation to land falling within paragraph (d) of that subsection, means the date (whether before or after the commencement of this Act) on which the special enactment in question came into operation ;
  - (c) in relation to land falling within paragraph (e) of that subsection, means the date (whether before or after the commencement of this Act) of the coming into operation of the order or scheme by virtue of which it falls within that paragraph;

- (d) in relation to land falling within paragraph (f) of that subsection, means the date (whether before or after the commencement of this Act) of the passing of the resolution by virtue of which it falls within that paragraph;
  - (e) in relation to land falling within paragraph (g) of that subsection, means the date (whether before or after the commencement of this Act) on which the order for its compulsory purchase was confirmed or made by the Secretary of State ;
  - (f) in relation to land falling within paragraph (h) of that subsection, means the date (whether before or after the commencement of this Act) on which the Secretary of State gave to the local planning authority the written notice specified in that paragraph.
- (4) In these provisions " the claimant", in relation to a blight notice, means the person who served that notice, and any reference to the interest of the claimant, in relation to such a notice, is a reference to the interest which the notice requires the appropriate authority to purchase as mentioned in subsection (1) of this section.

### **183 Objection to blight notice**

- (1) Where a blight notice has been served in respect of a hereditament or an agricultural unit, the appropriate authority, at any time before the end of the period of two months beginning with the date of service of that notice, may serve on the claimant a counter-notice in the prescribed form objecting to the notice.
- (2) Subject to the following provisions of this section, the grounds on which objection may be made in a counter-notice to a notice served under section 182 of this Act are—
- (a) that no part of the hereditament or agricultural unit to which the notice relates is comprised in land of any of the specified descriptions;
  - (b) that the appropriate authority (unless compelled to do so by virtue of these provisions) do not propose to acquire any part of the hereditament, or (in the case of an agricultural unit) any part of the affected area, in the exercise of any relevant powers;
  - (c) that the appropriate authority propose in the exercise of relevant powers to acquire a part of the hereditament or (in the case of an agricultural unit) a part of the affected area specified in the counter-notice, but (unless compelled to do so by virtue of these provisions) do not propose to acquire any other part of that hereditament or area in the exercise of any such powers;
  - (d) that (in the case of land falling within paragraph (a) or (c) but not (e), (f) or (h) of section 181(1) of this Act) the appropriate authority (unless compelled to do so by virtue of these provisions) do not propose to acquire in the exercise of any relevant powers any part of the hereditament or (in the case of an agricultural unit) any part of the affected area during the period of fifteen years from the date of the counter-notice or such longer period from that date as may be specified in the counter-notice;
  - (e) that, on the date of service of the notice under section 182 of this Act, the claimant was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
  - (f) that (for reasons specified in the counter-notice) the interest of the claimant is not an interest qualifying for protection under these provisions;
  - (g) that the conditions specified in paragraphs (c) and (d) of section 182(1) of this Act are not fulfilled.

- (3) An objection may not be made on the grounds mentioned in paragraph (d) of subsection (2) of this section if it may be made on the grounds mentioned in paragraph (b) of that subsection.
- (4) Any counter-notice served under this section in respect of a blight notice shall specify the grounds (being one or more of the grounds mentioned in the preceding provisions of this section or, as relevant, in section 190(6) of this Act) on which the appropriate authority object to the notice.
- (5) In this section " relevant powers ", in relation to any land falling within any of the specified descriptions, means any powers under which the appropriate authority are or could be authorised—
  - (a) to acquire that land compulsorily as being land falling within that description ;  
or
  - (b) to acquire that land compulsorily for any of the relevant purposes;
 and " the relevant purposes ", in relation to any such land, means the purposes for which, in accordance with the circumstances by virtue of which that land falls within the description in question, it is liable to be acquired or is indicated as being proposed to be acquired.

#### **184 Reference of objection to Lands Tribunal**

- (1) Where a counter-notice has been served under section 183 of this Act objecting to a blight notice, the claimant, at any time before the end of the period of two months beginning with the date of service of the counter-notice, may require the objection to be referred to the Lands Tribunal.
- (2) On any such reference, if the objection is not withdrawn, the Lands Tribunal shall consider the matters set out in the notice served by the claimant and the grounds of the objection specified in the counter-notice; and, subject to subsection (3) of this section, unless it is shown to the satisfaction of the Tribunal that the objection is not well-founded, the Tribunal shall uphold the objection.
- (3) An objection on the grounds mentioned in section 183(2) (b), (c) or (d) of this Act shall not be upheld by the Tribunal unless it is shown to the satisfaction of the Tribunal that the objection is well-founded.
- (4) If the Tribunal determines not to uphold the objection, the Tribunal shall declare that the notice to which the counter-notice relates is a valid notice.
- (5) If the Tribunal upholds the objection, but only on the grounds mentioned in section 183(2)(c) of this Act, the Tribunal shall declare that the notice is a valid notice in relation to the part of the hereditament or (in the case of an agricultural unit) of the affected area specified in the counter-notice as being the part which the appropriate authority propose to acquire as therein mentioned, but not in relation to any other part of the hereditament or affected area.
- (6) In any case falling within subsection (4) or subsection (5) of this section, the Tribunal shall give directions specifying the date on which notice to treat (as mentioned in section 185 of this Act) is to be deemed to have been served.

#### **185 Effect of valid blight notice**

- (1) Where a blight notice has been served, and either—

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- (a) no counter-notice objecting to that notice is served in accordance with these provisions; or
- (b) where such a counter-notice has been served, the objection is withdrawn, or, on a reference to the Lands Tribunal, is not upheld by the Tribunal,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in the hereditament, or (in the case of an agricultural unit) the interest of the claimant in so far as it subsists in the affected area, and to have served a notice to treat in respect thereof on the date mentioned in subsection (2) of this section.

(2) The said date-

- (a) in a case where, on a reference to the Lands Tribunal, the Tribunal determines not to uphold the objection, is the date specified in directions given by the Tribunal in accordance with section 184(6) of this Act;
- (b) in any other case, is the date on which the period of two months beginning with the date of service of the blight notice comes to an end.

(3) Where the appropriate authority have served a counter-notice objecting to a blight notice on the grounds mentioned in section 183(2)(c) of this Act, then if either—

- (a) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it has expired, gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the hereditament or affected area specified in the counter-notice, and withdraws his claim as to the remainder of that hereditament or area; or
- (b) on a reference to the Lands Tribunal, the Tribunal makes a declaration in accordance with section 184(5) of this Act in respect of that part of the hereditament or affected area,

the appropriate authority shall be deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the hereditament or affected area specified in the counter-notice (but not in so far as it subsists in any other part of that hereditament or area) and to have served a notice to treat in respect thereof on the date mentioned in subsection (4) of this section.

(4) The said date-

- (a) in a case falling within paragraph (a) of subsection (3) of this section, is the date on which notice is given in accordance with that paragraph; and
- (b) in a case falling within paragraph (b) of that subsection, is the date specified in directions given by the Lands Tribunal in accordance with section 184(6) of this Act.

## **186 Compensation for compulsory purchase of historic buildings and of land in clearance areas**

Where an interest in land is acquired in pursuance of a blight notice and the interest is one—

- (a) in respect of which a compulsory purchase order is in force under section 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (as applied by section 104 of this Act) containing a direction for minimum compensation under section 107 of this Act; or
- (b) in respect of which a compulsory purchase order is in force under the said section 1 as applied by section 7 of the Housing (Scotland) Act 1969 ;

the compensation payable for the acquisition shall, in a case falling within paragraph (a) of this section, be assessed in accordance with the direction mentioned in that paragraph and, in a case falling within paragraph (b) of this section, be assessed in accordance with section 10(2) and (3) of the said Act of 1969, in either case as if the notice to treat deemed to have been served in respect of the interest under section 185 of this Act had been served in pursuance of the compulsory purchase order.

### **187 Withdrawal of blight notice**

- (1) Subject to subsection (2) of this section, the person by whom a blight notice has been served may withdraw the notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the notice has been determined by the Lands Tribunal, or at any time before the end of the period of six weeks beginning with the date on which the compensation is so determined; and, where such a notice is withdrawn by virtue of this subsection, any notice to treat deemed to have been served in consequence thereof shall be deemed to have been withdrawn.
- (2) A person shall not be entitled by virtue of subsection (1) of this section to withdraw a notice after the appropriate authority have exercised a right of entering and taking possession of land in pursuance of a notice to treat deemed to have been served in consequence of that notice.
- (3) No compensation shall be payable in respect of the withdrawal of a notice to treat which is deemed to have been withdrawn by virtue of subsection (1) of this section.

### **188 Effect on powers of compulsory acquisition of counternotice disclaiming intention to acquire**

- (1) The provisions of subsection (2) of this section shall have effect where the grounds of objection specified in a counter-notice served under section 183 of this Act consist of or include the grounds mentioned in paragraph (b) or (d) of subsection (2) of that section, and either—
  - (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal, or
  - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred.
- (2) If a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes the whole or part of the hereditament or agricultural unit to which the counter-notice relates, or if the land in question falls within section 181(1)(d) of this Act, any power conferred by that order, or by the special enactment, as the case may be, for the compulsory acquisition of the interest of the claimant in the hereditament or agricultural unit or any part thereof shall cease to have effect.
- (3) The provisions of subsection (4) of this section shall have effect where the grounds of objection specified in a counter-notice under section 183 of this Act consist of or include the grounds mentioned in paragraph (c) of subsection (2) of that section, and either—
  - (a) the objection on the grounds mentioned in that paragraph is referred to and upheld by the Lands Tribunal; or
  - (b) the time for referring that objection to the Lands Tribunal expires without its having been so referred;

and in subsection (4) of this section any reference to " the part of the hereditament or affected area not required " is a reference to the whole of that hereditament or area except the part specified in the counter-notice as being the part which the appropriate authority propose to acquire as mentioned in the counter-notice.

- (4) If a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes any of the part of the hereditament or affected area not required, or if the land in question falls within section 181(1)(to) of this Act, any power conferred by that order, or by the special enactment, as the case may be, for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the hereditament or affected area not required shall cease to have effect.

### **189 Death of claimant after service of blight notice**

- (1) In relation to any time after the death of a person who has served a blight notice, the provisions mentioned in subsection (2) of this section shall apply as if any reference therein to the claimant were a reference to the person who, on the claimant's death, has succeeded to his interest in the hereditament or agricultural unit in question.
- (2) The said provisions are sections 183(1), 184(1) and 185(3) of this Act.

### **190 Power of heritable creditor to serve blight notice**

- (1) Where the whole or part of a hereditament or agricultural unit is comprised in land falling within any of the specified descriptions and a person claims that—
- (a) he is entitled as heritable creditor (by virtue of a power which has become exercisable) to sell an interest in the hereditament or unit, giving immediate vacant possession of the land; and
  - (b) since the relevant date (within the meaning of section 182 of this Act) he has made reasonable endeavours to sell that interest; and
  - (c) he has been unable to sell it except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were comprised in land of any of the said descriptions,
- then, subject to the provisions of this section, he may serve on the appropriate authority a notice in the prescribed form requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, these provisions.
- (2) Subsection (1) of this section shall apply in relation to an interest in part of a hereditament or agricultural unit as it applies in relation to an interest in the entirety of a hereditament or agricultural unit:

Provided that this subsection shall not enable a person—

- (a) if his interest as heritable creditor is in the entirety of a hereditament or agricultural unit, to make any claim or serve any notice under this section in respect of any interest in part of the hereditament or unit; or
  - (b) if his interest as heritable creditor is only in part of a hereditament or agricultural unit, to make or serve any such notice or claim in respect of any interest in less than the entirety of that part
- (3) Notice under this section shall not be served unless one or other of the following conditions is satisfied with regard to the interest which the heritable creditor claims he has the power to sell—

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- (a) the interest could be the subject of a notice under section 182 of this Act served by the person entitled thereto on the date of service of the notice under this section ; or
  - (b) the interest could have been the subject of such a notice served by that person on a date not more than six months before the date of service of the notice under this section.
- (4) No notice under this section shall be served in respect of a hereditament or agricultural unit, or any part of a hereditament or agricultural unit, at a time when a notice already served under section 182 of this Act is outstanding with respect to the hereditament, unit or part; and no notice shall be so served under that section at a time when a notice already served under this section is so outstanding.
- (5) For the purposes of subsection (4) of this section, a notice served under this section or section 182 of this Act shall be treated as outstanding with respect to a hereditament or agricultural unit, or to part of a hereditament or agricultural unit, until—
- (a) it is withdrawn in relation to the hereditament, unit or part; or
  - (b) an objection to the notice having been made by a counter-notice under section 183 of this Act, either—
    - (i) the period of two months specified in section 184 of this Act elapses without the claimant having required the objection to be referred to the Lands Tribunal under that section ; or
    - (ii) the objection, having been so referred to the Lands Tribunal, is upheld by the Tribunal with respect to the hereditament, unit or part.
- (6) The grounds on which objection may be made in a counter-notice under section 183 of this Act to a notice under this section are those specified in paragraphs (a) to (c) of subsection (2) of that section and, in a case to which it applies the grounds specified in paragraph (d) of that subsection and also the following grounds—
- (a) that, on the date of service of the notice under this section, the claimant had no interest as heritable creditor in any part of the hereditament or agricultural unit to which the notice relates;
  - (b) that (for reasons specified in the counter-notice) the claimant had not on that date the power referred to in subsection (1)(d) of this section ;
  - (c) that the conditions specified in subsection (1)(b) and (c) of this section are not fulfilled ;
  - (d) that (for reasons specified in the counter-notice) neither of the conditions specified in subsection (3) of this section was, on the date of service of the notice under this section, satisfied with regard to the interest referred to in that subsection.

## **191 Saving for claimant's right to sell whole hereditament, etc.**

- (1) The provisions of sections 183(2)(c), 184(5), 185(3) and 188(3) and (4) of this Act relating to hereditaments shall not affect the right of a claimant under section 90 of the Lands Clauses Consolidation (Scotland) Act 1845 to sell the whole of the hereditament, or (in the case of an agricultural unit) the whole of the affected area, which he has required the authority to purchase.
- (2) The said provisions shall not affect the right of a claimant under paragraph 4 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to sell (unless the Lands Tribunal otherwise determines) the whole of the hereditament, or



(in the case of an agricultural unit) the whole of the affected area, which he has required the authority to purchase; and accordingly in determining whether or not to uphold an objection relating to a hereditament on the grounds mentioned in section 183(2)(c) of this Act the Tribunal shall consider (in addition to the other matters which they are required to consider) whether—

- (a) in the case of a house, building or manufactory, the part proposed to be acquired can be taken without material detriment to the house, building or manufactory ; or
- (b) in the case of a park or garden belonging to a house, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house.

## **192 Meaning of " owner-occupier" and " resident owneroccupier "**

- (1) Subject to the following provisions of this section, in these provisions " owner-occupier ", in relation to a hereditament, means a person who—
  - (a) occupies the whole or a substantial part of the hereditament in right of an owner's interest therein, and has so occupied the hereditament or that part thereof during the whole of the period of six months ending with the date of service ; or
  - (b) occupied, in right of an owner's interest, the whole or a substantial part of the hereditament during the whole of a period of six months ending not more than twelve months before the date of service, the hereditament, or that part thereof, as the case may be, having been unoccupied since the end of that period.
- (2) Subject to the following provisions of this section, in these provisions " owner-occupier", in relation to an agricultural unit, means a person who—
  - (a) occupies the whole of that unit, and has occupied it during the whole of the period of six months ending with the date of service ; or
  - (b) occupied the whole of that unit during the whole of a period of six months ending not more than twelve months before the date of service,
 and, at all times material for the purposes of paragraph (a) or paragraph (b) of this subsection, as the case may be, has been entitled to an owner's interest in the whole or part of that unit.
- (3) In these provisions " resident owner-occupier ", in relation to a hereditament, means an individual who—
  - (a) occupies the whole or a substantial part of the hereditament as a private dwelling in right of an owner's interest therein, and has so occupied the hereditament or that part thereof, as the case may be, during the whole of the period of six months ending with the date of service ; or
  - (b) occupied, in right of an owner's interest, the whole or a substantial part of the hereditament as a private dwelling during the whole of a period of six months ending not more than twelve months before the date of service, the hereditament, or that part thereof, as the case may be, having been unoccupied since the end of that period.
- (4) In this section " owner's interest", in relation to a hereditament or agricultural unit, or part thereof, includes the interest of the lessee under a lease thereof, being a lease the unexpired period of which on the date of service is not less than three years; and " date of service ", in relation to a hereditament or agricultural unit, means the date of service of a notice in respect thereof under section 182 of this Act.

### **193 Special provisions as to partnerships**

- (1) The provisions of this section shall have effect for the purposes of the application of these provisions to a hereditament or agricultural unit occupied for the purposes of a partnership firm.
- (2) Occupation for the purposes of the firm shall be treated as occupation by the firm, and not as occupation by any one or more of the partners individually, and the definitions of " owner-occupier " in section 192(1) and (2) of this Act shall apply in relation to the firm accordingly.
- (3) If, after the service by the firm of a blight notice, any change occurs (whether by death or otherwise) in the constitution of the firm, upon proceedings, rights or obligations consequential upon that notice may be carried on or exercised by or against, or (as the case may be) shall be incumbent upon, the partners for the time being constituting the firm.
- (4) Nothing in this section or elsewhere in these provisions shall be construed as indicating an intention to exclude the operation of section 19 of the Interpretation Act 1889 (whereby, unless the contrary intention appears, " person" includes any body of persons corporate or unincorporate) in relation to any of these provisions.
- (5) Subsection (2) of this section shall not affect the definition of " resident owner-occupier " in section 192(3) of this Act.

### **194 " Appropriate authority " for purposes of these provisions**

- (1) Subject to the following provisions of this section, in these provisions " the appropriate authority ", in relation to any land, means the government department, local authority or other body by whom, in accordance with the circumstances by virtue of which the land falls within any of the specified descriptions, the land is liable to be acquired or is indicated as being proposed to be acquired.
- (2) If any question arises—
  - (a) whether the appropriate authority in relation to any land for the purpose of these provisions is the Secretary of State or a local highway authority; or
  - (b) which of two or more local highway authorities is the appropriate authority in relation to any land for those purposes; or
  - (c) which of two or more local authorities is the appropriate authority in relation to any land for those purposes;
 that question shall be referred to the Secretary of State, whose decision shall be final.
- (3) If any question arises which authority is the appropriate authority for the purposes of these provisions—
  - (a) section 183(1) of this Act shall have effect as if the reference to the date of service of the blight notice were a reference to that date or the date on which that question is determined, whichever is the later;
  - (b) section 190(3)(b) of this Act shall apply with the substitution for the period of six months of a reference to that period extended by so long as it takes to obtain a determination of the question ; and
  - (c) section 192(1)(b), (2)(b) and (3)(b) of this Act shall apply with the substitution for the reference to twelve months before the date of service of a reference to that period extended by so long as it takes to obtain a determination of the question.

## **195 " Appropriate enactment " for purposes of these provisions**

- (1) Subject to the following provisions of this section, in these provisions " the appropriate enactment", in relation to land falling within any of the specified descriptions, means the enactment which provides for the compulsory acquisition of land as being land falling within that description.
- (2) In relation to land falling within the description contained in section 181(1)(6) of this Act an enactment shall, for the purposes of subsection (1) of this section be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that description if—
  - (a) the enactment provides for the compulsory acquisition of land for the purposes of the functions which are indicated in the development plan as being the functions for the purposes of which the land is allocated or is proposed to be developed ; or
  - (b) where no particular functions are so indicated in the development plan, the enactment provides for the compulsory acquisition of land for the purposes of any of the functions of the government department, local authority or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development.
- (3) Where, in accordance with the circumstances by virtue of which any land falls within any of the specified descriptions, it is indicated that the land is proposed to be acquired for highway purposes, any enactment under which a highway authority are or (subject to the fulfilment of the relevant conditions) could be authorised to acquire that land compulsorily for highway purposes shall, for the purposes of subsection (1) of this section, be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within the description in question.
- (4) In subsection (3) of this section the reference to the fulfilment of the relevant conditions is a reference to such one or more of the following as are applicable to the circumstances in question, that is to say—
  - (a) the coming into operation of any requisite order under the Trunk Roads Act 1946 ;
  - (b) the coming into operation of any requisite scheme or order under the Special Roads Act 1949;
  - (c) the making or approval of any requisite plans.
- (5) If, apart from this subsection, two or more enactments would be tile appropriate enactment in relation to any land for the purposes of these provisions, the appropriate enactment for those purposes shall be taken to be that one of those enactments under which, in the circumstances in question, it is most likely that (apart from these provisions) the land would have been acquired by the appropriate authority.
- (6) If any question arises as to which enactment is the appropriate enactment in relation to any land for the purposes of these provisions, that question shall be referred—
  - (a) where the appropriate authority are a government department, to the Minister or Board in charge of that department;
  - (b) where the appropriate authority are statutory undertakers, to the appropriate Minister; and
  - (c) in any other case, to the Secretary of State,and the decision of the Minister, Secretary of State or Board to whom a question is referred under this subsection shall be final.

## 196 General interpretation of these provisions

- (1) Subject to the following provisions of this section, in these provisions the following expressions have the meanings hereby assigned to them respectively, that is to say:—

" the affected area ", in relation to an agricultural unit, means so much of that unit as, on the date of service, consists of land falling within any of the specified descriptions;

" agricultural unit " means land which is occupied as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same person for the purpose of farming the land;

" annual value ", in relation to a hereditament, means the value which, on the date of service, is shown in the valuation roll as the rateable value of that hereditament, except that, where the rateable value differs from the net annual value, it means the value which on that date is shown in the valuation roll as the net annual value thereof;

" the claimant " has the meaning assigned to it by section 182(4) of this Act;

" hereditament " means the aggregate of the lands and heritages (not being agricultural lands and heritages within the meaning of section 7 of the Valuation and Rating (Scotland) Act 1956) which form the subject of a single entry in the valuation roll for the time being in force for a valuation area ;

" special enactment " means a local enactment, or a provision contained in an Act other than a local or private Act, being a local enactment or provision authorising the compulsory acquisition of land specifically identified therein ; and in this definition " local enactment " means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;

" these provisions ", " the specified descriptions " and " blight notice " have the meanings assigned to them respectively by section 181(6) of this Act.

- (2) Where any land is on the boundary between two or more valuation areas, and accordingly—

- (a) different parts of that land form the subject of single entries in the valuation rolls for the time being in force for those areas respectively; but
- (b) if the whole of that land had been in one of those areas, it would have formed the subject of a single entry in the valuation roll for that area,

the whole of that land shall be treated, for the purposes of the definition of " hereditament " in subsection (1) of this section, as if it formed the subject of a single entry in the valuation roll for a valuation area.

- (3) Land which forms the subject of an entry in the valuation roll by reason only that it is land over which any shooting, fishing or other sporting rights are exercisable, or that it is land over which a right of exhibiting advertisements is let out or reserved, shall not be taken to be a hereditament within the said definition.

- (4) Where, in accordance with subsection (2) of this section, land whereof different parts form the subject of single entries in the valuation rolls for the time being in force for two or more valuation areas is treated as if it formed the subject of a single entry in the valuation roll for a valuation area, the definition of " annual value " in subsection (1) of this section shall apply as if any reference therein to a value shown in the valuation roll were a reference to the aggregate of the values shown (as rateable values or as net annual values, as the case may be) in those valuation rolls in relation to the different parts of that land.

- (5) In this section " date of service " has the same meaning as in section 192 of this Act.

*Supplementary provisions*

**197 No withdrawal of constructive notice to treat**

Without prejudice to the provisions of section 187(1) of this Act, the power conferred by section 39 of the Land Compensation (Scotland) Act 1963 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of any of the provisions of this Part of this Act.

**PART X**

**HIGHWAYS**

*Stopping up and diversion of highways*

**198 Highways affected by development: orders by Secretary of State**

- (1) The Secretary of State may by order authorise the stopping up or diversion of any highway if he is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act, or to be carried out by a government department.
- (2) Any order under this section may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway, and may direct—
  - (a) that any highway so provided or improved shall be maintained and managed by the highway authority;
  - (b) that the Secretary of State, or any local authority specified in that behalf in the order, shall be the highway authority for that highway;
  - (c) in the case of a highway for which the Secretary of State is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Trunk Roads Acts 1936 and 1946.
- (3) Any order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State to be necessary or expedient, including in particular—
  - (a) provision for authorising the Secretary of State, or requiring any other authority or person specified in the order—
    - (i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work; or
    - (ii) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section 1 or 2 of the Restriction of Ribbon Development Act 1935 in relation to any highway stopped up or diverted under the order;

- (b) provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the highway to which the order relates.
- (4) An order may be made under this section authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment.
- (5) The provisions of this section shall have effect without prejudice to—
  - (a) any power conferred on the Secretary of State by any other enactment to authorise the stopping up or diversion of a highway;
  - (b) the provisions of section 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; or
  - (c) the provisions of section 203(1)(a) of this Act.

**199 Footpaths and bridleways affected by development: orders by local planning authorities**

- (1) Subject to section 206 of this Act, a local planning authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied as mentioned in section 198(1) of this Act.
- (2) An order under this section may, if the local planning authority are satisfied that it should do so, provide—
  - (a) for the creation of an alternative footpath or bridleway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing path or way for such use ;
  - (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement, provision is made by the order;
  - (c) for the preservation of any rights of statutory under takers in respect of apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway ;
  - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.

**200 Highways crossing or entering route of proposed new highway, etc.**

- (1) If planning permission is granted under Part III of this Act for constructing or improving, or the Secretary of State proposes to construct or improve, a highway (hereafter in this section referred to as " the main highway "), the Secretary of State may by order authorise the stopping up or diversion of any other highway which crosses or enters the route of the main highway or which is, or will be, otherwise affected by the construction or improvement of the main highway, if it appears to the Secretary of State expedient to do so—
  - (a) in the interests of the safety of users of the main highway ; or
  - (b) to facilitate the movement of traffic on the main highway.

- (2) Subsections (2) to (5) of section 198 of this Act shall apply to an order under this section as they apply to an order under that section.

*Conversion of highway into footpath or bridleway*

**201 Order extinguishing right to use vehicles on highway**

- (1) The provisions of this section shall have effect where a competent authority by resolution adopt a proposal for improving the amenity of part of their area, being a proposal which involves a highway in that area (being a highway over which the public have a right of way with vehicles, but not a trunk road or a road classified as a principal road for the purposes of advances under section 8 of the Development and Road Improvement Funds Act 1909) being changed to a footpath or bridleway.
- (2) The Secretary of State may, on an application made by a competent authority, by order provide for the extinguishment of any right which persons may have to use vehicles on that highway.
- (3) An order made under subsection (2) of this section may include such provision as the Secretary of State (after consultation with the local planning authority and the highway authority, if different from the competent authority) thinks fit for permitting the use on the highway of vehicles (whether mechanically propelled or not) in such cases as may be specified in the order, notwithstanding the extinguishment of any such right as is mentioned in that subsection ; and any such provision may be framed by reference to particular descriptions of vehicles, or to particular persons by whom, or on whose authority, vehicles may be used, or to the circumstances in which, or the times at which, vehicles may be used for particular purposes.
- (4) No provision contained in, or having effect under, any enactment, being a provision prohibiting or restricting the use of footpaths or bridleways shall affect any use of a vehicle on a highway in relation to which an order made under subsection (2) of this section has effect, where the use is permitted in accordance with provisions of the order included by virtue of subsection (3) of this section.
- (5) Any person who, at the time of an order under subsection (2) of this section coming into force, has an interest in land having lawful access to a highway to which the order relates shall be entitled to be compensated by the competent authority in respect of any depreciation in the value of his interest which is directly attributable to the order and of any other loss or damage which is so attributable.

In this subsection " lawful access " means access authorised by planning permission granted under this Act or the Act of 1947, or access in respect of which no such permission is necessary.

- (6) A claim for compensation under subsection (5) of this section shall be made to the competent authority within the time and in the manner prescribed by regulations under this Act.
- (7) Sections 167 and 168 of this Act shall have effect in relation to compensation under subsection (5) of this section as they have effect in relation to compensation to which those sections apply.
- (8) Without prejudice to section 273(3) of this Act, the Secretary of State may, on an application made by a competent authority, by order revoke an order made by him in

relation to a highway under subsection (2) of this section; and the effect of the order shall be to reinstate any right to use vehicles on the highway, being a right which was extinguished by virtue of the order under that subsection.

- (9) The competent authorities for the purposes of this section are county councils and town councils, and before making an application under subsection (2) or (8) of this section a competent authority shall consult with the local planning authority and the highway authority (in a case where they are themselves not that authority).
- (10) Subsections (2), (3) and (5) of section 198 of this Act shall apply to an order under this section as they apply to an order under that section.

## **202 Provision of amenity for highway reserved to pedestrians**

- (1) Where in relation to a highway an order has been made under section 201(2) of this Act, a competent authority may carry out and maintain any such works on or in the highway, or place on or in it any such objects or structures, as appear to them to be expedient for the purposes of giving effect to the order or of enhancing the amenity of the highway and its immediate surroundings or to be otherwise desirable for a purpose beneficial to the public.
- (2) The powers exercisable by a competent authority under this section shall extend to laying out any part of the highway with lawns, trees, shrubs and flower-beds and to providing facilities for recreation or refreshment.
- (3) A competent authority may so exercise their powers under this section as to restrict the access of the public to any part of the highway, but shall not so exercise them as—
  - (a) to prevent persons from entering the highway at any place where they could enter it before the order under section 201 of this Act was made ; or
  - (b) to prevent the passage of the public along the highway; or
  - (c) to prevent normal access by pedestrians to premises adjoining the highway ; or
  - (d) to prevent any use of vehicles which is permitted by an order made under the said section 201 and applying to the highway; or
  - (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the highway.
- (4) An order under section 201(8) of this Act may make provision requiring the removal of any obstruction of the highway resulting from the exercise by a competent authority of their powers under this section.
- (5) The competent authorities for the purposes of this section are county councils and town councils, but such an authority shall not exercise any powers conferred by this section unless they have obtained the consent of the local planning authority and the highway authority (in a case where they are themselves not that authority).

### *Extinguishment of rights of way*

## **203 Extinguishment of public rights of way over land held for planning purposes**

- (1) Where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated—



- (a) the Secretary of State may by order extinguish any public right of way over the land if he is satisfied that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required;
  - (b) subject to section 206 of this Act, the local authority may by order extinguish any such right over the land, being a footpath or bridleway, if they are satisfied as aforesaid.
- (2) In this section any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with section 122(1) of this Act as if this section were in Part VI of this Act

*Procedure for making and confirming orders*

**204 Procedure for making of orders by Secretary of State**

- (1) Before making an order under section 198, 200, 201 or 203(1)(a) of this Act the Secretary of State shall publish in at least one local newspaper circulating in the relevant area, and in the Edinburgh Gazette, a notice—
- (a) stating the general effect of the order ;
  - (b) specifying a place in the relevant area where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of twenty-eight days from the date of the publication of the notice; and
  - (c) stating that, within that period, any person may by notice to the Secretary of State object to the making of the order.
- (2) Not later than the date on which that notice is so published, the Secretary of State—
- (a) shall serve a copy of the notice, together with a copy of the draft order and of any relevant map or plan, on every local authority in whose area any highway or, as the case may be, any land to which the order relates is situated, and on any water, hydraulic power, gas or electricity undertakers having any cables, mains, pipes or wires laid along, across, under or over any highway to be stopped up or diverted or, as the case may be, any land over which a right of way is to be extinguished, under the order; and
  - (b) shall cause a copy of the notice to be displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted or, as the case may be, of the right of way proposed to be extinguished under the order.
- (3) If before the end of the said period of twenty-eight days an objection is received by the Secretary of State from any local authority or undertakers on whom a notice is required to be served under subsection (2) of this section, or from any other person appearing to him to be affected by the order, and the objection is not withdrawn, the Secretary of State shall cause a local inquiry to be held:

Provided that, if the objection is made by a person other than such a local authority or undertakers, the Secretary of State may dispense with such an inquiry if he is satisfied that in the special circumstances of the case the holding of such an inquiry is unnecessary.

- (4) After considering any objections to the order which are not withdrawn, and, where a local inquiry is held, the report of the person who held the inquiry, the Secretary

of State (subject to subsection (5) of this section) may make the order either without modification or subject to such modifications as he thinks fit.

- (5) Where the order contains a provision requiring any such payment, repayment or contribution as is mentioned in section 198(3)(a) of this Act, and objection to that provision is duly made, in accordance with subsection (3) of this section, by an authority or person who would be required thereby to make such a payment, repayment or contribution, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- (6) Immediately after the order has been made, the Secretary of State shall publish, in the manner specified in subsection (1) of this section, a notice stating that the order has been made, and naming a place where a copy of the order may be seen at all reasonable hours; and the provisions of subsection (2) of this section shall have effect in relation to any such notice as they have effect in relation to a notice under subsection (1) of this section.
- (7) In this section " the relevant area ", in relation to an order, means the area in which any highway or land to which the order relates is situated, and " local authority " means a county council, town council or district council.

## **205 Procedure in anticipation of planning permission, etc.**

- (1) Where the Secretary of State would, if planning permission for any development had been granted under Part III of this Act, have power to make an order under section 198 or 200 of this Act authorising the stopping-up or diversion of a highway in order to enable that development to be carried out, then, notwithstanding that such permission has not been granted, the Secretary of State may, in the circumstances specified in subsections (2) to (4) of this section, publish notice of the draft of such an order in accordance with section 204 of this Act.
- (2) The Secretary of State may publish such a notice as aforesaid where the relevant development is the subject of an application for planning permission and either—
  - (a) that application is made by a local authority or statutory undertakers or the National Coal Board ; or
  - (b) that application stands referred to the Secretary of State in pursuance of a direction under section 32 of this Act; or
  - (c) the applicant has appealed to the Secretary of State under section 33 of this Act against a refusal of planning permission or of approval required under a development order, or against a condition of any such permission or approval.
- (3) The Secretary of State may publish such a notice as aforesaid where—
  - (a) the relevant development is to be carried out by a local authority, statutory undertakers or the National Coal Board and requires, by virtue of an enactment, the authorisation of a government department; and
  - (b) the developers have made application to the department for that authorisation and also requested a direction under section 37 of this Act or, in the case of the National Coal Board, under section 2 of the Opencast Coal Act 1958, that planning permission be deemed to be granted for that development.
- (4) The Secretary of State may publish such a notice as aforesaid where the local planning authority certify that they have begun to take such steps, in accordance with regulations made by virtue of section 256 of this Act, as are requisite in order to enable them to obtain planning permission for the relevant development.

- (5) Section 204(5) of this Act shall not be construed as authorising the Secretary of State to make an order under section 198 or 200 of this Act of which notice has been published by virtue of subsection (1) of this section until planning permission is granted for the development which occasions the making of the order.

## **206 Confirmation of orders made by other authorities**

- (1) An order made under section 199 or 203(1) of this Act shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it.
- (2) The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 199 or 203(1) (as the case may be) to be satisfied.
- (3) The time specified—
- (a) in an order under section 199 as the time from which a footpath or bridleway is to be stopped up or diverted; or
  - (b) in an order under section 203(1) as the time from which a right of way is to be extinguished,
- shall not be earlier than confirmation of the order.
- (4) Schedule 18 to this Act shall have effect with respect to the confirmation of orders under section 199 or 203(1)(b) of this Act and the publicity for such orders after they are confirmed.

### *Supplementary provisions*

## **207 Compulsory acquisition of land in connection with highways**

- (1) The Secretary of State or a local highway authority may be authorised to acquire land compulsorily—
- (a) for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order under section 198, 200 or 201 of this Act or for any other purpose for which land is required in connection with such an order; or
  - (b) for the purpose of providing any public right of way which is to be provided as an alternative to a right of way extinguished under 203(1)(a) of this Act.
- (2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (other than section 2 thereof) shall apply to the acquisition of land under this section, and accordingly shall have effect—
- (a) as if this section had been in force immediately before the commencement of that Act; and
  - (b) as if this section were included among the enactments specified in section 1(1)(b) of that Act.

## **208 Concurrent proceedings in connection with highways**

- (1) In relation to orders under sections 198, 200 and 201 of this Act, regulations made under this Act may make provision for securing that any proceedings required to be

taken for the purposes of the acquisition of land under section 207 of this Act (as mentioned in subsection (1)(a) of that section) may be taken concurrently with any proceedings required to be taken for the purposes of the order.

- (2) In relation to orders under section 203(1)(a) of this Act, regulations made under this Act may make provision for securing—
- (a) that any proceedings required to be taken for the purposes of such an order may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished; or
  - (b) that any proceedings required to be taken for the purposes of the acquisition of any other land under section 207 of this Act (as mentioned in subsection (1) (b) of that section) may be taken concurrently with either or both of the proceedings referred to in the preceding paragraph.

## **209 Provisions as to telegraphic lines**

- (1) Where in pursuance of an order under section 198, 200 or 201 of this Act a highway is stopped up or diverted, and, immediately before the date on which the order became operative, there was under, in, on, over, along or across the highway a telegraphic line belonging to or used by the Post Office, the Post Office shall have the same powers in respect of that line as if the order had not become operative:

Provided that if any person entitled to land over which the highway subsisted requires that the telegraphic line should be altered, paragraphs (1) to (8) of section 7 of the Telegraph Act 1878 shall apply to the alteration, and accordingly shall have effect, subject to any necessary modifications, as if references therein to undertakers included references to the person so requiring the line to be altered.

- (2) Where any such order provides for the improvement of a highway, other than a trunk road, and, immediately before the date on which the order became operative, there was under, in, on, over, along or across the highway a telegraphic line belonging to or used by the Post Office, then if the local highway authority require that that line should be altered, paragraphs (1) to (8) of the said section 7 shall apply to the alteration, and accordingly shall have effect, subject to any necessary modifications, as if references therein to undertakers included references to the local highway authority:

Provided that those paragraphs shall not apply by virtue of this subsection to the alteration of a telegraphic line for the purpose of authority's works as defined in Part II of the Public Utilities Street Works Act 1950.

- (3) Where an order under section 203(1)(a) of this Act extinguishing a public right of way is made on the application of a local planning authority, and at the time of the publication of the notice required by section 204(1) of this Act there was under, in, on, over, along or across the land over which the right of way subsisted a telegraphic line belonging to or used by the Post Office—
- (a) the power of the Post Office to remove the line shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the right of way is extinguished, and shall be exercisable in respect of the whole or any part of the line after the end of that period if before the end of that period the Post Office has given notice to the local planning authority of its intention to remove the line or that part thereof, as the case may be;

- (b) the Post Office may by notice given in that behalf to the local planning authority not later than the end of the said period of three months abandon the telegraphic line or any part thereof;
  - (c) subject to paragraph (b) of this subsection, the Post Office shall be deemed at the end of that period to have abandoned any part of the line which it has then neither removed nor given notice of its intention to remove;
  - (d) the Post Office shall be entitled to recover from the local planning authority the expense of providing, in substitution for the line and any telegraphic line connected therewith which is rendered useless in consequence of the removal or abandonment of the line, a telegraphic line in such other place as the Post Office may require;
  - (e) where under the preceding provisions of this subsection the Post Office has abandoned the whole or any part of a telegraphic line, it shall vest in the local planning authority, and the provisions of the Telegraph Acts 1863 to 1916 shall not apply in relation to the line or that part thereof with respect to anything done or omitted after the abandonment thereof.
- (4) As soon as practicable after the making of an order under section 203(1)(a) of this Act extinguishing a public right of way in circumstances in which subsection (3) of this section applies, the Secretary of State shall give notice to the Post Office of the making of the order.
- (5) In this section " telegraphic line " and " alter " have the same meanings as in the Telegraph Act 1878.

## **210 Application of s. 32 of Mineral Workings Act 1951 to orders under Part X**

- (1) In subsections (1) and (2) of section 32 of the Mineral Workings Act 1951 (temporary order for stopping up or diversion of highway)—
- (a) references to section 198 of this Act (except the reference to subsection (3) of that section) shall include references to section 199 of this Act;
  - (b) the reference to the said subsection (3) shall include a reference to subsection (2) of the said section 199; and
  - (c) references to the Secretary of State shall include references to a local planning authority for the purposes of the said section 199.
- (2) In subsection (3) of the said section 32 (rights of statutory undertakers in respect of their apparatus where order is made under section 198 of this Act) the reference to section 198 of this Act shall include a reference to section 200 of this Act.
- (3) This section has effect in lieu of the amendments of the said section 32 made by sections 90(3) and 93(4) of the Act of 1969.

## PART XI

### STATUTORY UNDERTAKERS

#### *Preliminary*

#### **211 Meaning of " operational land "**

In this Act " operational land " means, in relation to statutory undertakers—

- (a) land which is used for the purpose of carrying on their undertaking; and
- (b) land in which an interest is held for that purpose,

not being land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

#### **212 Cases in which land is to be treated as not being operational land**

- (1) Where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and—

- (a) the interest was acquired by them on or after 8th December 1969; or
- (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the Act of 1947,

then subsection (2) of this section shall have effect for the purpose of determining whether the land is to be treated as operational land for the purposes of this Act and shall so have effect notwithstanding the definition of operational land in section 211 of this Act.

- (2) The land shall not be treated as operational land for the purposes of this Act unless one or both of the following conditions are satisfied with respect to it, namely—

- (a) there is, or at some time has been, in force with respect to the land a specific planning permission for its development and that development, if carried out, would involve or have involved the use of the land for the purpose of the carrying on of the statutory undertakers' undertaking; or
- (b) the undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the Transport Act 1968 from other statutory undertakers and the land was, immediately before transfer, operational land of those other undertakers.

- (3) A specific planning permission for the purpose of subsection (2)(a) of this section is a planning permission—

- (a) granted on an application in that behalf under Part III of this Act or the enactments previously in force and replaced by that Part of this Act; or
- (b) granted by provisions of a development order granting planning permission generally for development which has received specific parliamentary approval; or
- (c) granted by a special development order in respect of development specifically described in the order; or
- (d) deemed to be granted by virtue of a direction of a government department under section 37 of this Act or section 32 of the Act of 1947;

and the reference in paragraph (b) of this subsection to development which has received specific parliamentary approval shall be construed as referring to development authorised by a local or private Act of Parliament or by an order approved by both Houses of Parliament or by an order which has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Act 1945, being an Act or order which designates specifically both the nature of the development thereby authorised and the land upon which it may be carried out

## **213 Meaning of " the appropriate Minister "**

- (1) In this Act " the appropriate Minister "—
- (a) in relation to statutory undertakers carrying on an under taking for the supply of gas or hydraulic power, means the Secretary of State for Trade and Industry;
  - (b) in relation to statutory undertakers carrying on a light house undertaking, means the said Secretary of State or the Board of Trade;
  - (c) in relation to statutory undertakers carrying on an under taking for the supply of electricity or water, means the Secretary of State; and
  - (d) in relation to any other statutory undertakers, means the Secretary of State for the Environment.
- (2) This Act shall have effect as if references to the Secretary of State and the appropriate Minister—
- (a) were references to the Secretary of State and the appropriate Minister, if the appropriate Minister is not the one concerned as the Secretary of State; and
  - (b) were references to the one concerned as the Secretary of State alone, if he is also the appropriate Minister;

and similarly with references to a Minister and the appropriate Minister and with any provision requiring the Secretary of State to act jointly with the appropriate Minister.

### *General provisions*

## **214 Applications for planning permission by statutory undertakers**

- (1) Where—
- (a) an application for planning permission to develop land to which this subsection applies is made by statutory undertakers and is referred to the Secretary of State under Part III of this Act; or
  - (b) an appeal is made to the Secretary of State under Part III of this Act from the decision on such an application ; or
  - (c) such an application is deemed to be made under subsection (7) of section 85 of this Act on an appeal under that section by statutory undertakers,
- the application or appeal shall be dealt with by the Secretary of State and the appropriate Minister.
- (2) Subsection (1) of this section applies—
- (a) to operational land; and
  - (b) to land in which the statutory undertakers hold, or propose to acquire, an interest with a view to its being used for the purpose of carrying on their undertaking where the planning permission, if granted on the application

or appeal, would be for development involving the use of the land for that purpose.

- (3) An application for planning permission which is deemed to have been made by virtue of section 91(5) of this Act shall be determined by the Secretary of State and the appropriate Minister.
- (4) Notwithstanding anything in Part III of this Act, planning permission to develop operational land of statutory undertakers shall not, except with their consent, be granted subject to conditions requiring that any buildings or works authorised by the permission shall be removed, or that any use of the land so authorised shall be discontinued, at the end of a specified period.
- (5) Subject to the provisions of this Part of this Act as to compensation, the provisions of this Act shall apply to an application which is dealt with under this section by the Secretary of State and the appropriate Minister as if it had been dealt with by the Secretary of State.

#### **215 Development requiring sanction of government department**

- (1) Where the sanction of a government department other than the Secretary of State is required in respect of any development of operational land, then, except where that sanction has been granted without any direction as to the grant of planning permission, the Secretary of State and the appropriate Minister shall not be required to deal with an application for planning permission under section 214(1) of this Act.
- (2) The provisions of subsection (3) of section 37 of this Act shall have effect for the purposes of this section as they have effect for the purposes of that section.

#### **216 Revocation or modification of permission to develop operational land**

In relation to any planning permission, granted on the application of statutory undertakers, for the development of operational land, the provisions of Part III of this Act with respect to the revocation and modification of planning permission shall have effect as if, for any reference therein to the Secretary of State, there were substituted a reference to the Secretary of State and the appropriate Minister.

#### **217 Order requiring discontinuance of use etc. of operational land**

The provisions of Part III of this Act with respect to the making of orders requiring the discontinuance of any use of land or imposing conditions on the continuance thereof, or requiring buildings or works on land to be altered or removed, shall have effect, in relation to operational land of statutory undertakers, as if, for any reference therein to the Secretary of State, there were substituted a reference to the Secretary of State and the appropriate Minister.

#### **218 Acquisition of land of statutory undertakers**

- (1) Notwithstanding anything in paragraph 10 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 a compulsory purchase order to which this section applies may be confirmed or made without the appropriate Minister's certificate.



- (2) This section applies to any compulsory purchase order under this Act authorising the acquisition of land which has been acquired by statutory undertakers for the purposes of their undertaking.
- (3) Except where the appropriate Minister's certificate is given, a compulsory purchase order to which this section applies shall be of no effect unless it is confirmed or made by the appropriate Minister jointly with the Minister or Ministers who would apart from this subsection have power to make or confirm it.
- (4) In this section " the appropriate Minister's certificate " means such a certificate as is mentioned in paragraph 10 of Schedule 1 to the said Act of 1947.

## **219 Extinguishment of rights of way, and rights as to apparatus, of statutory undertakers**

- (1) Where any land has been acquired by a Minister, a local planning authority or statutory undertakers under Part VI of this Act or compulsorily under any other enactment, or has been appropriated by a local planning authority for planning purposes, and—
  - (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land; or
  - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking,the acquiring or appropriating authority, if satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus, is necessary for the purpose of carrying out any development with a view to which the land was acquired or appropriated, may serve on the statutory undertakers a notice stating that, at the end of the period of twenty-eight days from the date of service of the notice or such longer period as may be specified therein, the right will be extinguished or requiring that, before the end of such period as aforesaid, the apparatus shall be removed.
- (2) The statutory undertakers on whom a notice is served under subsection (1) of this section may, before the end of the period of twenty-eight days from the service of the notice, serve a counter-notice on the acquiring or appropriating authority stating that they object to all or any of the provisions of the notice and specifying the grounds of their objection.
- (3) If no counter-notice is served under subsection (2) of this section—
  - (a) any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice; and
  - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to the removal of the apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (4) If a counter-notice is served under subsection (2) of this section on a local planning authority or on statutory undertakers, the authority or undertakers may either withdraw the notice (without prejudice to the service of a further notice) or may apply to the Secretary of State and the appropriate Minister for an order under this section embodying the provisions of the notice, with or without modification.

- (5) If a counter-notice is served under subsection (2) of this section on a Minister, he may withdraw the notice (without prejudice to the service of a further notice) or he and the appropriate Minister may make an order under this section embodying the provisions of the notice, with or without modification.
- (6) In this section any reference to the appropriation of land for planning purposes shall be construed in accordance with section 122(1) of this Act as if this section were in Part VI of this Act.

## **220 Orders under s. 219**

- (1) Where a Minister and the appropriate Minister propose to make an order under section 219(5) of this Act, they shall prepare a draft of the order.
- (2) Before making an order under subsection (4) or subsection (5) of section 219 of this Act, the Ministers proposing to make the order—
  - (a) shall afford to the statutory undertakers on whom notice was served under subsection (1) of that section an opportunity of objecting to the application for, or proposal to make, the order; and
  - (b) if any objection is made, shall cause an inquiry to be held, and may then, if they think fit, make the order in accordance with the application or in accordance with the draft order, as the case may be, either with or without modification.
- (3) Where an order is made under section 219 of this Act—
  - (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order; and
  - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.

## **221 Notice for same purposes as s. 219 but given by statutory undertakers to developing authority**

- (1) Subject to the provisions of this section, where land has been acquired or appropriated as mentioned in section 219(1) of this Act, and—
  - (a) there is on, under or over the land any apparatus vested in or belonging to statutory undertakers; and
  - (b) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development,

the undertakers may serve on the acquiring or appropriating authority a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (2) Where, after the land has been acquired or appropriated as aforesaid, development of the land is begun to be carried out, no notice under this section shall be served later than twenty-one days after the beginning of the development.

- (3) Where a notice is served under this section, the authority on whom it is served may, before the end of the period of twenty-eight days from the date of service, serve on the statutory undertakers a counter-notice stating that they object to all or any of the provisions of the notice and specifying the grounds of their objection.
- (4) If no counter-notice is served under subsection (3) of this section, the statutory undertakers shall, after the end of the period of twenty-eight days therein mentioned, have the rights claimed in their notice.
- (5) If a counter-notice is served under subsection (3) of this section, the statutory undertakers who served the notice under this section may either withdraw it or may apply to the Secretary of State and the appropriate Minister for an order under this section conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State and the appropriate Minister think it expedient to confer on them.
- (6) Where, by virtue of this section or of an order of Ministers thereunder, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the acquiring or appropriating authority for the works to be carried out by that authority, under the superintendence of the undertakers, instead of by the undertakers themselves.

## **222 Extension or modification of functions of statutory undertakers**

- (1) The powers conferred by this section shall be exercisable where, on a representation made by statutory undertakers, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of those undertakers should be extended or modified, in order—
  - (a) to secure the provision of services which would not otherwise be provided, or satisfactorily provided, for any purpose in connection with which a local planning authority or Minister may be authorised under Part VI of this Act to acquire land or in connection with which any such person may compulsorily acquire land under any other enactment; or
  - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in subsection (2) of this section.
- (2) The said acts and events are—
  - (a) the acquisition under Part VI of this Act or compulsorily under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question;
  - (b) the extinguishment of a right or the imposition of any requirement by virtue of section 219 of this Act;
  - (c) a decision on an application made by the statutory undertakers for planning permission to develop any such land as is mentioned in paragraph (a) of this subsection;
  - (d) the revocation or modification of planning permission granted on any such application ;
  - (e) the making of an order under section 49 of this Act in relation to any such land.
- (3) The powers conferred by this section shall also be exercisable where, on a representation made by a local planning authority or Minister, it appears to the

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Secretary of State and the appropriate Minister to be expedient that the powers and duties of statutory undertakers should be extended or modified, in order to secure the provision of new services, or the extension of existing services, for any purpose in connection with which the local planning authority or Minister making the representation may be authorised under Part VI of this Act to acquire land or in connection with which the local authority or Minister may compulsorily acquire land under any other enactment.

- (4) Where the powers conferred by this section are exercisable, the Secretary of State and the appropriate Minister may, if they think fit, by order provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them to be requisite in order to secure the services in question, as mentioned in subsection (1) (a) or (3) of this section, or to facilitate the adjustment in question, as mentioned in subsection (1)(b) of this section, as the case may be.
- (5) Without prejudice to the generality of subsection (4) of this section, an order under this section may make provision—
- (a) for empowering the statutory undertakers to acquire (whether compulsorily or by agreement) any land specified in the order, and to erect or construct any buildings or works so specified ;
  - (b) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments relating to the acquisition of land and the construction of works;
  - (c) where it has been represented that the making of the order is expedient for the purposes mentioned in subsection (1)(a) or (3) of this section, for giving effect to such financial arrangements between the local planning authority or Minister and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order;
  - (d) for such incidental and supplemental matters as appear to the Secretary of State and the appropriate Minister to be expedient for the purposes of the order.

### **223 Procedure in relation to orders under s. 222**

- (1) As soon as may be after making such a representation as is mentioned in subsection (1) or subsection (3) of section 222 of this Act—
- (a) the statutory undertakers, in a case falling within subsection (1) of that section ; or
  - (b) the local planning authority or Minister making the representation, in a case falling within subsection (3) thereof,

shall publish, in such form and manner as may be directed by the Secretary of State and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time (not being less than twenty-eight days) within which, and the manner in which, objections to the making of an order on the representation may be made, and shall serve a like notice on any persons appearing from the valuation roll to have an interest in any land to which the representation relates, and shall also, if it is so directed by the Secretary of State and the appropriate Minister, serve a like notice on such persons, or persons of such classes, as may be so directed.

- (2) Orders under section 222 of this Act shall be subject to special parliamentary procedure.

## **224 Relief of statutory undertakers from obligations rendered impracticable**

- (1) Where, on a representation made by statutory undertakers, the appropriate Minister is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which this subsection applies, the appropriate Minister may, if he thinks fit, by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order.
- (2) Subsection (1) of this section applies to the following acts and events, that is to say—
  - (a) the compulsory acquisition under Part VI of this Act or under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers; and
  - (b) the acts and events specified in section 222(2)(b) to (e) of this Act.
- (3) As soon as may be after making a representation to the appropriate Minister under subsection (1) of this section, the statutory undertakers shall, as may be directed by the appropriate Minister, either publish (in such form and manner as may be so directed) a notice giving such particulars as may be so directed of the matters to which the representation relates, and specify the time (not being less than twenty-eight days) within which, and the manner in which, objections to the making of an order on the representation may be made, or serve such a notice on such persons, or persons of such classes, as may be so directed, or both publish and serve such notices.
- (4) If any objection to the making of an order under this section is duly made and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure.
- (5) Immediately after an order is made under this section by the appropriate Minister, he shall publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours, and shall serve a like notice—
  - (a) on any person who duly made an objection to the order and has sent to the appropriate Minister a request in writing to serve him with the notice required by this subsection, specifying an address for service; and
  - (b) on such other persons (if any) as the appropriate Minister thinks fit.
- (6) Subject to subsection (7) of this section, and to the provisions of Part XII of this Act, an order under this section shall become operative on the date on which the notice required by subsection (5) of this section is first published.
- (7) Where in accordance with subsection (4) of this section the order is subject to special parliamentary procedure, subsection (6) of this section shall not apply.

## **225 Objections to orders under ss. 222 and 224**

- (1) For the purposes of sections 222 and 224 of this Act, an objection to the making of an order thereunder shall not be treated as duly made unless—
  - (a) the objection is made within the time and in the manner specified in the notice required by the section under which the order is proposed to be made; and
  - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.

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- (2) Where an objection to the making of such an order is duly made in accordance with subsection (1) of this section and is not withdrawn, the following provisions of this section shall have effect in relation thereto:

Provided that, in the application of those provisions to an order under section 222 of this Act, any reference to the appropriate Minister shall be construed as a reference to the Secretary of State and the appropriate Minister.

- (3) Unless the appropriate Minister decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the appropriate Minister, before making a final decision, shall consider the grounds of the objection as set out in the statement, and may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (4) In so far as the appropriate Minister, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision.
- (5) If, after considering the grounds of the objection as set out in the original statement and in any such further statement, the appropriate Minister is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or if, where a further statement has been required, it is not submitted within the specified period, the appropriate Minister may make a final decision without further investigation as to those matters.
- (6) Subject to subsections (4) and (5) of this section, the appropriate Minister, before making a final decision, shall afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate Minister; and if the objector avails himself of that opportunity, the appropriate Minister shall afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers, local planning authority or Minister on whose representation the order is proposed to be made, and to any other persons to whom it appears to the appropriate Minister to be expedient to afford such an opportunity.
- (7) Notwithstanding anything in the preceding provisions of this section, if it appears to the appropriate Minister that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination shall be dispensed with.
- (8) In this section any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification (if any) ought to be made.

### *Compensation*

#### **226 Right to compensation in respect of certain decisions and orders**

- (1) Statutory undertakers shall, subject to the following provisions of this Part of this Act, be entitled to compensation from the local planning authority—

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- (a) in respect of any decision made in accordance with section 214 of this Act whereby planning permission to develop operational land of those undertakers is refused or is granted subject to conditions where—
    - (i) planning permission for that development would have been granted by a development order but for a direction given under such an order that planning permission so granted should not apply to the development; and
    - (ii) it is not development which has received specific parliamentary approval (within the meaning given to that expression by section 212(3) of this Act);
  - (b) in respect of any order under section 42 of this Act, as modified by section 216 thereof, whereby planning permission, granted on the application of those undertakers for the development of any such land, is revoked or modified.
- (2) Where, by virtue of section 219 of this Act, any right vested in or belonging to statutory undertakers is extinguished, or any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.
- (3) Where works are carried out for the removal or re-siting of statutory undertakers' apparatus, being works which the undertakers have the right to carry out by virtue of section 221 of this Act or an order of Ministers thereunder, the undertakers shall be entitled- to compensation from the acquiring or appropriating authority.
- (4) Notwithstanding anything in subsection (1) of this section, if the decision or order in question relates to land acquired by the statutory undertakers after 7th January 1947. and the Secretary of State and the appropriate Minister are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of that decision or order, they may include therein a direction that subsection (1) of this section shall not apply to that decision or order.
- (5) For the purposes of this section the conditions referred to in sections 38 and 39 of this Act shall be disregarded and no compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.

## **227 Measure of compensation to statutory undertakers**

- (1) Where statutory undertakers are entitled to compensation—
- (a) as mentioned in subsection (1). (2) or (3) of section 226 of this Act; or
  - (b) under the provisions of section 159 in respect of an order made under section 49 of this Act as modified by section 217 thereof; or
  - (c) in respect of a compulsory acquisition of land which has been acquired by those undertakers for the purposes of their undertaking, where the first-mentioned acquisition is effected under a compulsory purchase order confirmed or made without the appropriate Minister's certificate;
- the amount of the compensation shall (subject to section 228 of this Act) be an amount calculated in accordance with the following provisions of this section.
- (2) The said amount, subject to subsections (3) and (4) of this section, shall be the aggregate of the following amounts, that is to say—

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- (a) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings or doing work for the purpose of any adjustment of the carrying on of the undertaking rendered necessary by the proceeding giving rise to compensation;
  - (b) whichever of the following is applicable, namely—
    - (i) where such an adjustment is made, the estimated amount of any decrease in net receipts from the carrying on of the undertaking pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation, together with such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment;
    - (ii) where no such adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking which is directly attributable to the proceeding giving rise to compensation;
  - (c) where the compensation is under section 226(2) of this Act, and is in respect of the imposition of a requirement to remove apparatus, the amount of any expenditure reasonably incurred by the statutory undertakers in complying with the requirement, reduced by the value after removal of the apparatus removed.
- (3) Where any such adjustment as is mentioned in paragraph (a) of subsection (2) of this section is made, the aggregate amount mentioned in that subsection shall be reduced by such amount (if any) as appears to the tribunal referred to in subsection (2) of section 229 of this Act to be appropriate to offset—
- (a) the estimated value of any property (whether moveable or heritable) belonging to the statutory undertakers and used for the carrying on of their undertaking which, in consequence of the adjustment, ceases to be so used, in so far as the value of the property has not been taken into account under paragraph (c) of that subsection; and
  - (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as that amount has not been taken into account under paragraph (b) of that subsection and is directly attributable to the adjustment,
- and by any further amount which appears to the tribunal referred to in subsection (2) of section 229 of this Act to be appropriate, having regard to any increase in the capital value of heritable property belonging to the statutory undertakers which is directly attributable to the adjustment, allowance being made for any reduction made under paragraph (b) of this subsection.
- (4) Where the compensation is under section 226(3) of this Act and the acquiring or appropriating authority carry out the works, then, in addition to any reduction falling to be made under subsection (3) of this section, the aggregate amount mentioned in subsection (2) of this section shall be reduced by the actual cost to the authority of carrying out the works.
- (5) References in this section to a decrease in net receipts shall be construed as references to the amount by which a balance of receipts over expenditure is decreased, or a balance of expenditure over receipts is increased, or, where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, as references to



the aggregate of the two balances; and references to an increase in net receipts shall be construed accordingly.

(6) In this section—

" proceeding giving rise to compensation " means—

- (a) except in relation to compensation under section 226(3) of this Act. the particular action (that is to say, the decision, order, extinguishment of a right, imposition of a requirement, or acquisition) in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken;
- (b) in relation to compensation under the said section 226(3), the circumstances making it necessary for the apparatus in question to be removed or re-sited;

" the appropriate Minister's certificate " has the same meaning as in section 218 of this Act.

## **228 Exclusion of s. 227 at option of statutory undertakers**

- (1) Where statutory undertakers are entitled to compensation in respect of such a compulsory acquisition as is mentioned in section 227(1)(c) of this Act, the statutory undertakers may by notice in writing under this section elect that the compensation shall be ascertained in accordance with the enactments (other than rule (5) of the rules set out in section 12 of the Land Compensation (Scotland) Act 1963) which would be applicable apart from section 227 of this Act; and if the undertakers so elect the compensation shall be ascertained accordingly.
- (2) An election under this section may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land.
- (3) Any notice under this section shall be given to the acquiring authority before the end of the period of two months from the date of service of notice to treat in respect of the interest of the statutory undertakers.

## **229 Procedure for assessing compensation where s. 227 applies**

- (1) Where the amount of any such compensation as is mentioned in subsection (1) of section 227 of this Act falls to be ascertained in accordance with the provisions of that section, the compensation shall, in default of agreement, be assessed by the tribunal referred to in subsection (2) of this section, if apart from this section it would not fall to be so assessed.
- (2) The tribunal referred to in this subsection shall consist of four persons, namely—
  - (a) an advocate or solicitor of not less than seven years' standing, appointed by the Lord President of the Court of Session to act as chairman ;
  - (b) two persons appointed by the Secretary of State as persons having special knowledge and experience of the valuation of land and of civil engineering respectively ; and
  - (c) for each claim coming before the tribunal, a person selected by the appropriate Minister, as a person having special knowledge and experience of statutory undertakings of the kind carried on by the claimant, from the members of a panel appointed by appropriate Ministers of persons appearing to them to have such knowledge and experience of statutory undertakings.

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- (3) The Treasury may pay out of moneys provided by Parliament to the members of the tribunal such remuneration (whether by way of salaries or by way of fees), and such allowances, as the Treasury may determine.
- (4) For the purposes of any proceedings arising before the tribunal referred to in subsection (2) of this section in respect of compensation falling to be ascertained as mentioned in subsection (1) of this section, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply as they apply to proceedings on a question referred to the Lands Tribunal under section 8 of that Act, but with the substitution in section 11 of that Act, for references to the acquiring authority, of references to the person from whom the compensation is claimed.

*Supplementary provisions*

**230 Special provisions as to display of advertisements on operational land**

- (1) The provisions of this Part of this Act specified in subsection (2) of this section do not apply in relation to the display of advertisements on operational land of statutory undertakers.
- (2) The said provisions are sections 214 to 217 and 226(1) and (4) of this Act.

**PART XII**

VALIDITY OF PLANNING INSTRUMENTS AND  
 DECISIONS AND PROCEEDINGS RELATING THERETO

**231 Validity of development plans and certain orders, decisions and directions**

- (1) Except as provided by the following provisions of this Part of this Act, the validity of—
  - (a) a structure plan, a local plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted; or
  - (b) an order under any provision of Part X of this Act, except section 203(1)(a), whether before or after the order has been made; or
  - (c) an order under section 224 of this Act, whether before or after the order has been made; or
  - (d) any such order as is mentioned in subsection (2) of this section, whether before or after it has been confirmed; or
  - (e) any such action on the part of the Secretary of State as is mentioned in subsection (3) of this section,
 shall not be questioned in any legal proceedings whatsoever.
- (2) The orders referred to in subsection (1)(d) of this section are orders of any of the following descriptions, that is to say—
  - (a) any order under section 42 of this Act or under the provisions of that section as applied by or under any other provision of this Act;
  - (b) any order under section 49 of this Act;
  - (c) any tree preservation order;

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- (d) any order made in pursuance of section 61(4) of this Act;
  - (e) any order under section 203(1)(a) of this Act;
  - (f) any order under Part II of Schedule 10 to this Act.
- (3) The action referred to in subsection (1)(e) of this section is action on the part of the Secretary of State of any of the following descriptions, that is to say—
- (a) any decision of the Secretary of State on an application for planning permission referred to him under section 32 of this Act;
  - (b) any decision of the Secretary of State on an appeal under section 33 of this Act;
  - (c) the giving by the Secretary of State of any direction under section 35 of this Act;
  - (d) any decision by the Secretary of State to confirm a completion notice under section 41 of this Act;
  - (e) any decision of the Secretary of State relating to an application for consent under a tree preservation order, or relating to an application for consent under any regulations made in accordance with section 61 of this Act, or relating to any certificate or direction under any such order or regulations, whether it is a decision of the Secretary of State on appeal or a decision on an application referred to him for determination in the first instance;
  - (f) any decision of the Secretary of State on an appeal to him under section 85(1)(a), (f) or (g) of this Act against any enforcement notice;
  - (g) any decision of the Secretary of State on an application for an established use certificate referred to him under subsection (1) of section 91 of this Act or on an appeal under subsection (2) of that section;
  - (h) any decision of the Secretary of State under subsection (5)(a) of section 93 of this Act to grant listed building consent for any works or under subsection (5)(b) of that section to grant planning permission in respect of any works;
  - (i) any decision of the Secretary of State to confirm a purchase notice or listed building purchase notice;
  - (j) any decision of the Secretary of State not to confirm a purchase notice or listed building purchase notice, including any decision not to confirm such a 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 such a notice, either wholly or in part;
  - (k) any decision of the Secretary of State on an application referred to him under paragraph 4 of Schedule 10 to this Act (being an application for listed building consent for any works) or on an appeal under paragraph 8 of that Schedule or section 93 of this Act.
- (4) 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 take any such action as is mentioned in subsection (3) of this section.

## **232 Proceedings for questioning validity of structure plans, etc.**

- (1) If any person aggrieved by a structure plan or local plan or by any alteration, repeal or replacement of any such plan desires to question the validity of the plan, alteration, repeal or replacement on the ground that it is not within the powers conferred by Part II of this Act, or that any requirement of the said Part II or of any regulations made thereunder has not been complied with in relation to the approval or adoption of the plan, alteration, repeal or replacement, he may, within six weeks from the date of

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*Status: This is the original version (as it was originally enacted).*

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the publication of the first notice of the approval or adoption of the plan, alteration, repeal or replacement required by regulations under section 16(1) of this Act, make an application to the Court of Session under this section.

- (2) On any application under this section the Court of Session—
- (a) may by interim order wholly or in part suspend the operation of the plan, alteration, repeal or replacement, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
  - (b) if satisfied that the plan, alteration, repeal or replacement is wholly or to any extent outside the powers conferred by Part II of this Act, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of the said Part II or of any regulations made thereunder, may wholly or in part quash the plan, alteration, repeal or replacement, as the case may be, either generally or in so far as it affects any property of the applicant.

### **233 Proceedings for questioning validity of other orders, decisions and directions**

- (1) If any person—
- (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that the order is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to that order; or
  - (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and desires to question the validity of that action, on the grounds that the action is not within the powers of this Act, or that any of the relevant requirements have not been complied with in relation to that action,
- he may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the Court of Session under this section.
- (2) Without prejudice to subsection (1) of this section, if the authority directly concerned with any order to which this section applies, or with any action on the part of the Secretary of State to which this section applies, desire to question the validity of that order or action on any of the grounds mentioned in subsection (1) of this section, the authority may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the Court of Session under this section.
- (3) This section applies to any such order as is mentioned in subsection (2) of section 231 of this Act (other than an order under section 203(1)(a) of this Act) and to any such action on the part of the Secretary of State as is mentioned in subsection (3) of the said section 231.
- (4) On any application under this section the Court of Session—
- (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings;
  - (b) if satisfied that the order or action in question 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 any of the relevant requirements in relation thereto, may quash that order or action:

Provided that paragraph (a) of this subsection shall not apply to applications questioning the validity of tree preservation orders.

- (5) In relation to a tree preservation order, or to an order made in pursuance of section 61(4) of this Act, the powers conferred on the Court of Session by subsection (4) of this section shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.
- (6) References in this section to the confirmation of an order include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.
- (7) In this section "the relevant requirements", in relation to any order or action to which this section applies, means any requirements of this Act or of the Tribunals and Inquiries Act 1971 (or any enactment replaced thereby), or of any order, regulations or rules made under this Act or under that Act (or any such enactment), which are applicable to that order or action, and any reference to the authority directly concerned with any order or action to which this section applies is a reference to the local planning authority, and, in relation to any such decision as is mentioned in section 231(3)(i) or (j) of this Act, being a decision confirming the notice in question subject to the substitution of another local authority or statutory undertakers for the local planning authority, shall be construed as including a reference to that other local authority or those statutory undertakers.

#### **234 Appeals to Court of Session against decisions under s. 51**

- (1) If, in the case of any decision to which this section applies, the person who made the application to which the decision relates, or the local planning authority, is dissatisfied with the decision in point of law, that person or the local planning authority (as the case may be) may, according as rules of court may provide, either appeal against the decision to the Court of Session or require the Secretary of State to state and sign a case for the opinion of the Court of Session.
- (2) This section applies to any decision of the Secretary of State—
  - (a) on an application under section 51 of this Act which is referred to the Secretary of State under the provisions of section 32 of this Act as applied by that section; or
  - (b) on an appeal from a decision of the local planning authority under section 51 of this Act, being an appeal brought under the provisions of section 33 of this Act as so applied.
- (3) Where an application under section 51 of this Act is made as part of an application for planning permission, the preceding provisions of this section shall have effect in relation to that application in so far as it is an application under the said section 51, but not in so far as it is an application for planning permission.
- (4) In relation to proceedings in the Court of Session brought by virtue of this section, the power to make rules of court shall include power to make rules prescribing the powers of the Court of Session with respect to—
  - (a) the giving of any decision which might have been given by the Secretary of State;

- (b) the remitting of the matter, with the opinion or direction of the court, for re-hearing and determination by the Secretary of State;
  - (c) the giving of directions to the Secretary of State.
- (5) Without prejudice to the preceding provisions of this section, the power to make rules of court in relation to proceedings in the Court of Session brought by virtue of this section shall include power to make rules providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

### **235 Special provisions as to decisions relating to statutory undertakers**

In relation to any action which—

- (a) apart from the provisions of Part XI of this Act, would fall to be taken by the Secretary of State, and, if so taken, would be action falling within section 231(3) of this Act; but
- (b) by virtue of Part XI of this Act, is required to be taken by the Secretary of State and the appropriate Minister.

the provisions of sections 231 and 233 of this Act shall have effect (subject to section 236 of this Act) as if any reference in those provisions to the Secretary of State were a reference to the Secretary of State and the appropriate Minister.

### **236 Special provisions as to orders subject to special parliamentary procedure**

- (1) Where an order under section 198, 200, 201 or 224 of this Act is subject to special parliamentary procedure, then—
- (a) if the order is confirmed by Act of Parliament under section 2(4), as read with section 10, of the Statutory Orders (Special Procedure) Act 1945, or under section 6 of that Act, the provisions of sections 231 and 232 of this Act shall not apply to the order;
  - (b) in any other case, section 232 of this Act shall have effect in relation to the order as if, in subsection (1) of that section, for the reference to the date therein mentioned there were substituted a reference to the date on which the order becomes operative under the said Act of 1945.
- (2) Where by virtue of Part XI of this Act any such action as is mentioned in section 235 of this Act is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—
- (a) if the order in which the action is embodied is confirmed by Act of Parliament under the said Act of 1945, the provisions of sections 231 and 233 of this Act shall not apply;
  - (b) in any other case, the provisions of section 233 of this Act shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the date on which the order becomes operative under the said Act of 1945.

## PART XIII

### FINANCIAL PROVISIONS

#### *Grants for development, etc.*

#### **237 Grants for development, etc.**

- (1) The Secretary of State may, with the consent of the Treasury and after consultation with such associations of local authorities as appear to the Secretary of State to be concerned, make regulations providing for the payment to local authorities for any year of grants of such amounts, and payable over such periods and subject to such conditions, as may be determined by or under the regulations in respect of expenditure incurred by those authorities (whether before or after the passing of this Act) in or in connection with the acquisition of land approved for the purposes of the regulations, being land required for or in connection with—
- (a) the development or redevelopment as a whole of any area (whether or not defined in a development plan as an area of comprehensive development); or
  - (b) the relocation of population or industry, or the replacement of open space, in the course or in consequence of such development or redevelopment,
- or in respect of expenditure so incurred in or in connection with the clearing or preliminary development of such land.
- (2) For the purposes of regulations under this section land appropriated by a local authority (whether before or after the passing of this Act) for use for purposes described in subsection (1) of this section may be treated as acquired by that authority for those purposes at a cost of such amount, and defrayed in such manner, as may be determined by or under the regulations.
- (3) Without prejudice to the generality of the preceding provisions of this section, any regulations under this section may provide—
- (a) for the inclusion, in the expenditure incurred by local authorities in the acquisition of land approved for the purposes of the regulations, of any sums or part of sums paid by those authorities in connection with any restriction imposed on the development or use of the land by or under any enactment (whether by Way of compensation or by way of contribution towards damage or expense incurred in consequence of the restriction);
  - (b) for the calculation of grants payable under the regulations by reference to the amount of the annual costs incurred or treated as being incurred by local authorities in respect of the borrowing of money to defray the expenditure in respect of which the grants are made, or by reference to the excess of such annual costs over receipts of those authorities which are attributable to such expenditure, or over the annual value of such receipts, or by reference to such other considerations as may be prescribed by the regulations;
  - (c) for the payment of capital sums in substitution for any periodical grants payable under the regulations in respect of such annual costs;

and for the purposes of this section "clearing" and "preliminary development" means the carrying out of such works as may be prescribed by or determined under the regulations.

- (4) In this section " year " means a period of twelve months beginning on 16th May or, in relation to a local authority whose financial year begins on a day other than 16th May, a period of twelve months beginning on that other day.

### **238 Maximum amount of grants under s. 237**

- (1) Subject to the following provisions of this section, the amount of any grant paid to a local authority in accordance with regulations made under section 237 of this Act—
- (a) where that amount is calculated by reference to annual costs incurred or treated as incurred by the authority in respect of the borrowing of money to defray expenditure in respect of which the grant is made, or by reference to the excess of such annual costs over the receipts, or the annual value of receipts, mentioned in subsection (3)(b) of that section, shall not exceed an amount equal to fifty per cent, of those costs, or of that excess, as the case may be;
  - (b) in any other case, shall not exceed an amount equal to fifty per cent, of the amount of the expenditure in respect of which the grant is made.
- (2) In respect of land of any of the following descriptions, that is to say—
- (a) land comprised in a compulsory purchase order made by a local planning authority under the Act of 1945 or the Act of 1947, and confirmed before 26th February 1954, being land acquired for war-damage redevelopment ;
  - (b) land acquired by agreement for war-damage redevelopment with the consent of the Secretary of State given before that date;
  - (c) land appropriated by a local planning authority for war damage redevelopment before that date; and
  - (d) land acquired or appropriated for war-damage redevelopment (whether before or after that date), being land contiguous or adjacent to land falling within any of the preceding paragraphs,
- subsection (1)(a) of this section shall apply (subject to subsection (3) of this section) as if for the words " fifty per cent" there were substituted the words " ninety per cent. ".
- (3) Subsection (2) of this section shall not authorise the payment, in the case of any land, of a grant at a higher rate in respect of a year or part of a year which, together with the preceding years or parts of years in respect of which grants at a higher rate have been paid in the case of that land, would extend beyond a total period of eight years.
- (4) In this section "war-damage redevelopment" means the redevelopment as a whole of an area of extensive war damage, and includes the relocation of population or industry, or the replacement of open space, in the course of such redevelopment.
- (5) In this section references to a grant at a higher rate are references to a grant of an amount which—
- (a) was or would have been authorised by section 89 of the Act of 1947 as that section had effect or would have had effect apart from section 52 of the Act of 1954 and the Local Government and Miscellaneous Financial Provisions (Scotland) Act 1958 and this Act; but
  - (b) otherwise than by virtue of the provisions of the Act of 1954 corresponding to subsections (2) and (3) of this section, was not or would not have been authorised by the provisions substituted by the Act of 1954 for the said section 89.



### **239 Supplementary provisions as to grants under s. 237**

- (1) Any approval of the Secretary of State required for the purposes of the payment of grant under section 237 of this Act in connection with the acquisition of land may be given subject to compliance with requirements imposed by the Secretary of State for securing that any negotiations for the acquisition of the land by the local planning authority will be carried out by the Valuation Office, and that any valuation of the land for the purposes of the acquisition, or for any purposes of the regulations, will be made by that office.
- (2) Subject to subsection (1) of this section, any regulations made for the purposes of section 237 of this Act may make provision whereby the payment of grants in pursuance of the regulations is dependent upon the fulfilment of such conditions as may be determined by or in accordance with the regulations, and may also make provision for requiring local planning authorities to whom grants have been so paid to comply with such requirements as may be so determined.

#### *Grants for research and education*

### **240 Grants for research and education**

The Secretary of State may, with the consent of the Treasury, make grants for assisting establishments engaged in promoting or assisting research relating to, and education with respect to, the planning and design of the physical environment.

#### *Contributions to certain expenditure*

### **241 Contributions by Ministers towards compensation paid by local authorities**

Where compensation is payable by a local authority under this Act in consequence of any decision or order given or made under—

- (a) Part III or Part IV of this Act;
- (b) sections 84 to 96 of this Act;
- (c) the provisions of Part IX of this Act relating to purchase notices;
- (d) Schedule 7 to this Act,

then if that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of moneys provided by Parliament, the Minister responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine.

### **242 Contributions by local authorities and statutory undertakers**

- (1) Without prejudice to the provisions of section 6(8) of the Trunk Roads Act 1936 (contributions by certain local authorities towards expenses incurred in connection with highways), any local authority may contribute towards any expenses incurred by a local highway authority or the Secretary of State in the acquisition of land under Part VI of this Act, or in the construction or improvement of roads on land so acquired, or in connection with any development required in the interests of the proper planning of the district of the local authority.

- (2) Any local authority and any statutory undertakers may contribute towards—
- (a) any expenses incurred by a local planning authority in or in connection with the carrying out of a survey or the preparation of a structure plan or local plan under Part II of this Act;
  - (b) any expenses incurred by a local planning authority in or in connection with the performance of any of their functions under Part III (except section 25), Part IV, Part V (except sections 97 and 99) or Part VI (except section 116) of this Act, under the provisions of Part IX of this Act relating to purchase notices and listed building purchase notices or under Schedule 10 to this Act
- (3) For the purposes of this section, contributions made by a local planning authority towards the expenditure of a joint planning committee or joint advisory committee shall be deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee.

**243 Assistance for acquisition of property where objection made to blight notice in certain cases**

A county council or a town council may, subject to such conditions as may be approved by the Secretary of State, advance money to any person for the purpose of enabling him to acquire a hereditament or agricultural unit in respect of which a counter-notice has been served under section 183 of this Act specifying the grounds mentioned in subsection (2)(d) of that section as, or as one of, the grounds of objection if, in the case of a hereditament its annual value does not exceed such amount as may be prescribed for the purposes of section 181(4)(a) of this Act.

*Recovery of compensation etc.*

**244 Recovery from acquiring authorities of sums paid by way of compensation**

- (1) Where an interest in land is compulsorily acquired, or is sold to an authority possessing compulsory purchase powers, and any of the land comprised in the acquisition or sale is land in respect of which a notice to which this section applies is recorded (whether before or after the completion of the acquisition or sale) in respect of a planning decision or order made before the service of the notice to treat, or the making of the contract, in pursuance of which the acquisition or sale is effected, the Secretary of State shall, subject to the following provisions of this section, be entitled to recover from the acquiring authority a sum equal to so much of the amount of the compensation specified in the notice as (in accordance with section 147(5) of this Act) is to be treated as attributable to that land.
- (2) This section applies to notices recorded under subsection (4) of section 147 of this Act and to notices recorded under the provisions of that subsection as applied by section 155(5) of this Act
- (3) If, immediately after the completion of the acquisition or sale, there is outstanding some interest in the land comprised therein to which a person other than the acquiring authority is entitled, the sum referred to in subsection (1) of this section shall not accrue due until that interest either ceases to exist or becomes vested in the acquiring authority.

- (4) No sum shall be recoverable under this section in the case of a compulsory acquisition or sale where the Secretary of State is satisfied that the interest in question is being acquired for the purposes of the use of the land as a public open space.
- (5) Where by virtue of the preceding provisions of this section the Secretary of State recovers a sum in respect of any land, by reason that it is land in respect of which a notice is recorded under the provisions of section 147(4) of this Act as applied by section 155 of this Act, section 157(2) and (3) of this Act shall have effect in relation to that sum as if it were a sum recovered as mentioned in section 157(2) of this Act.

#### **245 Recovery from acquiring authorities of sums paid in respect of war-damaged land**

- (1) Where an interest in land is compulsorily acquired by, or sold to, an authority possessing compulsory purchase powers, and a payment exceeding £20 has become or becomes payable under section 56 of the Act of 1947 in respect of that interest, the Secretary of State shall, subject to the following provisions of this section, be entitled to recover the amount of the payment from the acquiring authority.
- (2) If, before 18th November 1952, operations were begun in, on, over or under the land, or a use of the land was instituted, being operations or a use—
  - (a) in respect of which a development charge has at any time been determined to be payable, or it has at any time been determined that no development charge was payable; or
  - (b) comprised in a scheme of development exempt from development charge,subsection (1) of this section shall not apply to so much of any payment referred to in that subsection as was attributable to any land in relation to which the determination was made or, as the case may be, which is included in that scheme of development.
- (3) No amount shall be recoverable under this section in respect of any land in relation to which an amount has become recoverable by the Secretary of State under the provisions of section 148 of this Act as applied by section 264 of this Act.
- (4) If the acquisition or sale in question does not extend to the whole of the land to which the payment under the said section 56 related, the amount recoverable under this section shall be so much of that payment as, in accordance with subsection (5) of this section, is to be treated as apportioned to the land in which the interest acquired or sold subsists
- (5) For the purposes of this section a payment under section 56 of the Act of 1947 shall be treated as apportioned, as between different parts of the land to which it related, in the way in which it might reasonably be expected to have been so apportioned if, under the scheme made under that section, the authority determining the amount of the payment had been required (in accordance with the same principles as applied to the determination of that amount) to apportion it between different parts of that land.
- (6) In this section references to a scheme of development exempt from development charge are references to a scheme of development such that, if the operations and uses of land comprised in the scheme had all been begun or instituted before 18th November 1952, all those operations and uses would have been exempt from the provisions of Part VI of the Act of 1947 by virtue of regulations made thereunder; and references to the amount of a payment shall be construed as including any interest payable on the principal amount of the payment.

**246 Sums recoverable from acquiring authorities reckonable for purposes of grant**

Where a sum is recoverable from an authority under section 244 or 245 of this Act by reference to an acquisition or purchase of an interest in land, and in respect thereof, or of a subsequent appropriation of the land, a grant became or becomes payable to that or some other authority under an enactment, (the power conferred by that enactment to pay the grant shall include, and shall be deemed always to have included, power to pay a grant in respect of that sum as if it had been expenditure incurred by the acquiring authority in connection with the acquisition or purchase.

*Expenses and receipts of Secretary of State***247 Expenses of government departments**

- (1) The following expenses of the Secretary of State shall be paid out of moneys provided by Parliament, that is to say—
  - (a) any expenses incurred by the Secretary of State under subsection (2) of section 48 of this Act or under that subsection as applied by subsection (7) of section 61 of this Act, or in the payment of expenses of any committee established under the said section 61;
  - (b) any sums necessary to enable the Secretary of State to make any payments becoming payable by him under Part VII or Part VIII of this Act;
  - (c) any expenses incurred by the Secretary of State under Part X of this Act;
  - (d) any expenses incurred by the Secretary of State in the making of grants in accordance with regulations made under section 237 of this Act or grants under section 240 of this Act;
  - (e) subject to the provisions of subsection (4) of section 248 of this Act, any instalment payable by the Secretary of State under subsections (2) and (3) of that section;
  - (f) any administrative expenses incurred by the Secretary of State for the purposes of this Act.
- (2) There shall be paid out of moneys provided by Parliament any expenses incurred by any government department (including the Secretary of State)—
  - (a) in the acquisition of land under Part VI of this Act;
  - (b) in the payment of compensation under section 108(4), 226(2) or 266 of this Act;
  - (c) under section 118(2)(b) of this Act; or
  - (d) under section 241 of this Act.

**248 Payments under s. 56 of Act of 1947 and Parts I and V of Act of 1954**

- (1) The Secretary of State shall pay out of moneys provided by Parliament any payments falling to be made by him on or after 1st April 1968 under—
  - (a) section 56 of the Act of 1947 (war-damaged land); or
  - (b) any provision of Part I or Part V of the Act of 1954.
- (2) The aggregate of the sums issued to the Secretary of State or the Central Land Board out of the Consolidated Fund in any financial year ending before the said 1st April under section 64(1) of the Act of 1954 (sums required for making payments under Part I or Part V of the Act of 1954) shall be repaid by the Secretary of State into

the National Loans Fund, as mentioned in subsection (3) of this section, with interest thereon at such rate as the Treasury may determine, such interest accruing, in respect of the whole aggregate, from such date in the financial year in which the sums were issued as the Treasury may determine.

- (3) The said aggregate shall be repaid by twenty equal annual instalments, of principal and interest combined, falling due on the anniversary of the date determined under subsection (2) of this section, the first such instalment falling due in the financial year next following the financial year in which the sums in question were issued.
- (4) Any sums received by the Secretary of State by virtue of—
  - (a) the provisions of section 148 of this Act, as applied by Schedule 22 to this Act to compensation paid under Part V of the Act of 1954 ; or
  - (b) the provisions of section 244 of this Act as so applied,shall be paid into the Consolidated Fund.

#### **249 General provision as to receipts of Secretary of State**

Without prejudice to section 248 of this Act, and subject to the provisions of section 157 of this Act, any sums received by the Secretary of State under any provision of this Act shall be paid into the Consolidated Fund.

#### *Expenses of local authorities*

#### **250 Expenses of, and borrowing by, local authorities**

- (1) Any expenses incurred by a local highway authority under the provisions of this Act specified in Parts I and II of Schedule 19 to this Act shall be defrayed in like manner as expenses incurred by the authority on highways.
- (2) Any expenses incurred by a local authority under the provisions of this Act specified in Parts I and II of Schedule 19 to this Act in pursuance of a purchase notice or in the acquisition of land under this Act for the purposes of any function of that authority, shall be defrayed in like manner as other expenses incurred by that authority for the purposes of that function.
- (3) A local authority may borrow for the purposes of this Act in accordance with the provisions of Part XII of the Local Government (Scotland) Act 1947.
- (4) Nothing in this section shall authorise the exercise of the power of borrowing money thereby conferred otherwise than in compliance with the provisions of the Local Authorities Loans Act 1945 and of any orders for the time being in force made by the Treasury under section 1 of the Borrowing (Control and Guarantees) Act 1946.

## PART XIV

### APPLICATION OF ACT TO SPECIAL CASES

#### *Minerals*

#### **251 Power to modify Act in relation to minerals**

- (1) In relation to development consisting of the winning and working of minerals, the provisions of this Act specified in Parts I and II of Schedule 19 to this Act shall have effect subject to such adaptations and modifications as may be prescribed by regulations made under this Act with the consent of the Treasury.
- (2) Regulations made for the purposes of this section shall be of no effect unless they are approved by resolution of each House of Parliament.
- (3) Any regulations made by virtue of subsection (1) of this section shall not apply—
  - (a) to the winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for those purposes; or
  - (b) to development consisting of the winning and working of any minerals vested in the National Coal Board, being development to which any of the provisions of this Act relating to operational land of statutory undertakers apply by virtue of regulations made under section 259 of this Act; or
  - (c) to the winning and working of peat by any person for the domestic requirements of that person;

and nothing in subsection (1) of this section or in this subsection shall be construed as affecting the prerogative right of Her Majesty to any gold or silver mine.

#### **252 Modification of Mines (Working Facilities and Support) Act 1966**

- (1) Where a development plan provides that any land is to be used for the purpose of securing the winning and working of any minerals comprised therein, the provisions of the Mines (Working Facilities and Support) Act 1966 shall have effect in relation to the land subject to such modifications as may be prescribed by regulations made under this Act by the Secretary of State and the Secretary of State for Trade and Industry.
- (2) Regulations made for the purposes of this section may in particular provide for securing—
  - (a) that a right to work any minerals in the land may be granted by the Court of Session under the said Act of 1966 to any person who is desirous of working them, either by himself or through his lessees, and who is unable to obtain the necessary rights by agreement on reasonable terms;
  - (b) that for the purposes of the determination by the court of an application for any such right, it shall be assumed that the winning and working of the minerals is expedient in the national interest; and
  - (c) that the compensation or consideration in respect of any such right which is granted by the court shall be assessed having regard to the amount of the compensation which would be payable in respect of a compulsory acquisition of the minerals under Part VI of this Act.

- (3) Subsections (2) and (3) of section 251 of this Act shall apply to the provisions of this section and to any regulations made thereunder as they apply to the provisions of subsection (1) of that section and to regulations made by virtue of that subsection.

### *Crown land*

## **253 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 of this Act may include proposals relating to the use of Crown land, and any power to acquire land compulsorily under Part VI of this Act may be exercised in relation to any interest therein which is for the time being held otherwise than by or on behalf of the Crown;
  - (b) any restrictions or powers imposed or conferred by Part III, Part IV or Part V of this Act, by the provisions of Part IX of this Act relating to purchase notices and listed building purchase notices, or by any of the provisions of sections 214 to 217 of this Act, shall apply and be exercisable in relation to Crown land, to the extent of any interest therein for the time being held otherwise than by or on behalf of the Crown;
  - (c) a building which for the time being is Crown land may be included in a list compiled or approved by the Secretary of State under section 52 of this Act
- (2) Except with the consent of the appropriate authority—
- (a) no order or notice shall be made or served under any of the provisions of sections 49, 58, 63, 84 or 92 of this Act or under any of those provisions as applied by any order or regulations made under Part IV of this Act, 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 VI of this Act.
- (3) No enforcement notice shall be served under section 84 of this Act in respect of development carried out by or on behalf of the Crown after the appointed day on land which was Crown land at the time when the development was carried out.
- (4) No listed building enforcement notice shall be served in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed.
- (5) No purchase notice or listed building purchase notice shall be served in relation to any interest in Crown land unless an offer has been previously made by the owner of that interest to dispose of it to the appropriate authority on terms that the price payable for it shall be equal to (and shall, in default of agreement, be determined in like manner as) the compensation which would be payable in respect of that interest if it were acquired in pursuance of a purchase notice, and that offer has been refused by the appropriate authority.
- (6) The rights conferred by the provisions of sections 181 to 196 of this Act 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.

(7) In this Part of this Act "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 for the purposes of this section and section 254 of this Act "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, and, 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;
- (b) 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;

and, 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.

#### **254 Agreements relating to Crown land**

- (1) The appropriate authority and the local planning authority for the district in which any Crown land is situated may make agreements 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 thereto; and 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.
- (2) An agreement made under this section by a government department shall not have effect unless it is approved by the Treasury.
- (3) In considering whether to make or approve an agreement under this section relating to land belonging to a government department, or 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

#### **255 Supplementary provisions as to Crown interest**

- (1) Subject to subsection (2) of this section where there is a Crown interest in any land, the provisions of Part VII of this Act and of sections 155 to 157 thereof, and the provisions of Schedules 13, 14 and 15 to this Act and the provisions of Schedule 22 to this Act in so far as they relate to Part VII or to sections 155 to 157 of this Act, shall have effect in relation to any private interest as if the Crown interest were a private interest
- (2) In this section "private interest" means an interest which is not a Crown interest.

#### *Local planning authorities*

#### **256 Application to local planning authorities of provisions as to planning control and enforcement**

- (1) In relation to land of local planning authorities, and to the development by local authorities of land in respect of which they are the local planning authorities, the provisions of this Act specified in Part III of Schedule 19 to this Act shall have effect



subject to such exceptions and modifications as may be prescribed by regulations made under this Act.

- (2) Subject to the provisions of section 37 of this Act any such regulations may in particular provide for securing—
  - (a) that any application by such an authority for planning permission to develop such land, or for any other consent required in relation to such land under the said provisions, shall be made to the Secretary of State and not to the local planning authority;
  - (b) that any order or notice authorised to be made or served under those provisions in relation to such land shall be made or served by the Secretary of State and not by the local planning authority.
- (3) Sections 23, 24 and 26(2) and (3) of this Act shall apply, with the necessary modifications, in relation to applications made to the Secretary of State in pursuance of regulations made for the purposes of subsection (1) of this section, as they apply in relation to applications for planning permission which fall to be determined by the local planning authority.

#### **257 Application to local planning authorities of provisions as to listed buildings**

- (1) In relation to buildings of local planning authorities which are listed, and to the execution of works for their demolition, alteration or extension, the provisions of this Act specified in Part IV of Schedule 19 to this Act shall have effect subject to such exceptions and modifications as may be prescribed by regulations made under this Act.
- (2) Any such regulations may in particular provide for securing—
  - (a) that any application by such an authority for listed building consent shall be made to the Secretary of State and not to the local planning authority;
  - (b) that any notice authorised to be served under the said provisions in relation to a listed building belonging to a local planning authority shall be served by the Secretary of State and not by that authority.

#### **258 Special provisions as to statutory undertakers who are local planning authorities**

In relation to statutory undertakers who are local planning authorities, section 230 of this Act and the provisions specified in subsection (2) of that section shall have effect subject to such exceptions and modifications as may be prescribed by regulations made under this Act.

#### *Special case*

#### **259 National Coal Board**

- (1) Regulations made under this Act by the Secretary of State and the Secretary of State for Trade and Industry with the consent of the Treasury may direct that any of the provisions of this Act specified in Part I of Schedule 19 to this Act or of section 212 of this Act being provisions relating to statutory undertakers and to land of such undertakers, shall apply, subject to such adaptations, modifications and exceptions as may be specified in the regulations, in relation to the National Coal Board, and in relation to land (including mines) of that Board of any such class as may be specified

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in the regulations, as if the Board were statutory undertakers and as if land of any class so specified were operational land.

- (2) Without prejudice to the generality of subsection (1) of this section, any regulations made thereunder may in particular provide that any compensation payable to the National Coal Board by virtue of any of the provisions applied by the regulations, being compensation which, in the case of statutory undertakers, would be assessable in accordance with the provisions of section 227 of this Act, shall, instead of being assessed in accordance with that section, be assessed in accordance with the provisions of the regulations.

## PART XV

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **260 Default powers of Secretary of State**

- (1) If it appears to the Secretary of State, after consultation with the local planning authority, to be expedient that any order to which this subsection applies should be made, he may give directions to the local planning authority requiring them to submit to him such an order for his confirmation, or may himself make such an order; and any order so made by the Secretary of State shall have the like effect as if it had been made by the local planning authority and confirmed by the Secretary of State under Part III or IV of this Act.
- (2) Subsection (1) of this section applies to the following orders, that is to say—
- (a) orders under section 42 of this Act, or under the provisions of that section as applied by any order or regulations made under Part IV of this Act;
  - (b) orders under section 49 of this Act;
  - (c) tree preservation orders and orders amending or revoking them.
- (3) The provisions of Part III or Part IV of this Act, and of any regulations made thereunder, with respect to the procedure to be followed in connection with the submission by the local planning authority of any order to which subsection (1) of this section applies, with respect to the confirmation of such an order by the Secretary of State, and with respect to the service of copies thereof as so confirmed, shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1) of this section, in relation to the making thereof by the Secretary of State, and in relation to the service of copies thereof as so made.
- (4) Without prejudice to subsection (3) of this section, where the Secretary of State proposes under subsection (1) of this section to make any such order as is mentioned in subsection (2) (a) or (b) of this section he shall serve a notice of the proposal on the local planning authority; and if within such period as may be specified in the notice (not being less than twenty-eight days from the date of service) the authority so require, the Secretary of State before making the order shall afford to the authority an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.
- (5) If it appears to the Secretary of State, after consultation with the local planning authority, to be expedient that—
- (a) a completion notice under section 41 of this Act; or

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- (b) a notice under section 63 of this Act; or
- (c) an enforcement notice under section 84 of this Act, or under the provisions of that section as applied by regulations under section 61 of this Act; or
- (d) a stop notice under section 87 of this Act; or
- (e) a listed building enforcement notice,

should be served in respect of any land, he may give directions to the local planning authority requiring them to serve such a notice, or may himself serve such a notice; and any notice so served by the Secretary of State shall have the like effect as a notice served by the local planning authority:

Provided that, in relation to an enforcement notice under section 84 of this Act or a listed building enforcement notice which is served by the Secretary of State, the provisions of sections 86, 88 and 89, or, as the case may be, of sections 94 and 95 of this Act shall apply as if for any reference therein to the local planning authority there were substituted a reference to the Secretary of State.

- (6) If the Secretary of State is satisfied, after holding a local inquiry—
  - (a) that the council of a county or a burgh have failed to take steps for the acquisition of any land which, in the opinion of the Secretary of State, ought to be acquired by that council under section 102 of this Act for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated; or
  - (b) that a local planning authority have failed to carry out, on land acquired by them under section 35 of the Act of 1947 or section 102 of this Act or appropriated by them under section 111 of this Act, any development which, in the opinion of the Secretary of State, ought to be carried out,the Secretary of State may by order require the council or authority to take such steps as may be specified in the order for acquiring the land, or carrying out the development, as the case may be.
- (7) Any order under subsection (6) of this section shall be enforceable, on the application of the Secretary of State, by proceedings under section 91 of the Court of Session Act 1868.

## **261 Power to transfer planning functions of town councils of small burghs to county councils**

- (1) If at any time the Secretary of State considers it expedient in the public interest that the functions under this Act of a local planning authority being the town council of a small burgh should be transferred to the county council of the county within which that burgh is situated, he may by order transfer those functions to the county council, and where any such functions are so transferred any reference in this Act to the local planning authority shall in relation to the district of the small burgh be construed as a reference to the county council.
- (2) An order under the foregoing subsection may make provision for such incidental and consequential matters as the Secretary of State may think fit, including the transfer to the county council of officers, property, rights and liabilities of the town council and the compensation of officers.

## **262 Designation of conservation areas**

- (1) Every local planning authority shall from time to time determine which parts of their district are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and shall designate such areas as conservation areas.
- (2) The Secretary of State may, after consultation with a local planning authority, give to that authority such directions as he thinks necessary with respect to the exercise of their functions under subsection (1) of this section; and it shall be the duty of the authority to comply with any such directions.
- (3) Before making a determination under this section, a local planning authority shall consult with the local planning authority of each district of which any part is included in the area to which the proposed determination relates.
- (4) The local planning authority shall give notice to the Secretary of State of the designation of any conservation area, and of any variation or cancellation of any such designation, with sufficient particulars to identify the area affected, and shall cause the like notice to be published in the Edinburgh Gazette and in at least one newspaper circulating in the district of the local planning authority.
- (5) Where any area is for the time being designated as a conservation area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any buildings or other land in that area, of any powers under this Act, Part I of the Historic Buildings and Ancient Monuments Act 1953 or the Local Authorities (Historic Buildings) Act 1962.

## **263 Assumptions as to planning permission in determining value of interests in land**

- (1) In any case where the value or depreciation in value of an interest in land falls to be determined on the assumption that planning permission would be granted for development of any class specified in Schedule 6 to this Act, it shall be further assumed, as regards development of any class specified in paragraph 1 or 3 of that Schedule, that such permission would be granted subject to the condition set out in Schedule 16 to this Act.
- (2) In the application of the said Schedule 6 for the purposes of any determination to which subsection (1) of this section applies—
  - (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.
- (3) For the purposes of subsections (1) and (2) of this section, so far as applicable to any determination of existing use value as defined in section 176(5) of this Act, references to Schedule 6 to this Act, and to paragraphs 1, 3 and 8 of that Schedule, shall be construed as references to Schedule 3 to the Act of 1947 and to the corresponding paragraphs of that Schedule; and that Schedule shall have effect as if it contained a paragraph corresponding to paragraph 14 of Schedule 6 to this Act.
- (4) Except as provided in section 157(4) of this Act, nothing in the preceding provisions of this section or in paragraph 14 of Schedule 6 affects the meaning of " new

development" in this Act or any determination to be made for the purpose of Part VII of this Act.

- (5) For the avoidance of doubt it is hereby declared that where, under any provision of this Act, the value of an interest in land is required to be assessed on the assumption that planning permission would be granted for development of any class specified in Schedule 6 to this Act, that assumption is to be made on the footing that any such development must comply with the provisions of any enactment, other than this Act, which would be applicable to it.

#### **264 Recovery, on subsequent development, of payments in respect of war-damaged land**

- (1) In relation to notices recorded under section 58 of the Act of 1954 (which provided for the recording of notices of payments made under section 56 of the Act of 1947) the provisions of sections 148 and 149 of this Act shall have effect (subject to the following provisions of this section) as they have effect in relation to notices recorded under section 147 of this Act.
- (2) The said provisions shall have effect as mentioned in subsection (1) of this section, but as if—
- (a) any reference therein to the compensation specified in a notice were a reference to the payment so specified; and
  - (b) section 148 of this Act applied to every description of new development.
- (3) No amount shall be recoverable by the Secretary of State by virtue of this section in respect of any land in relation to which an amount has become recoverable under section 245 of this Act.
- (4) Subsection (5) of section 245 of this Act shall apply for the purposes of this section as it applies for the purposes of that section.

#### **265 Rights of entry**

- (1) Any person duly authorised in writing by the Secretary of State or by a local planning authority may at any reasonable time enter upon any land for the purpose of surveying it in connection with—
- (a) the preparation, approval, adoption, making or amendment of a structure plan or local plan relating to the land under Part II of this Act, including the carrying out of any survey under that Part;
  - (b) any application under Part III or section 60 or 63 of this Act, or under any order or regulations made thereunder, for any permission, consent or determination to be given or made in connection with that land or any other land under Part III or either of those sections of this Act or under any such order or regulations;
  - (c) any proposal by the local planning authority or by the Secretary of State to make or serve any order or notice under Part III (other than section 44), Part IV or Part V of this Act, or under any order or regulations made thereunder or any notice under section 105 of this Act
- (2) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter upon any land for the purpose of surveying any building thereon in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 52 of this Act.

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- (3) Any person duly authorised in writing by the Secretary of State or a local planning authority may at any reasonable time enter upon any land for the purpose of ascertaining whether, with respect to any building on the land, an offence has been, or is being, committed under section 53 or 94 of, or Schedule 10 to, this Act, or whether the building is being maintained in a proper state of repair.
- (4) Any person duly authorised in writing by the Secretary of State, a local planning authority or a local authority may at any reasonable time enter upon any land for the purpose of ascertaining whether—
  - (a) an offence appears to have been committed under section 55 of this Act; or
  - (b) any of the functions conferred by section 97 or 99 of this Act should or may be exercised in connection with the land,
 or for the purpose of exercising any of those functions in connection with the land.
- (5) Any person, being an officer of the Valuation Office or a person duly authorised in writing by the Secretary of State, may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation under Part VII of this Act in respect of that land or any other land.
- (6) Any person, being an officer of the Valuation Office or a person duly authorised in writing by a local planning authority, may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of that land or any other land, being compensation payable by the local planning authority under Part VIII of this Act (other than section 164), under section 201(5) of this Act or under Part XI of this Act (other than section 226(2) or 227(1)(c)).
- (7) Any person, being an officer of the Valuation Office or a person duly authorised in writing by a local authority or Minister authorised to acquire land under section 102 or 103 of this Act, and any person duly authorised in writing by a local authority having power to acquire land under Part VI of this Act, may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land, or in connection with any claim for compensation in respect of any such acquisition.
- (8) Subject to the provisions of section 266 of this Act, any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein.

## **266 Supplementary provisions as to rights of entry**

- (1) A person authorised, under section 265 of this Act to enter upon any land shall, if so required, produce evidence of his authority before so entering, and shall not demand admission as of right to any land which is occupied unless twenty-four hours' notice of the intended entry has been given to the occupier.
- (2) Any person who wilfully obstructs a person acting in the exercise of his powers under section 265 of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20.
- (3) If any person who, in compliance with the provisions of section 265 of this Act, is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, he shall, unless the disclosure is made in the course of performing his duty in connection

with the purpose for which he was authorised to enter the premises, be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both.

- (4) Where any land is damaged in the exercise of a right of entry conferred under section 265 of this Act, or in the making of any survey for the purpose of which any such right of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the land from the Secretary of State or authority on whose behalf the entry was effected.
- (5) The provisions of section 168 of this Act shall apply in relation to compensation under subsection (4) of this section as they apply in relation to compensation under Part VIII of this Act.
- (6) Where under section 265 of this Act a person proposes to carry out any works authorised by virtue of subsection (8) of that section—
  - (a) he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (1) of this section; and
  - (b) if the land in question is held by statutory undertakers, and those undertakers object to the proposed works on the grounds that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, the works shall not be carried out except with the authority of the appropriate Minister.

## **267 Local inquiries**

- (1) Subject to the provisions of this section, the Minister may cause a local inquiry to be held for the purposes of the exercise of any of his functions under any of the provisions of this Act.
- (2) The Minister shall appoint a person to hold the inquiry and to report thereon to him.
- (3) Notification of the time when and the place where the inquiry is to be held shall be sent to any person who has lodged and has not withdrawn objections in relation to any matter in question at the inquiry, and shall be published in such newspaper or newspapers as the Minister may direct.
- (4) The person appointed to hold the inquiry may, on the motion of any party thereto or of his own motion, serve a notice in writing on any person requiring him to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry:

Provided that—

- (i) no person shall be required in obedience to such a notice to attend at any place which is more than ten miles from the place where he resides unless the necessary expenses are paid or tendered to him; and
- (ii) nothing in this subsection shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

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- (5) The person appointed to hold the inquiry may administer oaths and examine witnesses on oath and may accept, in lieu of evidence on oath by any person, a statement in writing by that person.
- (6) Any person who refuses or wilfully neglects to attend in obedience to a notice under subsection (4) of this section or to give evidence or who wilfully alters, suppresses, conceals, destroys, or refuses to produce, any book or document which he may be required to produce by any such notice shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months.
- (7) The Minister may make orders as to the expenses incurred by the Minister in relation to the inquiry (including such reasonable sum as the Minister may determine for the services of the person appointed to hold the inquiry) and as to the expenses incurred by the parties to the inquiry and as to the parties by whom such expenses shall be paid.
- (8) Any order of the Minister under subsection (7) of this section requiring any party to pay expenses may be enforced in like manner as a recorded decree arbitral.
- (9) In this section the expression "Minister" means the Secretary of State, or any other Minister authorised under this Act to hold a local inquiry.

## **268 Inquiries under Private Legislation Procedure (Scotland) Act 1936**

- (1) Where the Ministers concerned so direct—
  - (a) any inquiry in relation to an order under this Act which in certain events becomes subject to special parliamentary procedure, and
  - (b) any hearing in connection with—
    - (i) an appeal against the refusal, or the grant, subject to conditions, of an application by statutory undertakers for planning permission to develop operational land, or
    - (ii) such an application made by statutory undertakers and referred to the Secretary of State, or
    - (iii) the revocation or modification of planning permission to develop operational land granted to statutory undertakers,
 shall be held by Commissioners under the Private Legislation Procedure (Scotland) Act 1936.
- (2) Any such direction shall be deemed to have been given under section 2, as read with section 10, of the Statutory Orders (Special Procedure) Act 1945.
- (3) Subsections (5) and (6) of section 225 of this Act shall not apply to an order such as is mentioned in subsection (1)(a) above.
- (4) Nothing in subsections (2) to (9) of section 267 of this Act shall apply to any inquiry to which subsection (1)(a) above applies.
- (5) The provisions of the said Act of 1945 in relation to the publication of notices in the Edinburgh Gazette and in a newspaper shall, notwithstanding anything contained in that Act, not apply to any order under this Act which is subject to special parliamentary procedure.



## **269 Service of notices**

- (1) Subject to the provisions of this section, any notice or other document required or authorised to be served or given under this Act may be served or given either—
  - (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
  - (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address; or
  - (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address ; or
  - (d) in the case of a person on whom the notice is required to be served as being a person appearing from the valuation roll to have an interest in land, by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his address as entered in the valuation roll; or
  - (e) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.
- (2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if—
  - (a) being addressed to him either by name or by the description of "the owner", "the lessee" or "the occupier", as the case may be, of the premises (describing them) it is delivered or sent in the manner specified in subsection (1)(a), (b) or (c) of this section; or
  - (b) being so addressed, and marked in such manner as may be prescribed by regulations under this Act for securing that it shall be plainly identifiable as a communication of importance, it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.
- (3) Where the notice or other document is required to be served on or given to all persons having interests in, or being occupiers of, premises comprised in any land, and it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied, the notice or document shall be taken to be duly served on all persons having interests in. and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if it is addressed to " the owners and any lessees and occupiers " of that part of the land (describing it) and is affixed conspicuously to some object on the land.

## **270 Power to require information as to interests in land**

- (1) For the purpose of enabling the Secretary of State or a local authority to make an order or serve any notice or other document which, by any of the provisions of this Act, he or they are authorised or required to make or serve, the Secretary of State or the

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local authority may require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to state in writing the nature of his interest therein, and the name and address of any other person known to him as having an interest therein, whether as superior, owner, heritable creditor, lessee or otherwise.

- (2) Any person who, having been required in pursuance of this section to give any information, fails to give that information shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (3) Any person who, having been so required to give any information, knowingly makes any misstatement in respect thereof shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or both.

## **271 Offences by corporations**

- (1) Where an offence under this Act (other than section 55) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.
- (2) In subsection (1) of this section the expression "director", in relation to any body corporate established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

## **272 Combined applications**

- (1) Regulations made under this Act may provide for the combination in a single document, made in such form and transmitted to such authority as may be prescribed by the regulations, of—
  - (a) an application for planning permission in respect of any development; and
  - (b) an application required, under any enactment specified in the regulations, to be made to a local authority in respect of that development.
- (2) Before making any regulations under this section, the Secretary of State shall consult with such local authorities or associations of local authorities as appear to him to be concerned.
- (3) Different provision may be made by any such regulations in relation to areas in which different enactments are in force.
- (4) An application required to be made to a local authority under an enactment specified in any such regulations shall, if made in accordance with the provisions of the regulations, be valid notwithstanding anything in that enactment prescribing, or enabling any authority to prescribe, the form in which, or the manner in which, such an application is to be made.
- (5) Subsection (4) of this section shall have effect without prejudice to—

- (a) the validity of any application made in accordance with the enactment in question; or
  - (b) any provision of that enactment enabling a local authority to require further particulars of the matters to which the application relates.
- (6) In this section " application " includes a submission.

## **273 Regulations and orders**

- (1) The Secretary of State may make regulations under this Act—
- (a) for prescribing the form of any notice, order or other document authorised or required by any of the provisions of this Act to be served, made or issued by any local authority;
  - (b) for any purpose for which regulations are authorised or required to be made under this Act, not being a purpose for which regulations are authorised or required to be made by another Minister.
- (2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument; and any statutory instrument containing regulations made under this Act (except regulations which, by virtue of any provision of this Act, are of no effect unless approved by a resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament
- (3) Any power conferred by any of the provisions of this Act to make an order shall include power to vary or revoke any such order by a subsequent order.
- (4) The power to make orders under sections 1(3), 18, 19(2)(f), 21, 53(3), 67, 71(6), 72(4), 73(8), 181(4)(a), 261 and 279 of this Act shall be exercisable by statutory instrument.
- (5) Any statutory instrument which contains a development order or an order under section 1(3), 67, 71(6), 73(8) or 18(4)(a) of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Without prejudice to subsection (5) of this section, where a development order makes provision for excluding or modifying any enactment contained in a public general Act (other than any of the enactments specified in Schedule 20 to this Act) the order shall not have effect until that provision is approved by a resolution of each House of Parliament.
- (7) Any order under this Act which designates an area for the purposes of section 72(4) of this Act shall cease to have effect at the end of the period of twenty-eight days beginning with the day on which the order is made (but without prejudice to anything previously done under the order or to the making of a new order) unless before the end of that period the order is approved by a resolution of each House of Parliament.
- (8) In reckoning any period for the purposes of subsection (7) of this section, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) Any order under section 67, 71(6), 72(4) or 73(8) of this Act may contain such supplementary and incidental provisions as may appear to the Secretary of State to be appropriate.
- (10) Any power (exercisable in accordance with section 280(2) of this Act) to make regulations or orders under this Act before the date of the commencement of this Act

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shall include power, by any regulations or order so made, to revoke any regulations or order made under any of the enactments which, as from that date, are repealed by this Act or having effect by virtue of any of those enactments as if made thereunder.

#### **274 Act not excluded by special enactments**

For the avoidance of doubt it is hereby declared that the provisions of this Act, and any restrictions or powers thereby imposed or conferred in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made by any enactment in force at the passing of the Act of 1947, or by any local Act passed at any time during the Session of Parliament held during the regnal years 10 & 11 Geo. 6. for authorising or regulating any development of the land.

#### **275 Interpretation**

(1) In this Act, except in so far as the context otherwise requires and subject to the transitional provisions herein after contained, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

" acquiring authority ", in relation to the acquisition of an interest in land (whether compulsorily or by agreement) or to a proposal so to acquire such an interest, means the government department, local authority or other body by whom the interest is, or is proposed to be, acquired;

" the Act of 1945 " means the Town and Country Planning (Scotland) Act 1945 ;

" the Act of 1947 " means the Town and Country Planning (Scotland) Act 1947;

" the Act of 1954 " means the Town and Country Planning (Scotland) Act 1954;

" the Act of 1959 " means the Town and Country Planning (Scotland) Act 1959 ;

" the Act of 1969 " means the Town and Country Planning (Scotland) Act 1969;

" advertisement " means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the foregoing provisions of this definition), includes any hoarding or similar structure used, or adapted for use, for the display of advertisements, and references to the display of advertisements shall be construed accordingly;

" agriculture " includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for wood lands where that use is ancillary to the farming of land for other agricultural purposes, and " agricultural " shall be construed accordingly;

" the appointed day " means 1st July 1948 ;

" the appropriate Minister " has the meaning assigned to it by section 213 of this Act;

" area of extensive war damage " and " area of bad lay-out or obsolete development " mean respectively an area consisting of land shown to the

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satisfaction of the Secretary of State to have sustained war damage or, as the case may be, to be badly laid out or of obsolete development or consisting of such land together with other land contiguous or adjacent thereto, being in each case land comprised in an area which is defined by a development plan as an area of comprehensive development;

" authority possessing compulsory purchase powers ", in relation to the compulsory acquisition of an interest in land, means the person or body of persons effecting the acquisition, and, in relation to any other transaction relating to an interest in land, means any person or body of persons who could be or have been authorised to acquire that interest compulsorily for the purposes for which the transaction is or was effected:

Provided that in relation to any such transaction to which an executive council or a joint committee constituted by virtue of section 32 of the National Health Service (Scotland) Act 1947 are a party in the exercise of their statutory functions, the said expression shall be construed as including that council or joint committee.

" authority to whom Part II of the Act of 1959 applies " means a body of any of the descriptions specified in Schedule 4 to the Act of 1959 ;

" bridleway " has the same meaning as in section 47 of the Countryside (Scotland) Act 1967;

" building ", except in sections 71 to 83 of this Act, includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

" building or works " includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly;

" building operations " includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder;

" caravan site " has the meaning assigned to it by section 1 (4) of the Caravan Sites and Control of Development Act 1960;

" clearing ", in relation to land, means the removal of buildings or materials from the land, the levelling of the surface of the land, and the carrying out of such other operations in relation thereto as may be prescribed;

" common " includes any town or village green ;

" compulsory acquisition " does not include the vesting in a person by an Act of Parliament of property previously vested in some other person ;

" conservation area " means an area designated under section 262 of this Act; 'development' has the meaning assigned to it by section 19 of this Act, and "develop" shall be construed accordingly;

" development order " has the meaning assigned to it by section 21 of this Act;

" development plan " (subject to section 18 of, and paragraph 7 of Schedule 4 to, this Act) shall be construed in accordance with section 17 of this Act;

" disposal ", except in section 113(7) of this Act, means disposal by way of sale, excambion or lease, or by way of the creation of any servitude, right or privilege, or in any other manner, except by way of appropriation, gift or the creation of a heritable security, and " dispose of " shall be construed accordingly;

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" enactment " includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, bye-law or scheme made under an Act of Parliament, including an order or scheme confirmed by Parliament;

" enforcement notice " means a notice under section 84 of this Act;

" engineering operations " includes the formation or laying out of means of access to highways;

" erection ", in relation to buildings as defined in this subsection, includes extension, alteration and re-erection;

" established use certificate " has the meaning assigned to it by section 90 of this Act;

" feu charter " includes a feu contract and any other instrument by which land is feued;

" footpath " has the same meaning as in section 47 of the Countryside (Scotland) Act 1967 ;

" functions " includes powers and duties;

" government department " includes any Minister of the Crown;

" heritable security " means—

(a) a heritable security within the meaning of the Conveyancing (Scotland) Act 1924 exclusive of a security by way of ground annual and a real burden *ad factum praestandum* but inclusive of a security constituted by way of *ex facie absolute disposition*; or

(b) an assignation in security of a lease recorded under the Registration of Leases (Scotland) Act 1857;

and the expression "heritable creditor" shall be construed accordingly;

" improvement ", in relation to a highway, has the same meaning as the expression " improvement of roads " has in Part II of the Development and Road Improvement Funds Act. 1909;

" industrial development certificate " has the meaning assigned to it by section 65 of this Act;

" joint planning committee " has the meaning assigned to it by Schedule 1 to this Act;

" land " includes land covered with water and any building as defined by this section, and, in relation to the acquisition of land under Part VI of this Act, includes any interest in land and any servitude or right in or over land;

" Lands Tribunal " means Lands Tribunal for Scotland;

" large burgh " has the meaning assigned to it in the Local Government (Scotland) Act 1947 ;

" lease " includes a sub-lease, but does not include an option to take a lease;

" listed building " has the meaning assigned to it by section 52(7) of this Act;

" listed building consent " has the meaning assigned to it by section 53(2) of this Act;

" listed building enforcement notice " has the meaning assigned to it by section 92 of this Act;

" listed building purchase notice " has the meaning assigned to it by section 179 of this Act;

" local authority " (except in section 204 of this Act) means a county council, town council or district council, and includes any joint board or joint

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committee of which all the constituent authorities are such local authorities as aforesaid;

" local highway authority " means a highway authority other than the Secretary of State;

" local planning authority " has the meaning assigned to it by section 1 of this Act;

" means of access " includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street;

" minerals " includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working;

" Minister " means any Minister of the Crown or other government department;

" new development " has the meaning assigned to it by section 19(5) of this Act;

" 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 ;

" operational land " has the meaning assigned to it by section 211 of this Act;

" owner ", in relation to any land, includes (except in sections 24 and 26 of this Act) any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking, and includes also a lessee under a lease of agreement, the unexpired period of which exceeds three years;

" planning decision " means a decision made on an application under Part III of this Act;

" planning permission " means permission under Part III of this Act, and in construing references to planning permission to develop land or to carry out any development of land, or to applications for such permission, regard shall be had to section 29(2) of this Act;

" planning permission granted for a limited period " has the meaning assigned to it by section 27(2) of this Act;

" prescribed " (except in relation to matters expressly required or authorised by this Act to be prescribed in some other way) means prescribed by regulations under this Act;

" previous apportionment ", in relation to an apportionment for any of the purposes of the relevant provisions, means an apportionment made before the apportionment in question, being—

- (a) an apportionment for any of the purposes of the relevant provisions as made, confirmed or varied by the Lands Tribunal on a reference to that Tribunal ; or
- (b) an apportionment for any of those purposes which might have been referred to the Lands Tribunal by virtue of any of the relevant provisions, where the time for such a reference has expired without its being required to be so referred, or where, after it had been so referred, the reference was withdrawn before the Tribunal gave their decision thereon; or
- (c) an apportionment made by or with the approval of the Central Land Board in connection with the approval by the Board, under section 2(2) of the Town and Country Planning Act 1953 of an assignment of part of the benefit of an established claim (as defined by section 124(4) of this Act, and in this definition " the relevant provisions " means any of

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the provisions of Part VII of this Act, any of those provisions as applied by any other provision of this Act, and any of the provisions of the Act of 1954;

" purchase notice " has the meaning assigned to it by section 169 of this Act;

" relocation of population or industry ". in relation to any area, means the rendering available elsewhere than in that area (whether in an existing community or a community to be newly established) of accommodation for residential purposes or for the carrying on of business or other activities, together with all appropriate public services, facilities for public worship, recreation and amenity, and other requirements, being accommodation to be rendered available for persons or undertakings who are living or carrying on business or other activities in that area or who were doing so but by reason of war circumstances are no longer for the time being doing so, and whose continued or resumed location in that area would be inconsistent with the proper planning thereof;

" replacement of open space ", in relation to any area, means the rendering of land available for use as an open space, or otherwise in an undeveloped state, in substitution for land in that area which is so used;

" small burgh " has the meaning assigned to it in the Local Government (Scotland) Act 1947;

" statutory undertakers " means persons authorised by any enactment, to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water, and "statutory undertaking " shall be construed accordingly;

" stop notice " has the meaning assigned to it by section 87 of this Act;

" tree preservation order " has the meaning assigned to it by section 58 of this Act;

" use ", in relation to land, does not include the use of land for the carrying out of any building or other operations thereon;

" Valuation Office " means the Valuation Office of the Inland Revenue Department;

" war damage " has the same meaning as in the War Damage Act 1943.

- (2) If, in relation to anything required or authorised to be done under this Act, any question arises as to which Minister is or was the appropriate Minister in relation to any statutory undertakers, that question shall be determined by the Treasury; and if any question so arises whether land of statutory undertakers is operational land, that question shall be determined by the Minister who is the appropriate Minister in relation to those undertakers.
- (3) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served.
- (4) With respect to references in this Act to planning decisions—
  - (a) in relation to a decision altered on appeal by the reversal or variation of the whole or part thereof, such references shall be construed as references to the decision as so altered ;
  - (b) in relation to a decision upheld on appeal, such references shall be construed as references to the decision of the local planning authority and not to the decision of the Secretary of State on the appeal;



- (c) in relation to a decision given on an appeal in the circumstances mentioned in section 34 of this Act, such references shall be construed as references to the decision so given;
  - (d) the time of a planning decision, in a case where there is or was an appeal, shall be taken to be or have been the time of the decision as made by the local planning authority (whether or not that decision is or was altered on that appeal) or, in the case of a decision given on an appeal in the circumstances mentioned in section 34 of this Act, the time when in accordance with that section notification of a decision of the local planning authority is deemed to have been received.
- (5) Subject to section 40(1) of this Act, for the purposes of this Act development of land shall be taken to be initiated—
- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
  - (b) if the development consists of a change in use, at the time when the new use is instituted;
  - (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in the preceding paragraphs.
- (6) Any reference in this Act to an assignation in security shall be construed as including a reference to an ex facie absolute assignation qualified as a security by a collateral agreement
- (7) In this Act any reference to a sale or purchase includes a reference to a sale or purchase by way of feu, and any reference to the price in relation to a sale or purchase includes a reference to grassum, feu-duty and ground annual.
- (8) Any reference in this Act to the dominium utile in relation to land which is not held on feudal tenure shall be construed as a reference to the interest in the land of the owner thereof.
- (9) References in this Act to any of the provisions in Part III or IV of Schedule 19 to this Act include, except where the context otherwise requires, references to those provisions as modified under section 256 or 257 of this Act
- (10) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Act

## **276 Consequential amendments**

- (1) Subject to section 18 of this Act, the enactments specified in Schedule 21 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.
- (2) References in any Act to the acquisition of land under Part III of the Act of 1947 or to land acquired thereunder (including references which, by Schedule 12 to that Act, are to be construed as such) shall be respectively construed as, or as including (according as the context requires) references to the acquisition of land under Part VI of this Act and to land acquired thereunder.

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## **277 Transitional provisions, savings and repeals**

- (1) The transitional provisions and savings contained in Schedule 22 to this Act shall have effect.
- (2) Subject to the provisions of that Schedule, the enactments specified in Schedule 23 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The inclusion in this Act of any express savings, transitional provision or amendment shall not be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

## **278 General vesting declarations**

- (1) Schedule 24 to this Act shall have effect for the purpose of enabling any authority to whom this section applies to vest in themselves by a declaration land which they are authorised by a compulsory purchase order to acquire and, with respect to the effect of such a declaration, the payment and recovery of sums in respect of compensation for the acquisition of land so vested and other matters connected therewith.
- (2) This section applies to any Minister or local or other public authority authorised to acquire land by means of a compulsory purchase order, and any such authority is in the said Schedule 24 referred to as an acquiring authority.
- (3) This section shall not apply to the compulsory acquisition of land with respect to which a compulsory purchase order was in force before 8th December 1969.

## **279 Commencement of certain provisions**

- (1) The provisions of this Act referred to in subsection (2) of this section shall come into operation on a day appointed by an order made by the Secretary of State.
- (2) The provisions of this Act referred to in this subsection are sections 58(5) and 59(1) to (3) of this Act and Schedule 7 to this Act.
- (3) Different days may be appointed under this section for different purposes and, in particular, different days may be so appointed for the coming into operation or repeal of the same provisions in different areas.
- (4) No order under this section relating to Schedule 7 to this Act shall be made unless a draft of the order has been approved by both Houses of Parliament.
- (5) Any reference in this Act to the commencement of any provision referred to in subsection (2) of this section shall be construed as a reference to the day appointed for the coming into operation of that provision or, in the case of a provision which comes into operation on different days in different areas, shall, in relation to any area be construed as a reference to the day appointed for the coming into operation of that provision in that area.
- (6) An order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into operation or repealed, including such adaptation of those provisions or of any other provisions of this Act then in force as appears to him to be necessary or expedient in consequence of the partial operation of this Act (whether before or after the day appointed by the order).

- (7) The Secretary of State shall maintain and keep up to date a register showing the effect of orders made under this section in such a way as enables members of the public to inform themselves—
- (a) as to the provisions which have come, or are to be brought into operation or have been, or are to be, repealed, and on which date and in relation to which areas; and
  - (b) as to whether, in the case of a particular area, any transitional provision has been made by such an order.
- (8) The register maintained under this section by the Secretary of State shall be kept at his principal offices in Edinburgh and shall be available for inspection by the public at reasonable hours.

## **280 Commencement**

- (1) Except as provided in sections 18 and 279 of this Act and subject to the following provisions of this section, this Act shall come into operation on the expiry of the period of one month beginning with the date on which it is passed; and the date of coming into operation of this Act as aforesaid is in this section referred to as " the commencement date ".
- (2) The following provisions of this Act, that is to say—
- (a) sections 71 to 83 and 174, this section and paragraphs 24 and 25 of Schedule 22,
  - (b) sections 253(1)(b), 269, 271, 273 and 275 so far as they relate to any of the provisions of sections 71 to 83 and 174 or anything done or to be done under any such provision,
  - (c) Schedule 23 so far as it relates to the repeal of Part I of the Control of Office and Industrial Development Act 1965,
  - (d) any provisions which confer any power to make regulations or orders, or which (whether expressly or as construed in accordance with section 32(3) of the Interpretation Act 1889) confer any power to revoke or vary any regulations or orders, and
  - (e) any provisions relating to the exercise of any such power,
- shall come into operation on the passing of this Act; but no regulations or order shall be made under this Act so as to come into operation before the commencement date other than any regulations or order made under any of the provisions of sections 71 to 83 of this Act.
- (3) In subsection (2) of this section the reference to provisions of this Act relating to the exercise of any such power as is therein mentioned includes a reference to any provisions of this Act whereby statutory instruments containing regulations or an order are subject to annulment in pursuance of a resolution of either House of Parliament, or whereby any regulations or order or any provisions thereof require the approval of each of those Houses.
- (4) Any reference in this Act to the commencement of this Act is a reference to the coming into operation of so much of this Act as comes into operation on the commencement date, and any reference to the date of the commencement of this Act is a reference to that date ; and if any Act passed after the passing of this Act refers to the commencement of this Act, subsections (2) and (3) of this section and section 18 of this Act shall be disregarded for the purpose of construing that reference in accordance

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with section 36 of the Interpretation Act 1889 (which relates to the meaning of "commencement" with reference to an Act).

- (5) The preceding provisions of this section shall have effect without prejudice to the generality of section 37 of the Interpretation Act 1889 (which relates to the exercise of statutory powers between the passing and the commencement of an Act).

## **281 Citations and extent**

- (1) This Act may be cited as the Town and Country Planning (Scotland) Act 1972.
- (2) The Town and Country Planning (Amendment) Act 1972 and this Act may be cited together as the Town and Country Planning (Scotland) Acts 1972.
- (3) This Act, except so far as it provides for Joint Planning Inquiry Commissions and relates to the House of Commons Disqualification Act 1957, extends to Scotland only.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### COMBINATION OF AUTHORITIES

#### PART I

##### *Voluntary Combination*

- 1 An agreement entered into under section 1(2) of this Act shall provide for the appointment of a joint planning committee, which shall consist of representatives of the local planning authorities concerned, and for the delegation to the joint planning committee of all or some of the functions (other than the power to borrow money or to levy a rate) relating to the purposes for which the combination has effect, and the agreement may make provision for the transfer of property and liabilities, the adjustment of liabilities between the authorities, the transfer and compensation of officers, the settlement of differences and for such other matters as appear to be necessary or expedient for the purpose of carrying the combination into effect.
- 2 The expenses of the joint planning committee shall be defrayed by the constituent authorities in the proportions specified or provided for in the agreement, and the proportion of expenses falling to be defrayed by a local planning authority shall be defrayed by that authority in like manner as if the expenses had been incurred by that authority for the purposes for which the combination has effect.
- 3 The Secretary of State may, on the application of the local planning authorities concerned, make an order for the purpose of giving effect to any of the foregoing provisions of this Part of this Schedule.
- 4 The Secretary of State may by order constitute the joint planning committee a body corporate.
- 5 The Secretary of State may, if it appears to him expedient so to do, make an order withdrawing the consent given by him to the combination under section 1(2) of this Act of any two or more local planning authorities and dissolving the combination; and any such order may contain provisions regulating the rights and liabilities of the authorities concerned and such other provisions (including provision for the transfer and compensation of officers), as appear to the Secretary of State to be necessary or proper in the circumstances:  
  
Provided that the Secretary of State shall not make such an order except after holding a local inquiry unless all the authorities concerned have consented to the making of the order.

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## PART II

### *Combination by Order*

- 1 An order made under section 1(3) of this Act shall provide for the constitution of a joint planning committee consisting of such number of members as may be determined by the order to be appointed by the constituent authorities and for the delegation to the committee of such of the functions (other than the power to borrow money or to levy a rate) of the constituent authorities as may be specified in the order.
- 2 An order made under the said section 1(3)—
  - (a) may provide for regulating the appointment, tenure of office and vacation of office, of members of the committee, for regulating the meetings and proceedings of the committee and for the payment of the expenses of the committee by the constituent authorities ;
  - (b) may provide that a committee constituted thereby shall be a body corporate;
  - (c) may provide for the transfer and compensation of officers, the transfer of property and liabilities and the adjustment of accounts and apportionment of liabilities ; and
  - (d) may contain such other provisions as appear to the Secretary of State to be necessary or expedient for enabling the committee to exercise their functions.
- 3 The Secretary of State may, if it appears to him expedient so to do, make an order dissolving, or altering the constitution of, such a joint planning committee or varying the delegation to the committee ; and any such order may contain provisions regulating the rights and liabilities of the authorities concerned and such other provisions (including provisions for the transfer and compensation of officers) as appear to the Secretary of State to be necessary or proper in the circumstances.

## SCHEDULE 2

Section 2.

### JOINT ADVISORY COMMITTEES AND SUB-COMMITTEES

## PART I

### *Joint Advisory Committees*

- 1 Any two or more local planning authorities may, with the approval of the Secretary of State, concur in establishing a joint advisory committee for the purpose of advising those authorities as to the preparation of structure plans and local plans and generally as to the planning of development in their districts; and any such committee shall be constituted in such manner as may be determined by the authorities by whom it is established:  
  
 Provided that a majority of the members of any such committee shall be members of one or other of those authorities.
- 2 If it appears to the Secretary of State to be expedient that a joint advisory committee or any two or more local planning authorities should be established in accordance

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with the last foregoing paragraph, he may, after consultation with those authorities, by order establish such a committee, and any such order may—

- (a) provide for the reference to the committee of such matters as may be specified in the order;
- (b) make such incidental and consequential provisions (including provision for the payment of expenses of the committee and the transfer and compensation of officers), as appear to the Secretary of State to be expedient

3 Any power conferred by this Part of this Schedule to establish and constitute a joint advisory committee shall include power to dissolve or alter the constitution of such committee and to vary the reference to the committee.

## PART II

### *Sub-Committees*

1 Any committee established by a local planning authority for the discharge of their functions under this Act may, subject to any restrictions imposed by that authority, and shall if so required by that authority—

- (a) establish such sub-committees as the committee (hereinafter referred to as "the planning committee") or the local planning authority may determine; and
- (b) authorise any such sub-committee to exercise on their behalf any functions of the planning committee,

and any such sub-committee shall be constituted in such manner as may be determined (subject to any such restrictions as aforesaid) by the planning committee or by the local planning authority, but not less than two-thirds of the members of any such committee shall be members of the local planning authority or of a local authority for any area forming part of the district of the local planning authority.

2 The power conferred by the last foregoing paragraph to establish and constitute sub-committees or to authorise such sub-committees to exercise any functions shall include power to dissolve or alter the constitution of such sub-committees and to vary any such authorisation.

3 The provisions of this Part of this Schedule shall, with any necessary modifications, apply in relation to a joint planning committee appointed in pursuance of a combination of local planning authorities under section 1 of this Act or a joint advisory committee as they apply in relation to a committee to which paragraph 1 of this Part of this Schedule relates.

## SCHEDULE 3

Section 18.

### DEVELOPMENT PLANS : PROVISIONS IN FORCE UNTIL SUPERSEDED BY PART II OF THIS ACT

#### *Surveys of planning districts and preparation of development plans*

1 (1) Any local planning authority who have not submitted to the Secretary of State a development plan for their district shall carry out a survey of their district and shall,

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within such period as the Secretary of State may in any particular case allow, submit to the the Secretary of State a report of the survey together with a development plan for their district.

- (2) Subject to the following provisions of this Part of this Schedule in this Act " development plan " means a plan indicating the manner in which a local planning authority propose that land in their district should be used, whether by the carrying out thereon of development or otherwise, and the stages by which any such development should be carried out.
- (3) Subject to the provisions of any regulations made under this Act for regulating the form and content of development plans, any such plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals in question with such degree of particularity as may be appropriate to different parts of the district; and any such plan may in particular define the sites of proposed roads, public and other buildings and works, airfields, parks, pleasure grounds, nature reserves and other open spaces, or allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan.
- (4) For the purposes of this paragraph, a development plan may define as an area of comprehensive development any area which, in the opinion of the local planning authority, should be developed or redeveloped as a whole for any one or more of the following purposes, that is to say—
- (a) for the purpose of dealing satisfactorily with extensive war damage or conditions of bad lay-out or obsolete development ; or
  - (b) for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of the development or redevelopment of any other area ; or
  - (c) for any other purpose specified in the plan ;
- and land may be included in any area so defined whether or not provision is made by the plan for the development or redevelopment of that particular land.
- (5) At any time before a development plan with respect to the whole of the district of a local planning authority has been approved by the Secretary of State, that authority may, with the consent of the Secretary of State, and shall, if so required by directions of the Secretary of State, prepare and submit to him a development plan relating to part of that district; and the foregoing provisions of this paragraph shall apply in relation to any such plan as they apply in relation to a plan relating to the whole of the district of a local planning authority.

#### *Approval of development plans*

- 2           The Secretary of State may approve any development plan submitted to him under paragraph 1 of this Schedule, either without modification or subject to such modifications as he considers expedient

#### *Amendment of development plans*

- 3           (1) At least once in every five years after the date on which a development plan for any district was approved by the Secretary of State, the local plaiming authority shall carry out a fresh survey of that district and (subject to paragraph 1 of Schedule 5 to this Act) submit to the Secretary of State a report of the survey, together with



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proposals for any alterations or additions to the plan which appear to them to be required having regard thereto.

- (2) Without prejudice to the provisions of sub-paragraph (1) of this paragraph, any local planning authority may (subject to paragraph 1 of Schedule 5 to this Act) at any time, and shall if so required by directions of the Secretary of State, submit to the Secretary of State proposals for such alterations or additions to the development plan for their district or any part thereof as appear to them to be expedient, or as may be required by those directions, as the case may be.
- (3) Where proposals for alterations or additions to a development plan are submitted to the Secretary of State under this paragraph, the Secretary of State may amend that plan to such extent as he considers expedient having regard to those proposals and to any other material considerations.
- (4) Where in accordance with the provisions of paragraph 1(5) of this Schedule a development plan has been prepared for part of the district of a local planning authority, and has been approved by the Secretary of State, then (without prejudice to the provisions of sub-paragraph (2) of this paragraph) the periods of five years mentioned in sub-paragraph (1) of this paragraph shall run from the date on which development plans in respect of the whole of the district have been approved by the Secretary of State.

*Additional powers of Secretary of State with respect to development plans*

- 4 (1) Where, by virtue of any of the foregoing provisions of this Schedule or of any directions of the Secretary of State thereunder, any development plan, report or proposals for alterations or additions to a development plan are required to be submitted to the Secretary of State, then—
  - (a) if within the period allowed in that behalf under those provisions or directions no such plan, report or proposals, or no such plan or proposals satisfactory to the Secretary of State, have been so submitted ; or
  - (b) if at any time it appears to the Secretary of State that the local planning authority are not taking the steps necessary to enable them to submit such a plan, report or proposals within that period,the Secretary of State may, after carrying out any survey which appears to him to be expedient for the purpose, make such development plan, or, as the case may be, amend the development plan to such extent, as he considers expedient.
- (2) Where, under sub-paragraph (1) of this paragraph, the Secretary of State has power to make or amend a development plan, he may if he thinks fit, authorise the local planning authority for any neighbouring district, or any other local planning authority which appears to the Secretary of State to have an interest in the proper planning of the district concerned, to submit such a plan to him for his approval, or, as the case may be, to submit to him proposals for the amendment of the plan, and to carry out any survey of the land which appears to him to be expedient for the purpose.
- (3) The Secretary of State may approve any plan submitted to him under sub-paragraph (2) of this paragraph, either without modification or subject to such modifications as he considers expedient, or, as the case may be, may amend any development plan, with respect to which proposals for amendment have been submitted to him under that sub-paragraph to such extent as he considers expedient having regard to those proposals and to any other material considerations.

- (4) The foregoing provisions of this Schedule shall, so far as applicable, apply to the making, approval or amendment of development plans under this paragraph, and to plans so made, approved or amended, as they apply to the approval or amendment of development plans under those provisions, and to plans approved or amended thereunder.
- (5) Where the Secretary of State incurs expenses under this paragraph in connection with the making or amendment of a plan with respect to the district, or any part of the district, of a local planning authority, so much of those expenses as may be certified by the Secretary of State to have been incurred in the performance of functions of that authority shall on demand be repaid by that authority to the Secretary of State.
- (6) Where, under this paragraph, a plan, or proposals for the amendment of a plan, are authorised to be submitted to the Secretary of State by the local planning authority for any district other than the district in which the land is situated, any expenses reasonably incurred in that behalf by that authority, as certified by the Secretary of State, shall be repaid to that authority by the local planning authority for the district in which the land is situated.

*Incorporation in development plans of orders and schemes relating to roads and new towns*

- 5 (1) Where the Secretary of State—
- (a) makes an order under Schedule 2 to the Trunk Roads Act 1946 directing that a road proposed to be constructed by him shall become a trunk road; or
  - (b) makes or confirms an order or scheme under the Special Roads Act 1949, any development plan approved or made under this Schedule which relates to land on which a road is to be constructed or altered in accordance with that order or scheme shall have effect as if the provisions of that order or scheme were included in the plan.
- (2) Where an order is made by the Secretary of State under section 1 of the New Towns (Scotland) Act 1968 designating an area as the site of a new town under that Act, any development plan approved or made under this Schedule which relates to land in that area shall have effect as if the provisions of that order were included in the plan.
- (3) Nothing in this paragraph shall be construed as prohibiting the inclusion in a development plan, as approved or made by the Secretary of State or as for the time being amended, of provisions—
- (a) defining the line of a road proposed to be constructed or altered in accordance with any such order or scheme as is mentioned in sub-paragraph (1) of this paragraph ; or
  - (b) defining an area designated as the site of a new town by any such order as is mentioned in sub-paragraph (2) of this paragraph ; or
  - (c) defining land as likely to be made the subject of any such order or scheme as is mentioned in either of those sub-paragraphs.
- (4) Provision may be made by regulations under this Act for enabling any proceedings preliminary to the making of any such order as is mentioned in sub-paragraph (1)(a) or (2) of this paragraph, to be taken concurrently with proceedings required under this Schedule to be taken in connection with the approval or making of a development plan relating to land to which any such order applies, or in connection with any amendment of a development plan rendered necessary or desirable in consequence of any such order.

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*Supplementary provisions as to development plans*

- 6 (1) A local planning authority, before preparing a development plan relating to any land comprised in a small burgh in their district, or proposals for alterations or additions to any such plan, shall consult with the town council of that burgh, and shall, before submitting any such plan or proposals to the Secretary of State, give to that council an opportunity to make representations with respect thereto and shall consider any representations so made.
- (2) Provision may be made by regulations under this Act with respect to the form and content of development plans, and with respect to the procedure to be followed in connection with the preparation, submission, approval, making and amendment of such plans; and such regulations shall in particular make provision for securing—
- (a) that before preparing a development plan or proposals for alterations or additions to any such plan the local planning authority shall consult with such bodies or persons as may be prescribed by the regulations ;
  - (b) that notice shall be given by advertisement in at least one newspaper circulating in the area concerned, of the submission to the Secretary of State of any such plan, or of proposals for the amendment of any such plan, and of any proposal by the Secretary of State to make or amend such a plan, and of the place or places where copies of the plan or proposals as so submitted, or of any such proposal of the Secretary of State, may be inspected ;
  - (c) that objections and representations duly made in accordance with the regulations shall be considered, and that such local inquiries or other hearings as may be prescribed shall be held, before such a plan is approved, made or amended by the Secretary of State ; and
  - (d) that copies of any such plan as approved or made by the Secretary of State, including any amendments thereof, shall be available for inspection by the public, and that copies therefor (including reproductions, on such scale as may be appropriate, of any relevant maps) shall be available for sale to the public at a reasonable cost.
- (3) If, as the result of any objections or representations considered, or local inquiry or other hearing held, in connection with a development plan or proposals for amendment of such a plan submitted to or prepared by the Secretary of State under this Schedule, the Secretary of State is of opinion that the local planning authority, or any other authority or person, ought to be consulted before he decides whether to approve or make the plan, either with or without modifications, or to amend the plan, as the case may be, he shall consult that authority or person but shall not be under any obligation to consult any other authority or person, or to afford any opportunity for further objections or representations, or to cause any further local inquiry or other hearing to be held.
- (4) Subject to the foregoing provisions of this paragraph, the Secretary of State may give directions to any local planning authority, or to local planning authorities generally—
- (a) for formulating the procedure for the carrying out of their functions under the foregoing provisions of this Schedule;
  - (b) for requiring them to give him such information as he may require for the purpose of the exercise of any of his functions under those provisions.

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*Publication and date of operation of development plans*

- 7 (1) Immediately after a development plan has been approved or made or amended by the Secretary of State under this Schedule, the local planning authority shall publish, in such manner as may be prescribed, a notice stating that the plan has been approved, made or amended, as the case may be, and naming a place where a copy of the plan or of the plan as amended, may be seen at all reasonable hours, and shall serve a like notice—
- (a) on any person who duly made an objection to, or representation with respect to, the proposed plan or amendment, and has sent to the local planning authority a request in writing to serve him with the notice required by this sub-paragraph, specifying an address for service; and
  - (b) on such other persons (if any) as may be required by general or special directions given by the Secretary of State.
- (2) Subject to the provisions of Part XII of this Act as to the validity of development plans and of amendments of such plans, a development plan, or an amendment of a development plan, shall become operative on the date on which the notice required by sub-paragraph (1) of this paragraph is first published.

SCHEDULE 4

Section 18.

DEVELOPMENT PLANS : MODIFICATIONS OF THIS ACT PENDING REPEAL OF SCHEDULE 3

- 1 In section 136(4) for the words "structure plan or local plan" (wherever those words occur) there shall be substituted the words " development plan ".
- 2 For section 231(1)(a) there shall be substituted:—
- “(a) a development plan or an amendment of a development plan, whether before or after it has been approved or made ; or”.
- 3 For subsections (1) and (2) of section 232 there shall be substituted:—
- “(1) If any person aggrieved by a development plan, or by an amendment of a development plan, desires to question the validity thereof or of any provision contained therein on the grounds that it is not within the powers of this Act, or that any requirement of this Act or of any regulation made thereunder has not been complied with in relation to the approval or making of the plan, or, as the case may be, in relation to the making of the amendment, he may, within six weeks from the date on which the notice required by paragraph 7(1) of Schedule 3 to this Act is first published, make an application to the Court of Session under this section.
  - (2) On any application under this section the Court of Session—
    - (a) may by interim order suspend the operation of the plan or amendment, as the case may be, or of any provision contained therein, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings ;
    - (b) if satisfied that the plan or amendment, or any provision contained therein, 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 any requirement of this Act or of any regulation made thereunder, may quash the plan or amendment or any provision

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- contained therein, either generally or in so far as it affects any property of the applicant.”
- 4 In section 242(2)(a) for the words "a structure plan or local plan under Part II of this Act" there shall be substituted the words " a development plan under Schedule 3 to this Act ".
- 5 For section 253(1)(a) there shall be substituted:—
- “(a) a development plan approved or made under Schedule 3 to this Act may include proposals relating to the use of Crown land and any power to acquire land compulsorily under Part VI of this Act may be exercised in relation to any interest therein which is for the time being held otherwise than by or on behalf of the Crown;”
- 6 After section 264 there shall be inserted the following setion :—
- “**264A** Where, in accordance with the provisions of Part III, Part IV or Part V of this Act. a local planning authority are required to have regard to the provisions of the development plan in relation to the exercise of any of their functions, then, in relation to the exercise of those functions during any period before such a plan has become operative with respect to the district of that authority, the authority—
- (a) shall have regard to any directions which may be or have been given to them by the Secretary of State as to the provisions to be included in such a plan; and
- (b) subject to any such directions, shall have regard to the provisions which in their opinion will be required to be so included for securing the proper planning of their district.”
- 7 For section 265(1)(a) there shall be substituted:—
- “(a) the preparation, approval, making or amendment of a development plan relating to the land under Schedule 3 to this Act, including the carrying out of any survey under that Schedule ;”
- 8 In section 275(1), for the definition of "development plan" there shall be substituted:
- 
- ““ development plan ' has the meaning assigned to it by paragraph 1 of Schedule 3 to this Act, and includes a plan made in accordance with sub-paragraph (5) of the said paragraph 1;”
- 9 In Schedule 2, in paragraph 1 of Part I, for the words " structure plans and local plans " there shall be substituted the words " development plans ".
- 10 In Part I of Schedule 19 after the words "Schedules 1 and 2 " there shall be inserted the words " Schedule 3

## SCHEDULE 5

Section 18.

### DEVELOPMENT PLANS : TRANSITION FROM SCHEDULE 3 TO PART II OF THIS ACT

- 1 Until the repeal of Schedule 3 to this Act as respects any area (whether the whole or part of the district of a local planning authority), proposals for any alterations or additions to a development plan in force in the area shall not without the approval of the Secretary of State be submitted to him under paragraph 3 of that Schedule.

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- 2 On the repeal of the said Schedule as respects any area, the development plan which was in force in the area immediately before the repeal takes effect (hereafter in this Schedule referred to as " the old development plan ") shall, subject to the following provisions of this Schedule, continue in force as respects that area and be treated for the purposes of this Act, any other enactment relating to town and country planning and the Land Compensation (Scotland) Act 1963 as being comprised in. or as being, the development plan therefor.
- 3 Subject to the following provisions of this Schedule, where by virtue of paragraph 2 of this Schedule the old development plan for any area is treated as being comprised in a development plan for that area and there is a conflict between any of its provisions and those of the structure plan for that area, the provisions of the structure plan shall be taken to prevail for the purposes of Parts III, IV, V, VI, VII and IX of this Act and Schedule 10 to this Act.
- 4 Where a structure plan is in force in any area, but no local plan is in force in that area, a street authorisation map prepared in pursuance of the Town and Country Planning (Development Plans) (Scotland) Regulations 1966 for that area shall—
- (a) if in force immediately before the structure plan comes into force be treated for the purposes of this Act as having been adopted as a local plan by the local planning authority;
  - (b) if immediately before the structure plan comes into force it was under consideration by the Secretary of State be treated for those purposes as having been so adopted on being approved by the Secretary of State.
- 5 Where a structure plan is in force in any area, but no local plan is in force in that area, then, for any of the purposes of the Land Compensation (Scotland) Act 1963—
- (a) the development plan or current development plan shall as respects that area be taken as being whichever of the following plans gives rise to those assumptions as to the grant of planning permission which are more favourable to the owner of the land acquired, for that purpose, that is to say, the structure plan, so far as applicable to the area, and any alterations thereto, together with the Secretary of State's notice of approval of the plan and alterations, or the old development plan ;
  - (b) land situated in an area defined in the current development plan as an area of comprehensive development shall be taken to be situated in whichever of the following areas leads to such assumptions as aforesaid, that is to say, any area wholly or partly within the area first-mentioned in this paragraph selected by the structure plan as an action area or the area so denned in the old development plan.
- 6 Subject to paragraph 7 of this Schedule, the Secretary of State may by order wholly or partly revoke a development plan continued in force under this Schedule whether in its application to the whole of the district of a local planning authority or in its application to part of that district and make such consequential amendments to the plan as appear to him to be necessary or expedient.
- 7 Before making an order with respect to a development plan under paragraph 6 of this Schedule, the Secretary of State shall consult with the local planning authority for the district to which the plan relates.
- 8 Any reference in paragraphs 1 and 2 of this Schedule to the repeal of Schedule 3 to this Act shall, in a case where that repeal is brought into force by an order under section 18 of this Act on different days, be construed as a reference to a repeal of such of the provisions of the said Schedule as may be specified in the order.

- 9 In relation to any development plan continued in force by virtue of this Schedule, sections 231 and 232 of this Act shall have effect with the same substitutions as are specified in paragraphs 1 to 3 of Schedule 4 to this Act.

## SCHEDULE 6

Sections 19, 153, 158, 169 and 263.

### DEVELOPMENT NOT CONSTITUTING NEW DEVELOPMENT

#### PART I

##### DEVELOPMENT NOT RANKING FOR COMPENSATION UNDER S 158

- 1 The carrying out of any of the following works, that is to say—
- (a) the rebuilding, as often as the person having the right to rebuild may desire, of any building which was in existence on the appointed day, or of any building which was in existence before that day but was destroyed or demolished after 7th January 1937, including the making good of war damage sustained by any such building;
  - (b) the rebuilding, as often as the person having the right to rebuild may desire, of any building erected after the appointed day which was in existence at a material date;
  - (c) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building, or which do not materially affect the external appearance of the building and (in either case) are works for making good war damage,
- so long as (in the case of works falling within any of the preceding sub-paragraphs) the cubic content of the original building is not exceeded—
- (i) in the case of a dwellinghouse, by more than one-tenth or 1,750 cubic feet, whichever is the greater ; and
  - (ii) in any other case, by more than one-tenth.
- 2 The use as two or more separate dwellinghouses of any building which at a material date was used as a single dwellinghouse.

#### PART II

##### DEVELOPMENT RANKING FOR COMPENSATION UNDER S. 158

- 3 The enlargement, improvement or other alteration, as often as the person having the right to carry out such operations may desire, of any such building as is mentioned in paragraph 1(a) or (b) of this Schedule, or any building substituted for such a building by the carrying out of any such operations as are mentioned in that paragraph, so long as the cubic content of the original building is not increased or exceeded—
- (a) in the case of a dwellinghouse, by more than one-tenth or 1,750 cubic feet, whichever is the greater; and
  - (b) in any other case, by more than one-tenth.
- 4 The carrying out, on land which was used for the purposes of agriculture or forestry at a material date, of any building or other operations required for the purposes

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- of that use, other than operations for the erection, enlargement, improvement or alteration of dwellinghouses or of buildings used for the purposes of market gardens, nursery grounds or timber yards or for other purposes not connected with general farming operations or with the cultivation or felling of trees.
- 5 The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for those purposes.
- 6 The winning and working of peat by any person for the domestic requirements of that person.
- 7 In the case of a building or other land which, at a material date, was used for a purpose falling within any general class specified in an order made by the Secretary of State for the purposes of this paragraph, or which having been unoccupied on and at all times since the appointed day, was last used (otherwise than before 7th January 1937) for any such purpose, the use of that building or land for any other purpose falling within the same general class.
- 8 In the case of any building or other land which, at a material date, was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose on the appointed day, or on the day thereafter when the building began to be so used, or, as the case may be, one-tenth of the area of the land so used on that day.
- 9 The deposit of waste materials or refuse in connection with the working of minerals, on any land comprised in a site which at a material date was being used for that purpose, so far as may be reasonably required in connection with the working of those minerals.

### PART III

#### SUPPLEMENTARY PROVISIONS

- 10 Any reference in this Schedule to the cubic content of a building shall be construed as a reference to that content as ascertained by external measurement.
- 11 Where, after the appointed day, any buildings or works have been erected or constructed, or any use of land has been instituted, and any condition imposed under Part III of this Act, limiting the period for which those buildings or works may be retained, or that use may be continued, has effect in relation thereto, this Schedule shall not operate except as respects the period specified in that condition.
- 12 For the purposes of paragraph 3 of this Schedule—
- (a) the erection, on land within the curtilage of any such building as is mentioned in that paragraph, of an additional building to be used in connection with the original building shall be treated as the enlargement of the original building ; and
  - (b) where any two or more buildings comprised in the same curtilage are used as one unit for the purposes of any institution or undertaking, the reference in that paragraph to the cubic content of the original building shall be construed as a reference to the aggregate cubic content of those buildings.



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13 In this Schedule " at a material date " means at either of the following dates, that is to say—

- (a) the appointed day ; and
- (b) the date by reference to which this Schedule falls to be applied in the particular case in question:

Provided that sub-paragraph (b) of this paragraph shall not apply in relation to any buildings, works or use of land in respect of which, whether before or after the date mentioned in that sub-paragraph, an enforcement notice served before that date has become or becomes effective.

14 (1) In relation to a building erected after the appointed day, being a building resulting from the carrying out of any such works as are described in paragraph 1 of this Schedule, any reference in this Schedule to the original building is a reference to the building in relation to which those works were carried out and not to the building resulting from the carrying out of those works.

(2) This paragraph has effect subject to section 263(4) of this Act.

## SCHEDULE 7

Sections 33, 85, 91, 93, 99 and 279 and  
paragraph 7 of Schedule 10.

### DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

#### *Determination of appeals by appointed person*

- 1 (1) An appeal to which this Schedule applies, being an appeal of a prescribed class, shall, except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State, be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (3) This paragraph shall not affect any provision contained in this Act or any instrument thereunder that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.

#### *Powers and duties of person determining appeal*

- 2 (1) A person appointed under this Schedule to determine an appeal shall have the like powers and duties in relation to the appeal as the Secretary of State under whichever are relevant of the following provisions, that is to say—
- (a) in relation to appeals under section 33, subsections (3) and (5) of that section ;
  - (b) in relation to appeals under section 85, subsections (4) to (6) of that section ;
  - (c) in relation to appeals under section 91, subsection (2) and (3) of that section ;
  - (d) in relation to appeals under section 93, subsections (4) and (5) of that section ;
  - (e) in relation to appeals under section 99, section 85(4) and (5) of this Act;
  - (f) in relation to appeals under paragraph 7 of Schedule 10 to this Act, sub-paragraph (3) of that paragraph.

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- (2) The provisions of section 33(4), 85(2), 91(4), 93(2) and paragraph 7(4) of Schedule 10 to this Act relating to the affording of an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State, shall not apply to an appeal which falls to be determined by a person appointed under this Schedule but before the determination of any such appeal the Secretary of State shall, unless (in the case of an appeal under section 36) the appeal is referred to a Planning Inquiry Commission under section 45 of this Act, ask the applicant or appellant, as the case may require, and the local planning authority whether they wish to appear before and be heard by the person so appointed, and—
- (a) the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid ; and
  - (b) the person so appointed shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.
- (3) Subject to sub-paragraph (4) of this paragraph, the decision of a person appointed under this Schedule on any appeal to which this Schedule applies shall be final.
- (4) An appeal determined by any such person by virtue of this Schedule shall be treated for the purposes of this Act as having been determined by the Secretary of State.

*Determination of appeals by Secretary of State*

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal, which by virtue of paragraph 1 of this Schedule and apart from this sub-paragraph, falls to be determined by a person appointed by the Secretary of State shall instead be determined by the Secretary of State.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, so appointed, the applicant or appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account under section 26(3)(a) of this Act.
- (3) Where in consequence of a direction under this paragraph an appeal to which this Schedule applies falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) Where in consequence of a direction under this paragraph the Secretary of State determines an appeal himself, he shall, unless (in the case of an appeal under section 33) the appeal is referred to a Planning Inquiry Commission under section 45 of this Act, afford to the applicant or appellant, the local planning authority and any person who has made any such representations as aforesaid an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose either—
- (a) if the reasons for the direction raise matters with respect to which either the applicant or appellant, or the local planning authority or any such person, have not made representations; or
  - (b) if the applicant or appellant or the local planning authority had not been asked in pursuance of paragraph 2(2) of this Schedule whether they wished to appear before and be heard by a person appointed to hear the appeal, or had been asked that question and had expressed no wish in answer thereto,

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or had expressed a wish to appear and be heard as aforesaid, but had not been afforded an opportunity of doing so.

- (5) Except as provided by sub-paragraph (4) of this paragraph, where the Secretary of State determines an appeal in consequence of a direction under this paragraph he shall not be obliged to afford any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made; and in determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

*Appointment of another person to determine appeal*

- 4 (1) Where the Secretary of State has appointed a person to determine an appeal under this Schedule the Secretary of State may, at any time before the determination of the appeal, appoint another person to determine it instead of the first-mentioned person.
- (2) Paragraph 2 of this Schedule shall, subject to sub-paragraph (3) of this paragraph, apply in relation to an appeal which falls to be determined by a person appointed under this paragraph as they apply in relation to an appeal which falls to be determined by a person appointed under that paragraph.
- (3) If before the appointment of a person under this paragraph to determine an appeal, the Secretary of State had with reference to the person previously appointed, asked the question referred to in paragraph 2(2) of this Schedule, the question need not be asked again with reference to the person appointed under this paragraph and any answers to the question shall be treated as given with reference to him, but—
- (a) the consideration of the appeal or any inquiry or other hearing in connection therewith, if already begun, shall be begun afresh ; and
  - (b) it shall not be necessary to afford any person an opportunity of making fresh representations or modifying or withdrawing any representations already made.

*Local inquiries and hearings*

- 5 (1) A person appointed under this Schedule to determine an appeal may (whether or not the parties have asked for an opportunity to appear and be heard) hold a local inquiry in connection with the appeal and shall hold such an inquiry if the Secretary of State directs him to do so.
- (2) Subject to sub-paragraph (3) of this paragraph, the expenses—
- (a) of any hearing held by virtue of paragraph 2(2)(b) of this Schedule; and
  - (b) of any inquiry held by virtue of this paragraph,
- shall be defrayed by the Secretary of State.
- (3) Subsections (4) to (9) of section 267 of this Act shall apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.

*Stopping of appeals*

- 6 If before or during the determination of an appeal under section 33 of this Act which is to be or is being determined in accordance with paragraph 1 of this Schedule, the Secretary of State forms the opinion mentioned in subsection (7) of that section, he may direct that the determination shall not be begun or proceeded with.

*Supplementary provisions*

- 7 (1) The Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by a person appointed to determine the relevant appeal under this Schedule.
- (2) The functions of determining an appeal and doing anything in connection therewith conferred by this Schedule on a person appointed to determine an appeal thereunder who is an officer of the Scottish Office shall be treated for the purposes of the Parliamentary Commissioner Act 1967 as functions of that office.
- (3) In section 33(7) of this Act, for the words " and 65 " there shall be substituted the words " 65 and 72 " ; but the provisions of this sub-paragraph shall cease to have effect at the same time as the provisions referred to in section 83(1) of this Act whether or not the provisions of this sub-paragraph have by that time been brought into operation.

SCHEDULE 8

Section 45.

CONSTRUCTION OF REFERENCES IN SECTIONS 45 AND  
46 TO " THE RESPONSIBLE MINISTER OR MINISTERS "

- 1 In relation to matters specified in the first column of the Table below (being matters mentioned in section 45(1) of this Act which may be referred to a Planning Inquiry Commission under that section) "the responsible Minister or Ministers" for the purposes of sections 45 and 46 of this Act are those specified opposite in the second column of the Table.
- 2 Where an entry in the second column of the Table specifies two or more Ministers, that entry shall be construed as referring to those Ministers acting jointly.

TABLE

| Referred Matter   | Responsible Minister or Ministers  |
|---|--|
| 1. Application for planning permission or appeal under section 33 of this Act—  |  |
| (a) relating to land to which section 2140) of this Act applies;  | The Secretary of State and the appropriate Minister (if different).                                      |
| (b) relating to other land.   | The Secretary of State.  |
| 2. Proposal that a government department should give a direction under section 37 of this Act or that development should be carried out by or on behalf of a government department. | The Secretary of State and the Minister (if different) in charge of the government department concerned. |

SCHEDULE 9

Section 47.

JOINT PLANNING INQUIRY COMMISSIONS

*Interpretation*

- 1 In relation to matters specified in the first column of the Table below (being matters which under section 47 of this Act may be referred to a Joint Planning Inquiry Commission), " the responsible Ministers" for the purposes of this Schedule are those specified opposite in the second column of the Table, acting jointly.

TABLE

| Referred Matter   | Responsible Ministers  |
|---|--|
| 1. Application for planning permission or appeal under section 33 of this Act—<br><br>(a) relating to land to which section 214(1) of this Act or section 225(1) of the Act of 1971 applies;<br><br>(b) relating to other land. | The Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England and the appropriate Minister (if different).<br><br>The Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England. |
| 2. Proposal that a government department should give a direction under section 37 of this Act or section 40 of the Act of 1971, or that development should be carried out by or on behalf of a government department.           | The Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England and the Minister (if different) in charge of the government department concerned.   |

- 2 In this Schedule—
- (a) "Act of 1971 " means the Town and Country Planning Act 1971;
  - (b) " commission " means a Joint Planning Inquiry Commission constituted under section 47 of this Act; and
  - (c) " referred matter " means a matter referred to a commission under that section.

*The reference*

- 3 Two or more of the matters mentioned in subsection (1) of section 47 of this Act may be referred to the same commission if it appears to the responsible Ministers that they relate to proposals to carry out development for similar purposes on different sites.
- 4 Where a referred matter relates to a proposal to carry out development for any purpose at a particular site, the responsible Ministers may also refer to the commission the question whether development for that purpose should be instead

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carried out at an alternative site, whether in Scotland or in England, or partly in one and partly in the other.

5 The responsible Ministers shall, on referring a matter to a commission, state in the reference the reasons therefor and may draw the attention of the commission to any points which seem to them to be relevant to their inquiry.

6 (1) A reference to a commission of a proposal that development should be carried out by or on behalf of a government department may be made at any time.

(2) A reference of any other matter mentioned in subsection (1) of section 47 of this Act may be made at any time before, but not after, the determination of the relevant referred application or the relevant appeal or, as the case may be, the giving of the relevant direction, notwithstanding that an inquiry or other hearing has been held into the proposal by a person appointed by any Minister for the purpose.

*Notice of reference to persons and authorities concerned*

7 (1) Notice of the making of a reference to a commission shall be published in the prescribed manner, and a copy of the notice shall be served on the local planning authority for the area in which it is proposed that the relevant development shall be carried out.

(2) In the case of an application for planning permission referred under section 32 of this Act or section 35 of the Act of 1971 or an appeal under section 33 of this Act or section 36 of the Act of 1971, notice shall also be served—

(a) on the applicant or appellant; and

(b) on any person who has made representations, relating to the subject matter of the application or appeal, which the local planning authority are required to take into account under section 26(2) or (3) of this Act or, as the case may be, section 29(2) or (3) of the Act of 1971.

(3) In the case of a proposal that a direction should be given by a government department under section 37 of this Act or section 40 of the Act of 1971 with respect to any development, notice shall also be served on the local authority or statutory undertakers applying for authorisation to carry out that development.

(4) In this paragraph, " prescribed " means prescribed by regulations made by the Secretary of State and the Secretary of State for the Environment jointly in the exercise of their respective powers under this Act and the Act of 1971.

*Proceedings of commission on reference*

8 A commission inquiring into a referred matter shall—

(a) identify and investigate the considerations relevant to, or the technical or scientific respects of, that matter which in their opinion are relevant to the question whether the proposed development should be permitted to be carried out, and assess the importance to be attached to those considerations or aspects ;

(b) thereafter, comply with paragraph 9 below in respect of affording to persons an opportunity of appearing before, and being heard by, one or more members of the commission ;

(c) report to the responsible Ministers on the said matter.

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- 9 A commission shall afford the following persons an opportunity of appearing and being heard as aforesaid:—
- (a) in any case, the local planning authority, if the authority so desire;
  - (b) in the case of a matter mentioned in section 45(1)(a), (b) or (c) of this Act or section 48(1)(a), (b) or (c) of the Act of 1971, the applicant, if he so desires ; and
  - (c) in the case of an application or appeal mentioned in the said section 45(1)(a) or (b) or the said section 48(1)(a) or (b), any person who has made representations relating to the subject matter of the application or appeal which the local planning authority are required to take into account under section 26(2) or (3) of this Act or section 29(2) or (3) of the Act of 1971.
- 10 The provisions of sections 32(5) and 33(4) of this Act and sections 35(5) and 36(4) of the Act of 1971 and the provisions of Schedule 7 to this Act and Schedule 9 to the Act of 1971, relating to the affording of an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State, shall not apply to an application for planning permission, or an appeal, referred to a commission.

#### *Local inquiries*

- 11 A commission shall, for the purpose of complying with paragraph 9 above, hold a local inquiry; and they may hold such an inquiry if they think it necessary for the proper discharge of their functions, notwithstanding that neither the applicant nor the local planning authority desire the opportunity of appearing and being heard.
- 12 Where a commission are to hold a local inquiry in connection with a referred matter and it appears to the responsible Ministers, in the case of some other matter falling to be determined by a Minister of the Crown and required or authorised by an enactment other than this Schedule to be the subject of a local inquiry, that the two matters are so far cognate that they should be considered together, the responsible Minister may direct that the two inquiries be held concurrently or combined as one inquiry.
- 13 For the purposes of the Tribunals and Inquiries Act 1971 a local inquiry held by a commission—
- (a) if held in Scotland, shall be treated as one held by the Secretary of State in pursuance of a duty imposed by a statutory provision; and
  - (b) if held in England, shall be treated as one held by the Secretary of State for the Environment in pursuance of a duty so imposed.
- 14 (1) Subsections (4) to (9) of section 267 of this Act shall apply to a local inquiry held by a commission in Scotland as they apply to an inquiry held under that section.
- (2) Subsections (2) to (5) of section 290 of the Local Government Act 1933 (evidence and costs at local inquiries) shall apply in relation to a local inquiry held by a commission in England as they apply in relation to an inquiry caused to be held by a department under subsection (1) of that section, with the substitution for references to a department (other than the first reference in subsection (4)) of references to the Secretary of State for the Environment.

*Supplementary*

- 15 (1) A- commission may, with the approval of the Ministers and at their expense, arrange for the carrying out (whether by the commission themselves or by others) of research of any kind appearing to the commission to be relevant to a referred matter.
- (2) In this paragraph " the Ministers" means the Secretaries of State for the time being having general responsibility in planning matters in relation to Scotland and in relation to England, acting jointly; but their functions under this paragraph may, by arrangements made between them, be exercised by either acting on behalf of both.
- 16 Subject to the provisions of this Schedule, and to any directions given to them by the responsible Ministers, a commission shall have power to regulate their own procedure.

SCHEDULE 10

Sections 54 and 56.

CONTROL OF WORKS FOR DEMOLITION, ALTERATION OR EXTENSION OF LISTED BUILDINGS

**PART I**

APPLICATIONS FOR LISTED BUILDING CONSENT

*Form of application and effect of consent*

- 1 (1) Provision may be made by regulations under this Act with respect to the form and manner in which applications for listed building consent are to be made, the manner in which such applications are to be advertised and the time within which they are to be dealt with by local planning authorities or, as the case may be, by the Secretary of State.
- (2) Any listed building consent shall (except in so far as it otherwise provides) enure for the benefit of the building and of all persons for the time being interested therein.
- 2 (1) Regulations under this Act may provide that an application for listed building consent, or an appeal against the refusal of such an application, shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one or other of those described in section 24(1)(a) to (d) of this Act and any such regulations may—
- (a) include requirements corresponding to sections 24(2) to (4) and 26(3) of this Act; and
- (b) make provision as to who, in the case of any building, is to be treated as the owner for the purposes of any provision of the regulations made by virtue of this sub-paragraph.
- (2) If any person issues a certificate which purports to comply with the requirements of regulations made by virtue of this paragraph and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.



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*Directions as to manner of dealing with applications*

- 3 The provisions of section 28(2) and (3) of this Act shall apply to an application for listed building consent for any works for the demolition, alteration or extension of a building in a conservation area as they apply to an application of the kind therein mentioned.

*Reference of applications to Secretary of State*

- 4 (1) The Secretary of State may give directions requiring applications for listed building consent to be referred to him instead of being dealt with by the local planning authority.
- (2) A direction under this paragraph may relate either to a particular application, or to applications in respect of such buildings as may be specified in the direction.
- (3) An application in respect of which a direction under this paragraph has effect shall be referred to the Secretary of State accordingly.
- (4) Before determining an application referred to him under this paragraph, the Secretary of State shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State.
- (5) The decision of the Secretary of State on any application referred to him under this paragraph shall be final.
- 5 (1) Subject to the following provision of this paragraph, a local planning authority to whom application is made for listed building consent shall not grant such consent, unless they have notified the Secretary of State of the application (giving particulars of the works for which the consent is required) and either—
- (a) a period of twenty-eight days has expired, beginning with the date of the notification, without the Secretary of State having directed the reference of the application to him ; or
- (b) the Secretary of State has notified the authority that he does not intend to require the reference of the application.
- (2) The Secretary of State may at any time before the said period expires give notice to the authority that he requires further time in which to consider whether to require the reference of the application to him and sub-paragraph (1) of this paragraph shall then have effect with the substitution for a period of twenty-eight days or such longer period as may be specified in the Secretary of State's notice.
- 6 (1) The Secretary of State may give directions that, in the case of such descriptions of applications for listed building consent as he may specify, other than such consent for the demolition of a building, paragraph 5 of this Schedule shall not apply; and accordingly, so long as the directions are in force local planning authorities may determine applications of such descriptions in any manner they think fit, without notifying the Secretary of State.
- (2) Without prejudice to the foregoing provisions of this Schedule, the Secretary of State may give directions to local planning authorities requiring them, in such cases or classes of case as may be specified in the directions, to notify to him and to such other persons as may be so specified any applications made to them for listed building consent, and the decisions taken by the authorities thereon.

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*Appeal against decision*

- 7
- (1) Where an application is made to the local planning authority for listed building consent and the consent is refused by the authority or is granted by them subject to conditions, the applicant, if he is aggrieved by the decision, may by notice served in the prescribed manner within such period as may be prescribed, not being less than twenty-eight days from the receipt by him of notification of the decision, appeal to the Secretary of State.
  - (2) A person appealing under this paragraph may include in his notice thereunder, as the ground or one of the grounds of his appeal, a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 52 of this Act, or—
    - (a) in the case of a building to which subsection (8) of that section applies, that the Secretary of State should give a direction under that subsection with respect to the building ; or
    - (b) in the case of a building subject to a building preservation notice under section 56 of this Act, that the building should not be included in a list compiled or approved under the said section 52.
  - (3) Subject to the following provisions of this paragraph, the Secretary of State may allow or dismiss an appeal thereunder, or may reverse or vary any part of the decision of the authority, whether the appeal relates to that part thereof or not, and—
    - (a) may deal with the application as if it had been made to him in the first instance ; and
    - (b) may, if he thinks fit, exercise his power under section 52 of this Act to amend any list compiled or approved thereunder by removing from it the building to which the appeal relates or his power under subsection (8) of that section to direct that that subsection shall no longer apply to the building.
  - (4) Before determining an appeal under this paragraph, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
  - (5) The decision of the Secretary of State on any appeal under this paragraph shall be final.
  - (6) Schedule 7 to this Act applies to appeals under this paragraph.

*Appeal in default of decision*

- 8
- Where an application is made to the local planning authority for listed building consent, then unless within the prescribed period from the date of the receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either—
- (a) give notice to the applicant of their decision on the application ; or
  - (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under paragraph 4 of this Schedule,
- the provisions of paragraph 7 of this Schedule shall apply in relation to the application as if listed building consent had been refused by the authority and as if notification of their decision had been received by the applicant at the end of the prescribed period or at the end of the said extended period, as the case may be.

## PART II

### REVOCATION OF LISTED BUILDING CONSENT

- 9 (1) If it appears to the local planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify listed building consent in respect of any works to a building, being consent granted on an application made under Part I of this Schedule, the authority, subject to the following provisions of this paragraph, may by order revoke or modify the consent to such extent as (having regard to those matters), they consider expedient.
- (2) Except as provided in paragraph 11 of this Schedule, an order under this paragraph shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.
- (3) Where a local planning authority submit an order to the Secretary of State for confirmation under this paragraph, the authority shall serve notice on the owner, on the lessee and on the occupier of the building affected and on any other person who in their opinion will be affected by the order ; and if within such period as may be specified in that notice (not being less than twenty-eight days after the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person 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) The power conferred by this paragraph to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.
- 10 (1) If it appears to the Secretary of State, after consultation with the local planning authority, to be expedient that an order under paragraph 9 of this Schedule should be made, he may give directions to the authority requiring them to submit to him such an order for his confirmation, or may himself make such an order ; and any order so made by the Secretary of State shall have the like effect as if it had been made by the authority and confirmed by the Secretary of State under that paragraph.
- (2) The provisions of paragraph 9 of this Schedule shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of this paragraph, in relation to the making thereof by the Secretary of State and in relation to the service of copies thereof as so made.
- 11 (1) The following provisions shall have effect where the local planning authority have made an order under paragraph 9 of this Schedule but have not submitted the order to the Secretary of State for confirmation by him, and—
- (a) the owner, lessee and occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order ; and
- (b) it appears to the authority that no claim for compensation is likely to arise under section 161 of this Act on account of the order.
- (2) The authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify—

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- (a) the period (not being less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose ; and
  - (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this sub-paragraph) at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this paragraph and without being confirmed by the Secretary of State.
- (3) The authority shall also serve notice to the same effect on the persons mentioned in sub-paragraph (1)(a) of this paragraph, and the notice shall include a statement to the effect that no compensation is payable under section 161 of this Act in respect of an order under paragraph 9 of this Schedule which takes effect by virtue of this paragraph and without being confirmed by the Secretary of State.
- (4) The authority shall send a copy of any advertisement published under sub-paragraph (2) of this paragraph to the Secretary of State, not more than three days after the publication.
- (5) If within the period referred to in sub-paragraph (2)(a) of this paragraph no person claiming to be affected by the order has given notice to the Secretary of State as aforesaid and the Secretary of State has not directed that the order be submitted to him for confirmation, the order shall, at the expiration of the period referred to in sub-paragraph (2)(b) of this paragraph, take effect by virtue of this paragraph and without being confirmed by the Secretary of State as required by paragraph 9(2) of this Schedule.
- (6) This paragraph does not apply to an order revoking or modifying a listed building consent granted by the Secretary of State.

### PART III

#### PROVISIONS APPLICABLE ON LAPSE OF BUILDING PRESERVATION NOTICE

- 12      The provisions of this Part of this Schedule apply where a building preservation notice ceases to be in force by virtue of section 56(3) of this Act, otherwise than by reason of the building to which it relates being included in a list compiled or approved under section 52 of this Act.
- 13      The fact that the building preservation notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 53 or 94 of this Act committed by him with respect to the said building while the notice was in force.
- 14      Any proceedings on or arising out of an application for listed building consent made while the building preservation notice was in force shall lapse and any listed building consent granted with respect to the building, while the notice was in force, shall also lapse.
- 15      Any listed building enforcement notice served by the local planning authority while the building preservation notice was in force shall cease to have effect and any proceedings thereon under sections 92 and 93 of this Act shall lapse, but section 95(1) and (2) of this Act shall continue to have effect as respects

any expenses incurred by the local authority, owner, lessee or occupier as therein mentioned and with respect to any sums paid on account of such expenses.

## SCHEDULE 11

Sections 58(11), 59(4).

TREE PRESERVATION ORDERS : MODIFICATIONS OF THIS ACT PENDING  
COMING INTO OPERATION OF SECTIONS 58(5) AND 59(1) TO (3)

- 1 In section 58(4), the words "under subsection (5)(c) of this section and " shall be omitted.
- 2 For section 58(5) there shall be substituted:—
- “(5) Provision may be made by regulations under this Act with respect to the form of tree preservation orders and the procedure to be followed in connection with the submission and confirmation of such orders, and such regulations shall, in particular, make provision for securing—
- (a) that notice shall be given to the owners, lessees and occupiers of land affected by any such order of the submission to the Secretary of State of the order;
  - (b) that objections and representations with respect to the proposed order duly made in accordance with the regulations shall be considered before the order is confirmed by the Secretary of State ; and
  - (c) that copies of the order when confirmed by the Secretary of State shall be served on the owners, lessees and occupiers of the land to which it relates.”
- 3 For section 59(1) to (3) there shall be substituted:—
- “**59** (1) If it appears to a local planning authority that a tree preservation order proposed to be made by that authority should take effect immediately without previous confirmation by the Secretary of State, they may include in the order as made by them a direction that this section shall apply to the order.
- (2) Notwithstanding section 58(4) of this Act, an order which contains such a direction shall take effect provisionally on such date as may be specified therein, and shall continue in force by virtue of this section until the expiration of the period of six months beginning with the date on which the order was made, or until the date on which the Secretary of State confirms the order or notifies the local planning authority that he does not propose to confirm it, whichever first occurs.
- (3) Provision shall be made by regulations under this Act for securing—
- (a) that the notices to be given of the submission to the Secretary of State of a tree preservation order containing a direction under this section shall include a statement of the effect of the direction; and
  - (b) that where the Secretary of State, within the said period of six months, notifies the local planning authority that he does not propose to confirm such an order, copies of that notice shall be served on the owners, lessees and occupiers of the land to which the order related.”

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## SCHEDULE 12

Section 90.

### PROVISIONS AS TO ESTABLISHED USE CERTIFICATES

#### *Application for certificate and appeal against refusal thereof*

- 1 An application for an established use certificate shall be made in such manner as may be prescribed by a development order, and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given thereunder, or by the local planning authority or, in the case of an application referred to the Secretary of State, by him.
- 2 Provision may be made by a development order for regulating the manner in which applications for established use certificates are to be dealt with by local planning authorities, and, in particular—
  - (a) for requiring the authority to give any applicant for such a certificate, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with ;
  - (b) for requiring the authority to give to the Secretary of State and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for such certificates made to the authority, including information as to the manner in which any such application has been dealt with.
- 3 (1) A development order may provide that an application for an established use certificate, or an appeal against the refusal of such an application, shall not be entertained unless it is accompanied by a certificate in such form as may be prescribed by the order and corresponding to one or other of those described in section 24(1)(a) to (d) of this Act; and any such order may—
  - (a) include requirements corresponding to section 24(2), (3) and (4), and section 26(3) of this Act; and
  - (b) make provision as to who, in the case of any land, is to be treated as the owner for the purposes of any provision of the order made by virtue of this sub-paragraph.
 (2) If any person issues a certificate which purports to comply with any provision of a development order made by virtue of sub-paragraph (1) above and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

#### *Provisions with respect to grant of certificate*

- 4 An established use certificate shall be in such form as may be prescribed by a development order and shall specify—
  - (a) the land to which the certificate relates and any use thereof which is certified by the certificate as established;
  - (b) by reference to the paragraphs of section 90(1) of this Act, the grounds on which that use is so certified; and
  - (c) the date on which the application for the certificate was made, which shall be the date at which the use is certified as established.

- 5           Where the Secretary of State or a person appointed by him under Schedule 7 to this Act to determine an appeal grants an established use certificate, the Secretary of State or that person shall give notice to the local planning authority of that fact.
- 6           In section 31 of this Act references to applications for planning permission shall include references to applications for established use certificates; and the information which may be prescribed as being required to be contained in a register kept under that section shall include information with respect to established use certificates granted by the Secretary of State or by a person appointed by him under Schedule 7 to this Act to determine an appeal.

## SCHEDULE 13

Section 127.

### ADJUSTMENT OF CLAIM HOLDINGS

#### PART I

##### ADJUSTMENT OF CLAIM HOLDINGS ASSIGNED TO CENTRAL LAND BOARD AS SECURITY FOR DEVELOPMENT CHARGES

- 1           (1) In this Part of this Schedule references to the assignment of a claim holding to the Central Land Board are references to any transaction whereby—
- (a) the holder of the claim holding assigned it to the Central Land Board as security, or part of the security, for one or more development charges determined, or thereafter to be determined, by the Board ; or
  - (b) the holder and the Central Land Board agreed that a development charge determined by the Board should be set off against any payment which might thereafter become payable to the holder by reference to that holding; or
  - (c) the Central Land Board refrained from determining a development charge, which would otherwise have fallen to be determined by them, in consideration of an assignment of the holding, with or without other claim holdings.
- (2) All assignments of claim holdings to the Central Land Board made by the same person, whether or not made at the same time, other than any assignment to which paragraph 2(1) of this Schedule applies, shall for the purposes of this Part of this Schedule be treated collectively as a single assignment made at the time when the last of those assignments was made.
- (3) Where a development charge covered by an assignment to the Central Land Board was determined in respect of land consisting of, or forming part of, the area of a claim holding—
- (a) which was not comprised in the assignment ; but
  - (b) whose holder immediately before the time of completion was the person who would, apart from the assignment, have been liable to pay the unpaid balance of the development charge,
- then, for the purposes of this Part of this Schedule, that claim holding shall be deemed to have been comprised in the assignment.
- (4) In this Part of this Schedule references to the determination of a development charge in respect of any land are references to a determination of the Central Land Board

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that the charge was payable in respect of the carrying out of operations in, on, over or under that land, or in respect of the use of that land.

- (5) For the purposes of this Part of this Schedule the amount of a development charge—
- (a) in a case where the Central Land Board determined that amount as a single capital payment, shall be taken to have been the amount of that payment; and
  - (b) in a case where the Board determined that amount otherwise than as a single capital payment, shall be taken to have been the amount of the single capital payment which would have been payable if the Board had determined the amount as such a payment;
- and references in this Part of this Schedule to the unpaid balance of a development charge are references to the amount of the charge, if no sum was actually paid to the Board on account of the charge, or if any sum was so paid, are references to the amount of the charge reduced by the amount or aggregate amount of the sum or sums so paid, other than any sum paid by way of interest.
- (6) In relation to the assignation of a claim holding to the Central Land Board, references in this Part of this Schedule to a development charge covered by the assignation are references to a development charge the payment of which was secured, or partly secured by, the assignation, or, as the case may be, which was agreed to be set off against any payment which might become payable by reference to that claim holding.
- 2 (1) Where a claim holding was assigned to the Central Land Board in accordance with the special arrangements relating to owners of single house plots, that claim holding shall, subject to sub-paragraph (2) of this paragraph, be deemed to have been extinguished as from the time when it was assigned to the Board.
- (2) Where a claim holding (in this sub-paragraph referred to as " the original holding ") was assigned as mentioned in sub-paragraph (1) of this paragraph but was so assigned by reference to a plot of land which did not extend to the whole of the area of the original holding, that sub-paragraph shall not apply, but there shall be deemed to have been substituted for the original holding, as from the time of the assignation, a claim holding with an area consisting of so much of the area of the original holding as was not comprised in that plot of land, and with a value equal to that fraction of the value of the original holding which then attached to so much of the area of the original holding as was not comprised in that plot.
- 3 Without prejudice to paragraph 2 of this Schedule, where an assignation to the Central Land Board comprised one or more claim holdings, and the unpaid balance of the development charge covered by the assignation, or (if more than one) the aggregate of the unpaid balances of the development charges so covered, was equal to or greater than the value of the claim holding, or the aggregate value of the claim holdings, as the case may be, the holding or holdings shall be deemed to have been extinguished as from the time of the assignation.
- 4 Where an assignation to the Central Land Board comprised only a single claim holding with an area of which every part either consisted of, or formed part of, the land in respect of which some development charge covered by the assignation was determined, and paragraph 3 of this Schedule does not apply, the value of that claim holding shall be deemed to have been reduced, as from the time of the assignation, by the unpaid balance of the development charge covered by the assignation, or (if more than one) by the aggregate of the unpaid balances of all the development charges covered by the assignation.



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- 5 (1) The provisions of this paragraph shall have effect in the case of an assignation of one or more claim holdings to the Central Land Board to which neither paragraph 3 nor paragraph 4 of this Schedule applies.
- (2) Any claim holding comprised in the assignation with an area of which every part either consisted of, or formed part of, the land in respect of which some development charge covered by the assignation was determined shall be allocated to the development charge in question, or (if more than one) to those development charges collectively.
- (3) Any claim holding comprised in the assignation with an area part of which did, and part of which did not, consist of, or form part of, such land as is mentioned in sub-paragraph (2) of this paragraph shall be treated as if, at the time of the assignation, the claim holding (in this sub-paragraph referred to as " the parent holding " had been divided into two separate claim holdings, that is to say—
- (a) a claim holding with an area consisting of so much of the area of the parent holding as consisted of, or formed part of, such land as is mentioned in sub-paragraph (2) of this paragraph, and with a value equal to that fraction of the value of the parent holding which then attached to that part of the area of the parent holding ; and
  - (b) a claim holding with an area consisting of the residue of the area of the parent holding, and with a value equal to that fraction of the value of the parent holding which then attached to the residue of the area of the parent holding,
- and the claim holding referred to in head (a) of this sub-paragraph shall be allocated to the development charge in question, or (if more than one) to those development charges collectively.
- (4) Paragraph 3 or paragraph 4 of this Schedule shall then apply in relation to each claim holding (if any) allocated in accordance with sub-paragraph (2) or sub-paragraph (3) of this paragraph to any development charge, or to any development charges collectively, as if the assignation had comprised only that claim holding and had covered only that development charge or those development charges.
- (5) If, after the application of the foregoing provisions of this paragraph, there remains outstanding any claim holding not allocated in accordance with those provisions, or any claim holding which (having been so allocated) is deemed to have been reduced in value but not extinguished, an amount equal to the aggregate of—
- (a) the unpaid balance of any development charge covered by the assignation to which no claim holding was so allocated ; and
  - (b) the amount (if any) by which the value of any claim holding so allocated which is deemed to have been extinguished falls short of the unpaid balance of the development charge, or the aggregate of the unpaid balances of the development charges, to which it was so allocated.
- shall be treated as having been deducted from the value of the claim holding so remaining outstanding, or (if more than one) as having been deducted rateably from the respective values of those claim holdings, and the value of any such holding shall be deemed to have been reduced accordingly as from the time of the assignation.

## PART II

### ADJUSTMENT BY REFERENCE TO PAYMENTS IN RESPECT OF WAR-DAMAGED LAND

- 6 (1) The provisions of this Part of this Schedule shall have effect where a payment under the scheme has become, or becomes payable in respect of an interest in land, and a claim holding related (or would, apart from this Part of this Schedule, have related) to the like interest in the whole or part of that land, with or without any other land.
- (2) In this Part of this Schedule "the scheme " means the scheme made under section 56 of the Act of 1947, "the date of the scheme " means 23rd December 1949, and " payment under the scheme " means a payment which has become, or becomes, payable by virtue of the scheme.
- (3) In relation to any payment under the scheme " the payment area ", in this Part of this Schedule, means the land in respect of which the payment became or becomes payable, and references to the amount of the payment shall be construed as references to the principal amount thereof, excluding any interest payable thereon in accordance with section 62(3) of the Act of 1947.
- 7 If the payment area is identical with the area of the claim holding, then—
- (a) in the case of a payment of an amount equal to the value of the claim holding, the claim holding shall be deemed to have been extinguished as from the date of the scheme;
- (b) in the case of a payment of an amount less than the value of the claim holding, the value of the claim holding shall be deemed to have been reduced, as from the date of the scheme, by the amount of the payment.
- 8 (1) If the payment area forms part of the area of the claim holding, the holding (in this paragraph referred to as " the parent holding") shall be treated, as from the date of the scheme, as having been divided into two claim holdings, that is to say—
- (a) a claim holding with an area consisting of that part of the area of the parent holding which constituted the payment area, and with a value equal to that fraction of the value of the parent holding which attached to that part of the area of the parent holding ; and
- (b) a claim holding with an area consisting of the residue of the area of the parent holding, and with a value equal to that fraction of the value of the parent holding which attached to the residue of the area of the parent holding.
- (2) Where sub-paragraph (1) of this paragraph applies, paragraph 7 of this Schedule shall have effect in relation to the claim holding referred to in sub-paragraph (1)(a) of this paragraph as if it were the parent holding.
- 9 If the payment area includes the area of the claim holding together with other land, paragraph 7 of this Schedule shall apply as if—
- (a) the payment area had been identical with the area of the claim holding ; but
- (b) the amount of the payment had been so much of the actual amount thereof, as might reasonably be expected to have been attributed to the area of the claim holding if, under the scheme, the authority determining the amount of the payment had been required (in accordance with the same principles as applied to the determination of that amount) to apportion it between the area of the claim holding and the rest of the payment area.
- 10 If the payment area includes part of the area of the claim holding together with other land not comprised in the area of the claim holding—

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- (a) paragraph 8 of this Schedule shall apply as if the part of the payment area comprised in the area of the claim holding had been the whole of the payment area ; and
- (b) paragraph 9 of this Schedule shall apply as if the part of the area of the claim holding comprised in the payment area had been the whole of the area of the claim holding.

### PART III

#### ADJUSTMENT IN CASES OF PARTIAL TRANSMISSION OF CLAIM HOLDINGS

- 11 The provisions of this Part of this Schedule shall have effect where, by virtue of a transmission of part of the benefit of an established claim (in this Part of this Schedule referred to as " the relevant transmission "), different persons became entitled to different parts of the benefit of that established claim.
- 12 As from the date of the relevant transmission, each of those different parts shall be treated as having constituted a separate claim holding.
- 13 The area and value of any such separate claim holding at any time after the relevant transmission shall be taken to have been such as may, in the requisite manner, be or have been determined to be just and appropriate in all the circumstances.
- 14 In paragraph 13 of this Schedule the reference to determination in the requisite manner of the area and value of a claim holding is a reference to the determination thereof on the occasion of an apportionment affecting that holding which fell or falls to be made for any of the purposes of the Act of 1954, of Part VII of this Act or of this Schedule, being a determination made—
- (a) by the authority making that apportionment; or
  - (b) where, under the Act of 1954 or Part VII of this Act, that authority's findings were or are referred to the Lands Tribunal, by that Tribunal,
- having regard in particular to the principles mentioned in paragraph 15 of this Schedule.
- 15 (1) The said principles are those set out in the following provisions of this paragraph.
- (2) The aggregate of the values of all claim holdings representing parts of the benefit of the same established claim must not exceed the amount of the established claim.
  - (3) Subject to sub-paragraph (2) of this paragraph, where a claim holding representing part only of the benefit of an established claim was assigned to the Central Land Board, otherwise than as mentioned in paragraph 2 of this Schedule, and by virtue of Part I of this Schedule the value of that claim holding is deemed to have been reduced by reference to an amount due by way of development charge, the value of that holding at the time of the assignation is not to be taken to have been less than the amount secured by the assignation.
  - (4) In the case of the claim holding representing the part of the benefit of an established claim which was the subject of the relevant transmission, if it was not a claim holding to which sub-paragraph (5) of this paragraph applies—
    - (a) the area of that claim holding is to be taken to be the claim area of that established claim, less the area of any claim holding to which the said sub-paragraph (5) applies which represents part of the benefit of the same established claim ; and

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- (b) the value of the claim holding immediately after the relevant transmission is, subject to sub-paragraphs (2) and (3) of this paragraph, to be taken to have been that part of the amount of the established claim to which the holder purported to become entitled under the terms of the relevant transmission.
- (5) Where any person who was entitled to a claim holding representing part only of the benefit of an established claim—
- (a) at any time while so entitled was also entitled to the interest in land to which the established claim related in so far as that interest subsisted in part only of the claim area ; and
- (b) became entitled to both that holding and that interest in such circumstances that the authority making the apportionment in question or the Lands Tribunal, as the case may be, were or are satisfied that the holding and the interest were intended to relate to one another,

the area of that claim holding is to be taken to be that part of the claim area, and the value of the holding immediately after the relevant transmission (however that or any other transmission affecting the holding was expressed, but subject to sub-paragraphs (2) to (4) of this paragraph) is to be taken to have been an amount equal to so much of the amount of the established claim as might reasonably be expected to have been attributed to that part of the claim area if the authority determining the amount of that established claim had been required to apportion it, in accordance with the same principles as applied to its determination, between that part and the residue of the claim area.

- 16 Paragraph 1 of this Schedule shall apply for the purposes of this Part of this Schedule as it applies for the purposes of Part I thereof.

#### PART IV

##### ADJUSTMENT IN RESPECT OF PAYMENTS UNDER PART I OF ACT OF 1954

- 17 The provisions of this Part of this Schedule shall have effect where, by virtue of Part I of the Act of 1954, a payment became or becomes payable in respect of a claim holding.
- 18 Subject to the following provisions of this Part of this Schedule, if either—
- (a) the principal amount of the payment was or is not less than the value of the claim holding ; or
- (b) the payment (whatever its amount) became or becomes payable under Case D (that is to say, by virtue of section 8 of the Act of 1954, which related to cases where a claim holding had been assigned for valuable consideration), the claim holding shall be deemed to have been extinguished ; and if the principal amount of the payment (not being a payment under Case D) was or is less than the value of the claim holding, the value of that holding shall be deemed to have been reduced by the principal amount of the payment.
- 19 Paragraph 18 of this Schedule shall apply where two or more payments under Part I of the Act of 1954 were or are payable in respect of the same claim holding, with the substitution, for references to the principal amount of the payment, of references to the aggregate of the principal amounts of the payments.
- 20 (1) Where one or more relevant acts or events have occurred in relation to a claim holding (in this paragraph referred to as " the Parent holding ") and any such act or event did

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not extend to the whole of the area of the parent holding, then, for the purposes of the preceding provisions of this Part of this Schedule, and for the purposes of Part V of this Schedule and of Part VTJ of this Act—

- (a) the parent holding shall be treated as having been divided immediately before the time of completion, into as many separate claim holdings, with such areas, as may be necessary to ensure that, in the case of each holding, either any relevant act or event extending to the area of that holding extended to the whole thereof or no relevant act or event extended to the area of that holding ;
- (b) the value of each of the separate holdings respectively shall be taken to have been that fraction of the value of the parent holding which then attached to the part of the area of the parent holding constituting the area of the separate holding; and
- (c) the portion of the amount of any payment under Part I of the Act of 1954 which, by the authority determining that amount, was or is apportioned to the area of any of the separate claim holdings shall be taken to have been a payment payable under the said Part I in respect of that claim holding.

- (2) In this paragraph "relevant act or event", in relation to a claim holding, means an act or event whereby, in accordance with the provisions of Part I of the Act of 1954, one or more payments became or become payable in respect of that claim holding.

21 For the purposes of this Part of this Schedule—

- (a) a payment shall be treated as having become payable notwithstanding that the right to receive the payment was extinguished by section 14(2) of the Act of 1954 (which enabled the Central Land Board to set off payments against liabilities in respect of development charges) ;
- (b) any reduction of the principal amount of a payment by virtue of that subsection shall be disregarded ; and
- (c) where in accordance with subsection (3) of section 14 of the Act of 1954 (which provided for cases of failure to apply for a payment within the appropriate period) an amount was determined as being the principal amount of a payment to which a person would have been entitled as mentioned in that subsection, that payment shall be treated as if it had become due and as if the principal amount thereof had been the amount so determined.

22 (1) Where in accordance with the preceding provisions of this Part of this Schedule a claim holding is deemed to have been extinguished or the value of a claim holding is deemed to have been reduced, the extinguishment or reduction, as the case may be, shall be deemed to have had effect immediately before the time of completion.

- (2) References in this Part of this Schedule to the value of a claim holding are references to the value thereof immediately before the time of completion.

## **PART V**

### **ADJUSTMENT IN RESPECT OF COMPENSATION UNDER PART V OF ACT OF 1954**

23 Where compensation under Part V of the Act of 1954 became or becomes payable by reference to a claim holding, then (subject to the following provisions of this Part of this Schedule) for the purposes of Part VII of this Act—

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- (a) if the principal amount of the compensation was or is equal to the value of the claim holding at the time of completion . (ascertained apart from this Part of this Schedule) the claim holding shall be deemed to have been extinguished immediately before that time ;
- (b) if the principal amount of the compensation was or is less than the value of the claim holding at that time (ascertained apart from this Part of this Schedule) the value of the claim holding shall be deemed to have been reduced immediately before that time by the principal amount of the compensation.

24 Where compensation became or becomes payable as mentioned in paragraph 23 of this Schedule, and at any time an amount became or becomes recoverable in respect thereof under section 30 of the Act of 1954, as applied by section 48 of that Act, or under section 148 of this Act as applied by Schedule 22 to this Act to compensation under Part V of the Act of 1954, then, for the purposes of Part VII of this Act, paragraph 23 of this Schedule shall have effect as from that time as if the principal amount of that compensation had been reduced by a sum equal to seven-eighths of the amount which so became or becomes recoverable.

25 Where, in the case of a claim holding (in this paragraph referred to as " the parent holding "), compensation under Part V of the Act of 1954 became or becomes payable in respect of depreciation of the value of an interest in land by one or more planning decisions or orders, and any such decision or order did not extend to the whole of the area of the parent holding, then, both for the purposes of the foregoing provisions of this Part of this Schedule and for the purposes of Part VII of this Act—

- (a) the parent holding shall be treated as having been divided immediately before the time of completion into as many separate claim holdings, with such areas, as may be necessary to ensure that, in the case of each holding, either any such decision or order extending to the area of that holding extended to the whole thereof or no such decision or order extended to the area of that holding;
- (b) the value of each of the separate holdings respectively shall be taken to have been that fraction of the value of the parent holding which then attached to the part of the area of the parent holding constituting the area of the separate holding; and
- (c) the portion of the amount of any such compensation which, by the authority determining that amount, was or is apportioned to the area of any of the separate claim holdings shall be taken to have been compensation payable under Part V of the Act of 1954 in respect of that claim holding.

## PART VI

### SUPPLEMENTARY PROVISIONS

26 Where in accordance with any of the provisions of this Schedule a part of the benefit of an established claim constitutes a separate claim holding, the interest in land to which that claim holding relates shall be taken to be an interest of the like character as the interest to which the established claim related.

27 Where in accordance with any of the provisions of this Schedule a claim holding (in this paragraph referred to as "the parent holding ") is to be treated as divided into two or more claim holdings, a person who was the holder of one of those holdings

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shall be treated as having been the holder thereof at any time when he was the holder of the parent holding.

28 Expressions used in this Schedule and in Part VII of this Act have the same meanings in this Schedule as in that Part of this Act.

29 In this Schedule " the holder ", in relation to a claim holding, means the person for the time being entitled to the holding, and " the time of completion " means the time when, in accordance with section 127 of this Act, the adjustment of claim holdings is deemed to have been completed.

## SCHEDULE 14

Section 130.

### CALCULATION OF VALUE OF PREVIOUS DEVELOPMENT OF LAND

1 Where for the purposes of section 130 of this Act the value of any development initiated before a time referred to in that section has to be ascertained with reference to that time, the value of the development shall be calculated in accordance with the provisions of this Schedule.

2 Subject to the following provisions of this Schedule, the value shall be calculated by reference to prices current at the time in question—

- (a) as if the development had not been initiated, but the land had remained in the state in which it was immediately before the development was initiated ;  
and
- (b) on the assumption that (apart from the provisions of Part III of this Act or the provisions of the Act of 1947, as the case may be) the development could at that time lawfully be carried out,

and shall be taken to be the difference between the value which in those circumstances the land would have had at that time if planning permission for that development had been granted unconditionally immediately before that time and the value which in those circumstances the land would have had at that time if planning permission for that development had been applied for and refused immediately before that time, and it could be assumed that planning permission for that development, and any other new development of that land, would be refused on any subsequent application.

3 If the development involved the clearing of any land, the reference in paragraph (2) (a) of this Schedule to the state of the land immediately before the development shall be construed as a reference to the state of the land immediately after the clearing thereof but before the carrying out of any other operations.

4 (1) If the development was initiated in pursuance of planning permission granted subject to conditions, paragraph 2 of this Schedule shall apply as if the reference to the granting of permission unconditionally were a reference to the granting of permission subject to the like conditions.

(2) If the permission referred to in sub-paragraph (1) of this paragraph was granted subject to conditions which consisted of, or included, a requirement expressed by reference to a specified period, the reference in that sub-paragraph to the like conditions shall be construed, in relation to the condition imposing that requirement, as a reference to a condition imposing the like requirement in respect of a period of like duration beginning at the time in question.

- 5 In the application of the foregoing provisions of this Schedule to development initiated, but not completed, before the time in question, references to permission for that development shall be construed as references to permission for so much of that development as had been carried out before that time.

## SCHEDULE 15

Section 131.

### APPORTIONMENT OF UNEXPENDED BALANCE OF ESTABLISHED DEVELOPMENT VALUE

#### *Determination of relevant area*

- 1 (1) "Where, in the case of a compulsory acquisition to which section 131 of this Act applies, any area of the relevant land which, immediately before the relevant date, has an unexpended balance of established development value does not satisfy the condition set out in sub-paragraph (2) of this paragraph, that area shall be treated as divided into as many separate areas as may be requisite to ensure that each of those separate areas satisfies that condition.
- (2) The condition referred to in sub-paragraph (1) of this paragraph is that all the interests (other than excepted interests) subsisting in the area in question subsist in the whole of that area.
- (3) Any area of the relevant land which has an unexpended balance of established development value and which complies with the condition set out in sub-paragraph (2) of this paragraph is in this Schedule referred to, in relation to the interests subsisting therein, as " the relevant area", and the subsequent provisions of this Schedule shall have effect separately in relation to each relevant area.

#### *Preliminary calculations*

- 2 In the case of the interest of the lessor under any lease, there shall be calculated the capital value, as at the time immediately before the relevant date, of the right to receive a sum equal to the unexpended balance of established development value of the relevant area at that time, but payable at the expiration of the lease; and the amount so calculated in the case of any such interest is in this Schedule referred to as " the reversionary development value " of that interest.

#### *Apportionment of unexpended balance between interests*

- 3 Where two or more interests (other than excepted interests) subsist in the relevant area, the portion of the unexpended balance of established development value of the relevant area attributable to each of those interests respectively shall be taken to be the following, that is to say—
- (a) in the case of the interest of the lessor under any lease, so much, if any, of the reversionary development value of that interest, as remains after the deduction therefrom of the aggregate of—
- (i) the reversionary development value of the interest of the person, if any, to whom that lessor stands in the relationship of lessee ; and
  - (ii) in a case where the restricted value of the first-mentioned interest is a minus quantity, an amount equal to that minus quantity ;



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- (b) in the case of the interest of the lessee under any lease which is not subject to a sub-lease, so much, if any, of the said balance as remains after the deduction therefrom of the aggregate of—
  - (i) the reversionary development value of the interest of the lessor under the lease, and
  - (ii) in a case where the restricted value of the first-mentioned interest is a minus quantity, an amount equal to that minus quantity.

*Application of Schedule to past acquisitions*

- 4 In relation to any compulsory acquisition to which section 131 of this Act applies, where the relevant date was a date before the commencement of this Act, the foregoing provisions of this Schedule shall have effect with the necessary modifications.

*Interpretation*

- 5 In this Schedule—
- (a) " the relevant land ", in relation to a compulsory acquisition to which section 131 of this Act applies, means the land in which the interest acquired subsisted or subsists;
  - (b) " lease " does not include any lease in the case of which the interest of the lessee is an excepted interest;
  - (c) " the: relevant date" and " excepted interest" have the same meanings as in section 131 of this Act; and
  - (d) other expressions h3ve the same meanings as in Part VII of this Act.

SCHEDULE 16

Sections 157, 158, 169 and 263.

CONDITION TREATED AS APPLICABLE TO REBUILDING AND ALTERATIONS

- 1 Where the building to be rebuilt or altered is the original building, the amount of gross floor space in the building as rebuilt or altered which may be used for any purpose shall not exceed by more than ten per cent, the amount of gross floor space which was last used for that purpose in the original building.
- 2 Where the building to be rebuilt or altered is not the original building, the amount of gross floor space in the building as rebuilt or altered which may be used for any purpose shall not exceed the amount of gross floor space which was last used for that purpose in the building before the rebuilding or alteration.
- 3 In determining under this Schedule the purpose for which floor space was last used in any building, no account shall be taken of any use in respect of which an effective enforcement notice has been or could be served or, in the case of a use which has been discontinued, could have been served immediately before the discontinuance.
- 4 For the purposes of this Schedule gross floor space shall be ascertained by external measurement; and where different parts of a building are used for different purposes, floor space common to those purposes shall be apportioned rateably.
- 5 In relation to a building erected after the appointed day, being a building resulting from the carrying out of any such works as are described in paragraph 1 of

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Schedule 6 to this Act, any reference in this Schedule to the original building is a reference to the building in relation to which those works were carried out and not to the building resulting from the carrying out of those works.

## SCHEDULE 17

Section 179.

## PROCEEDINGS ON LISTED BUILDING PURCHASE NOTICE

*Action by local planning authority on whom listed building purchase notice is served*

- 1 (1) The local planning authority on whom a listed building purchase notice is served, 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 authority are willing to comply with the purchase notice ; or
  - (b) that another local planning authority or statutory undertakers specified in the notice under this sub-paragraph have agreed to comply with it in their place ; or
  - (c) that for reasons specified in the notice under this sub-paragraph, the authority are not willing to comply with the purchase notice and have not found any other local planning 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 sub-paragraph, together with a statement of the reasons so specified.
- (2) Where the local planning authority on whom a listed building purchase notice is served by an owner or lessee have served on him a notice in accordance with sub-paragraph (1)(a) or (b) of this paragraph the authority, or the other local planning 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 provisions of section 104 of this Act, and to have served a notice to treat in respect thereof on the date of service of the notice under sub-paragraph (1) of this paragraph.
- (3) Where the authority on whom a listed building purchase notice is served by an owner or lessee propose to serve on him a notice in accordance with sub-paragraph (1)(c) of this paragraph they shall transmit a copy of the purchase notice to the Secretary of State together with a statement of their reasons ; and section 171 of this Act shall then apply in relation to the purchase notice as it applies in relation to a purchase notice under section 169 of this Act with the substitution for references therein to the Secretary of State taking action under section 172 of this Act of references to his taking action under paragraph 2 of this Schedule.

*Action by Secretary of State in relation to listed building purchase notice*

- 2 (1) Subject to the following provisions of this paragraph, if the Secretary of State is satisfied that the conditions specified in section 179(1)(a) to (c) of this Act are fulfilled in relation to a listed building purchase notice, he shall confirm the notice:

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Provided that, if he is satisfied that the said conditions are fulfilled only in respect of part of the land, he shall confirm the notice only in respect of that part and the notice shall have effect accordingly.

- (2) The Secretary of State shall not confirm the purchase notice unless he is satisfied that the land comprises such land contiguous or adjacent to the building as is in his opinion required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.
- (3) If it appears to the Secretary of State to be expedient to do so in the case of a listed building purchase notice served on account of listed building consent being refused or granted subject to conditions, he may, in lieu of confirming the purchase notice, grant listed building consent for the works in respect of which the application was made or, where such consent for those works was granted subject to conditions, revoke or amend those conditions so far as it 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 those works.
- (4) If it appears to the Secretary of State to be expedient to do so, in the case of a listed building purchase notice served on account of listed building consent being revoked or modified by an order under Part II of Schedule 10 to this Act, he may, in lieu of confirming the notice, cancel the order revoking the consent or, where the order modified the consent 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 works in respect of which the consent was granted.
- (5) If it appears to the Secretary of State that the land, or any part of it, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other works for which listed building consent ought to be granted, he may in lieu of confirming the listed building 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 listed building consent for those works shall be granted in the event of an application being made in that behalf.
- (6) 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 development for which planning permission ought to be granted, he may, in lieu of confirming the listed building 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.
- (7) If it appears to the Secretary of State, having regard to the probable ultimate use of the building or the site thereof, that it is expedient to do so, he may, if he confirms the notice, modify it either in relation to the whole or in relation to any part of the land, by substituting another local planning authority or statutory undertakers for the authority on whom the notice was served.
- (8) In section 171 of this Act as applied by paragraph 1(3) of this Schedule, any reference to the taking of action by the Secretary of State under this paragraph is a reference to the taking by him of any such action as is mentioned in sub-paragraphs (1) or (3) to (7) of this paragraph, or to the taking by him of a decision not to confirm the purchase

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notice on the grounds that any of the conditions referred to in sub-paragraph (1) of this paragraph are not fulfilled.

*Effect of Secretary of State's action in relation to listed building purchase notice*

- 3 (1) Where the Secretary of State confirms a listed building purchase notice, the authority on whom the notice was served (or, if under paragraph 2(7) of this Schedule the Secretary of State modified the notice by substituting another authority or statutory undertakers for that authority, that other authority or those statutory undertakers) shall be deemed to be authorised to acquire the relevant interest compulsorily in accordance with the provisions of section 104 of this Act 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 sub-paragraphs (3) to (6) of paragraph 2 of this Schedule, and has not notified the owner or lessee 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 have been authorised to acquire the relevant interest compulsorily in accordance with the provisions of section 104 of this Act and to have served a notice to treat in respect thereof at the end of that period.
- (3) In this paragraph—
- (a) " the relevant interest" means the owner's or lessee's interest in the land or, if the purchase notice is confirmed by the Secretary of State in respect of only part of the land, the owner's or lessee's interest in that part;
  - (b) " the relevant period " is whichever of the following periods first expires, that is to say—
    - (i) the period of nine months beginning with the date of the service of the purchase notice ; and
    - (ii) 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 listed building purchase notice has been served of a decision on his part to confirm, or not to confirm, the notice (including any decision to confirm the notice only in respect of part of the land, or to give any direction as to the granting of listed building consent) 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 listed building purchase notice in its place.
- (5) For the purposes of any regulations made under this Act as to the time within which a listed building purchase notice may be served, the service of a listed building purchase notice under sub-paragraph (4) of this paragraph 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 decision to refuse listed building consent or to grant it subject to conditions (being the 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 sub-paragraph (4) of this paragraph.

*Special provision as to compensation where listed building purchase notice served*

- 4 Where in consequence of listed building consent being revoked or modified by an order under Part II of Schedule 10 to this Act, compensation is payable by virtue of section 161 of this Act in respect of expenditure incurred in carrying out any works to the building in respect of which the consent was granted, then if a listed building purchase notice is served in respect of an interest in the land, any compensation payable in respect of the acquisition of that interest in pursuance of the 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.

SCHEDULE 18

Section 206.

PROCEDURE IN CONNECTION WITH ORDERS RELATING TO FOOTPATHS AND BRIDLEWAYS

**PART I**

CONFIRMATION OF ORDERS

- 1 (1) Before an order under section 199 or 203(1)(b) of this Act is submitted to the Secretary of State for confirmation or confirmed as an unopposed order, the authority by whom the order was made shall give notice in the prescribed form—
- (a) stating the general effect of the order and that it has been made and is about to be submitted for confirmation or to be confirmed as an unopposed order ;
  - (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours ; and
  - (c) specifying the time (not being less than twenty-eight days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.
- (2) Subject to sub-paragraph (3) of this paragraph, the notice to be given under sub-paragraph (1) of this paragraph shall be given—
- (a) by publication in the Edinburgh Gazette and in at least one local newspaper circulating in the area in which the land to which the order relates is situated ; and
  - (b) by serving a like notice on—
    - (i) every owner, occupier and lessee (except tenants for a month or a period less than a month and statutory tenants within the meaning of the Rent (Scotland) Act 1971) of any of that land ;
    - (ii) every county or town council whose area includes any of that land ;
    - (iii) any statutory undertakers to whom there belongs, or by whom there is used, for the purposes of their undertaking, any apparatus under, in, on, over, along or across that land; and
    - (iv) any person named in the order by virtue of section 199(2)(d) of this Act; and
  - (c) by causing a copy of the notice to be displayed in a prominent position at the ends of so much of any footpath or bridleway as is to be stopped up, diverted or extinguished by virtue of the order.

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- (3) Except in the case of an owner, occupier or lessee being a local authority or statutory undertakers, the Secretary of State may in any particular case direct that it shall not be necessary to comply with sub-paragraph (2)(b)(i) of this paragraph ; but if he so directs in the case of any land, then in addition to publication the notice shall be addressed to "the owners and any occupiers" of the land (describing it) and a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.
- 2        If no representations or objections are duly made, or if any so made are withdrawn, the authority by whom the order was made may, instead of submitting the order to the Secretary of State themselves confirm the order (but without any modification).
- 3        (1) If any representation or objection duly made is not withdrawn, the Secretary of State shall, before confirming the order, if the objection is made by a local authority, cause a local inquiry to be held, and in any other case either—
- (a) cause a local inquiry to be held ; or
- (b) afford to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose,
- and, after considering the report of the person appointed to hold the inquiry or to hear representations or objections, may confirm the order, with or without modifications:
- Provided that in the case of an order under section 199 of this Act, if objection is made by statutory undertakers on the ground that the order provides for the creation of a public right of way over land covered by works used for the purpose of their undertaking, or over the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- (2) Notwithstanding anything in the foregoing provisions of this paragraph, the Secretary of State shall not confirm an Order so as to affect land not affected by the order as submitted to him, except after—
- (a) giving such notice as appears to him requisite of his proposal so to modify the order, specifying the time (not being less than twenty-eight days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal may be made ;
- (b) holding a local inquiry or affording to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose ; and
- (c) considering the report of the person appointed to hold the inquiry or to hear representations or objections as the case may be;
- and, in the case of an order under section 199 of this Act, if objection is made by statutory undertakers on the ground that the order as modified would provide for the creation of a public right of way over land covered by works used for the purposes of their undertaking, or over the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- 4        (1) The Secretary of State shall not confirm an order under section 199 of this Act which extinguishes a right of way over land under, in, on, over, along or across which there is any apparatus belonging to or used by statutory undertakers for the purposes of their undertaking, unless the undertakers have consented to the confirmation of the order ; and any such consent may be given subject to the condition that there are

included in the order such provisions for the protection of the undertakers as they may reasonably require.

- (2) The consent of statutory undertakers to any such order shall not be unreasonably withheld ; and any question arising under this paragraph whether the withholding of consent is unreasonable, or whether any requirement is reasonable, shall be determined by whichever Minister is the appropriate Minister in relation to the statutory undertakers concerned.
- 5 Regulations under this Act may, subject to this Part of this Schedule, make such provision as the Secretary of State thinks expedient as to the procedure on the making, submission and confirmation of orders under sections 199 and 203(1)(b) of this Act.

## PART II

### PUBLICITY FOR ORDERS AFTER CONFIRMATION

- 6 As soon as may be after an order under section 199 or 203(1)(b) of this Act has been confirmed by the Secretary of State or confirmed as an unopposed order, the authority by whom the order was made shall publish, in the manner required by paragraph 1(2) of this Schedule, a notice in the prescribed form, describing the general effect of the order, stating that it has been confirmed, and naming a place where a copy thereof as confirmed may be inspected free of charge at all reasonable hours, and shall—
- (a) serve a like notice and a copy of the order as confirmed on any persons on whom notices were required to be served under the said paragraph 1(2); and
  - (b) cause a like notice to be displayed in the like manner as the notice required to be displayed under the said paragraph 1(2):

Provided that no such notice or copy need be served on a person unless he has sent to the authority a request in that behalf, specifying an address for service.

## SCHEDULE 19

Sections 250, 251, 256, 257 and 259 and paragraphs 70 and 71 of Schedule 22.

### PROVISIONS OF THIS ACT REFERRED TO IN SECTIONS 250, 251, 256, 257 AND 259 AND PARAGRAPHS 70 AND 71 OF SCHEDULE 22

## PART I

Sections 1 and 2

Section 19.

Section 20 except subsection (7).

Section 21 except subsection (6).

Section 22.

Section 26(1).

Section 27.

Section 28(1).

Sections 29 and 30.

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Section 31(2) and (4).  
Section 32 with the omission in subsection (4) of the reference to sections 23 and 24.  
Section 33(1) to (6) with the omission in subsection (5) of the reference to section 24.  
Section 34.  
Section 37.  
Section 42.  
Sections 48 to 51.  
Section 52 except subsections (6), (8) and (9).  
Section 58.  
Sections 61 to 66.  
Section 86.  
Sections 88 and 89.  
Section 98.  
Sections 100 and 101.  
Sections 108 to 115.  
Sections 117 to 122.  
Section 153.  
Section 154 with the omission in subsection (2) of the references to sections 155 to 157.  
Section 158 except subsection (5).  
Section 159.  
Section 163.  
Section 165.  
Sections 167 and 168.  
Section 169(1) to (4).  
Sections 170 to 172.  
Sections 175 to 178.  
Section 180(1).  
Section 198.  
Section 203 except subsection (1)(b).  
Section 204.  
Sections 207 and 208.  
Section 209.  
Section 211.  
Sections 213 to 220.  
Sections 222 to 225.  
Section 226 except subsection (3).  
Section 227 except subsections (4) and (6)(b).  
Sections 228 to 230.  
Section 231(1) except paragraphs (d) and (e).  
Section 232.  
Section 236 with the omission in subsection (2) of the references to section 233.  
Section 237.  
Section 238(1).  
Section 239.  
Sections 241 and 242.



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Section 250.

Sections 251 and 252.

Section 253(1) (the reference, in paragraph (b), to Part III being construed as not referring to sections 23 and 24 and the reference, in that paragraph, to Part IV being construed as not referring to sections 71 to 83) and section 253(2) to (5) and (7).

Section 254.

Section 256.

Section 258.

Section 260.

Section 265 except subsections (4) and (5).

Section 266.

Section 270.

Schedules 1 and 2.

Schedule 6.

Schedule 20.

Schedule 22, paragraphs 27 to 32, 38,40 and 74 to 79.

Any other provisions of this Act in so far as they apply, or have effect for the purposes of, any of the provisions specified above.

## **PART II**

Section 3.

Sections 4 to 18

Sections 23(2) to (6) except subsection (2)(a) and the reference to it in subsection (6), and subsection (8).

Section 25(2)(b) and (3).

Section 26(4).

Section 28(2) and (3).

Section 31(3).

Section 33(7) and (8).

Sections 38 to 41.

Sections 43 to 47.

Section 52(8) and (9).

Sections 53 and 54.

Section 56.

Sections 77 to 79.

Sections 83 and 85.

Section 87.

Sections 90 to 96.

Section 99(4).

Sections 102 to 107.

Sections 160 to 162.

Section 166.

Section 169(5) and (6).

Section 173.

Section 179.

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Section 186.  
Sections 190 and 191.  
Sections 199 to 202.  
Section 203(1)(b).  
Sections 205 and 206.  
Section 210.  
Section 212.  
Section 221.  
Section 226(3).  
Section 227(4) and (6)(b).  
Section 240.  
Section 243.  
Section 257.  
Section 271.  
Schedules 5, 7, 8, 9, 10, 12, 17 and 18 and paragraphs 14 to 17, 20, 26, 33, 34, 36, 48, 49 and 65 of Schedule 22.  
Any other provisions of this Act in so far as they apply, or have effect for the purposes of, any of the provisions specified above.

### **PART III**

Sections 19 to 22  
Section 26(1), (5) and (6).  
Section 27.  
Section 28(1).  
Sections 29 and 30.  
Section 31 except subsection (3).  
Sections 32 to 34.  
Section 37.  
Section 42.  
Sections 48 to 51.  
Section 52 except subsections (2) and (7) to (9).  
Section 58.  
Sections 61 to 66.  
Section 70.  
Sections 84 to 91.  
Section 98.  
Sections 100 and 101.  
Section 166.

### **PART IV**

Section 25(2)(b) and (3)  
Section 26(4).  
Section 28(2) and (3).  
Section 52(2) and (7) to (9).

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Section 53.  
Section 54.  
Section 56.  
Section 92 to 96.  
Sections 104 to 107.  
Sections 160 to 162.  
Section 169(5) and (6).  
Section 179.  
Schedules 10 and 17.

## SCHEDULE 20

Section 273(6).

### ENACTMENTS EXEMPTED FROM SECTION 273(6) OF THIS ACT

- 1 Section 32(1) of the Public Health (Scotland) Act 1897.
- 2 Section 158 of the Burgh Police (Scotland) Act 1892, as extended by section 104(2) (h) of the Burgh Police (Scotland) Act 1903.
- 3 Section 5 of the Roads Improvement Act 1925, as applied to Scotland by section 12 of that Act.
- 4 Any enactment making such provision as might by virtue of any Act of Parliament have been made in relation to the area to which the order applies by means of a byelaw, order or regulation not requiring confirmation by Parliament.
- 5 Any enactment which has been previously excluded or modified by a development order, and any enactment having substantially the same effect as any such enactment.

## SCHEDULE 21

Sections 18 and 276.

### CONSEQUENTIAL AMENDMENTS

#### PART I

##### *The Land Compensation (Scotland) Act 1963 (c. 51)*

In the Land Compensation (Scotland) Act 1963 any reference to an area defined in the current development plan as an area of comprehensive development shall be construed as a reference to an action area for which a local plan is in force.

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## PART II

### *The Finance Act 1931 (c. 28)*

In section 28(6) (inserted by the Land Commission Act 1967), for the words " the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 ".

In Schedule 2, in paragraph (viii) (inserted by the Land Commission Act 1967), for the words " section 12(5) of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 31(2) of the Town and Country Planning (Scotland) Act 1972 ".

### *The Building Restrictions (War-Time Contraventions) Act 1946 (c. 35)*

In section 8(5), in paragraph (c), after the word " 1947 " there shall be inserted the words " or of paragraph 28 of Schedule 22 to the Town and Country Planning (Scotland) Act 1972 ", and the words " under Part II of that Act " shall be omitted ; and at the end of paragraph (d) there shall be added the words " or by paragraph 28 of Schedule 22 to the Town and Country Planning (Scotland) Act 1972 ".

### *The Town and Country Planning (Scotland) Act 1947 (c. 53)*

In section 44(1), for the words " this Part of this Act " there shall be substituted the words " Part VI of the Town and Country Planning (Scotland) Act 1972 ".

### *The Civil Aviation Act 1949 (c. 67)*

In section 30—

- (a) in subsection (1), for the words from "arbitration" to " 1944 " and the words " paragraph 2 of that Schedule " there shall be substituted respectively the words " Lands Tribunal " and "section 227(2), (3), (5) and (6) of the Town and Country Planning (Scotland) Act 1972 " ;
- (b) in subsection (2), from the beginning to the words "in respect of" there shall be substituted the words—

“(2) Subsections (2), (3), (5) and (6) of the said section 227 shall have effect for the purposes of this section as if, in paragraph (c) of subsection (2) of that section, the words ' is under section 226(2) of this Act, and ' were omitted, and as if, at the end of that paragraph, there were inserted the following paragraph:—

“(d) in respect of”

and for the words " sub-paragraph (4) thereof " there shall be substituted the words " subsection (6) of that section " . In section 64(6)(b), for the words "section fifty" and " 1945 " there shall be substituted respectively the words " section 267 " and " 1972 ".

In Schedule 4—

- (a) in paragraph 4, for the words from " the First Schedule " to " this Part " there shall be substituted the words " section 225 of the Town and Country Planning (Scotland) Act 1972 shall have effect as if any reference in that section to section 222 of that Act, or to the section under which the order is proposed to be made, included a reference to this Part " ;
- (b) in paragraph 8, for the words from " the First Schedule " to " this Part " there shall be substituted the words " section 225 of the Town and Country Planning (Scotland) Act

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1972 shall have effect as if any reference in that section to section 224 of that Act, or to the section under which the order is proposed to be made, included a reference to this Part ".

*The Building (Scotland) Act 1959 (c. 24)*

Section 17(2) shall be amended as follows:—

- (a) for paragraph (b) there shall be substituted the following paragraph—
  - “(b) subject to a building preservation notice under section 56 of the Town and Country Planning (Scotland) Act 1972”;
- (b) in paragraph (c), for the words " section 28 of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 52 of the said Act of 1972 ";
- (c) after the words "Act of 1931 " there shall be inserted the words " the said Act of 1972 ".

*The Town and Country Planning (Scotland) Act 1959 (c. 70)*

For section 27(5)(b) there shall be substituted the following paragraph:—

“(b) to section 113 of the Town and Country Planning (Scotland) Act 1972”.

In Schedule 4, in paragraph 2, for the words "the Town and Country Planning (Scotland) Act 1947" there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 ".

*The Airports Authority Act 1965 (c. 16)*

In section 17(6), for the words "Section 128 of the Town and Country Planning Act 1971 " there shall be substituted the words " Section 118 of the Town and Country Planning (Scotland) Act 1972 ".

In section 18 of the said Act of 1965 (as amended by the Civil Aviation Act 1971) for the words set out in the first column below there shall be substituted the words set out opposite to them in the second column below:—

|  |   |
|--|---|
| " section 20 of the Act of 1947 "                                  | " sections 153 and 154 of the Act of 1972 "     |
| " section 18(1) of the Act of 1947 "                               | " section 158 of the Act of 1972 "              |
| " Schedule 5, paragraph 1, of the Act of 1947 "                    | " section 226(1) of the Act of 1972 "           |
| " section 18(3) of the Act of 1947 "                               | " section 176(2) of the Act of 1972 "           |
| " section 17 of the Act of 1947 "                                  | " section 169 of the Act of 1972 "              |
| " the said section 20 "  | " the said section 153 "                        |
| " section 19 of the Act of 1947 (in both places) "                 | " section 42 of the Act of 1972 "               |
| " section 17(1B) or (2) of the Act of 1947 "                       | " section 170(2) or 175(1) of the Act of 1972 " |
| "section 43 of the Town and Country Planning (Scotland) Act 1954 " | " section 157 of the Act of 1972 "              |
| " Part II of the Act of 1947 "                                     | " Part III of the Act of 1972 "                 |

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and in section 18(5), for the words " ' the Act of 1947 ' means the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " ' the Act of 1972 ' means the Town and Country Planning (Scotland) Act 1972 " .

In section 19(1), for the words "section 113(1) of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 275(1) of the Town and Country Planning (Scotland) Act 1972 " .

#### *The Gas Act 1965 (c. 36)*

In section 4(7), for the words "the Town and Country Planning (Scotland) Acts 1947 to 1963 " and " section 32 of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted respectively the words " the Town and Country Planning (Scotland) Act 1972 " and " section 37 of that Act " .

In section 28(1)—

- (a) in the definition of " local planning authority", for the words " section 2 of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 1 of the Town and Country Planning (Scotland) Act 1972 ";
- (b) in the definition of " planning permission ", for the words "Part III of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " Part III of the Town and Country Planning (Scotland) Act 1972 " .

In Schedule 3—

- (a) in paragraph 7(2), for the word " 1947" there shall be substituted the word " 1972 ";
- (b) in paragraph 9(a), for the words " section 19 of the Town and Country Planning (Scotland) Act 1954 ", " Part II of the said Act of 1954 " and " sections 23 and 24 of the said Act of 1954" there shall be substituted respectively the words " section 135 of the Town and Country Planning (Scotland) Act 1972 " , "Part VII of the said Act of 1972 " and " sections 35 and 36 of the said Act of 1972 " .

#### *The Building Control Act 1966 (c. 27)*

In section 6(1)(a), after the words " Part I of the Control of Office and Industrial Development Act 1965" there shall be inserted the words " or section 72 of the Town and Country Planning (Scotland) Act 1972 " .

#### *The Housing (Scotland) Act 1966 (c. 49)*

In section 18, in subsection (1), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

- “(a) in relation to which a building preservation notice served under section 56 of the Town and Country Planning (Scotland) Act 1972 is in force, or
- (b) which is a listed building within the meaning of section 52(7) of that Act”,

and, in subsection (2), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

- “(a) subject to a building preservation notice served under the said section 56, or
- (b) a listed building within the meaning of the said section 52(7)”.

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*The Local Government (Scotland) Act 1966 (c. 51)*

In section 9(5), for the words " the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 " .

In section 10(4), for the words " the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 " .

In section 25(3)(c), for the words from " of a building " to " notified " there shall be substituted the words " of a building preservation notice as defined by section 56 of the Town and Country Planning (Scotland) Act 1972 or are included in a list compiled or approved under section 52 of that Act or are notified " .

In section 41, for the words "the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 " .

*The Land Commission Act 1967 (c. 1)*

In section 15, for the words set out in the first column below (in each place where they occur in that section) there shall be substituted the words set out opposite to them in the second column below—:

|  |                             |
|--|-----------------------------|
| " the Scottish Act of 1945 "               | " the Act of 1972 "         |
| " section 21 "                             | " section 117 "             |
| " section 24 "                             | " sections 219 and 220 "    |
| " Schedule 4 "                             | " sections 226(2) and 227 " |
| " section 35 of the Scottish Act of 1947 " | " section 102 "             |
| " subsection (1) of the said section 24 "  | " section 219(1) "          |
| " section 86 of the Scottish Act of 1947 " | " section 259 "             |

In section 58(3), for the words "section 113(1) of the Scottish Act of 1947 " there shall be substituted the words " section 275(1) of the Act of 1972 " .

In section 89(6)(b), for the words "section 113(1) of the Scottish Act of 1947 " there shall be substituted the words " section 275(1) of the Act of 1972 " .

In section 99—

- (a) in subsection (1), after the words "' the Act of 1971 ' means the Town and Country Planning Act 1971 " there shall be inserted the words " ' the Act of 1972 ' means the Town and Country Planning (Scotland) Act 1972 " ;
- (b) in subsection (2)(6), for the words from " Part I " to the end of the paragraph there shall be substituted the words " any of paragraphs 1, 2, 3 and 5 to 9 of Schedule 6 to the Act of 1972, as read with Part III of that Schedule " ; and
- (c) in subsection (8), for the words from "section 113(1)" to " 1959 (interpretation) " there shall be substituted the words " and section 275(1) (interpretation) of the Act of 1972 " .

In Schedule 15, in paragraph (viii), for the words "section 12(5) of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 31 of the Town and Country Planning (Scotland) Act 1972 " .

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In Schedule 16, in Part II, for the words "section 27 of the Scottish Act of 1945" there shall be substituted the words " section 118 of the Act of 1972 " and for the words " said section 27 " there shall be substituted the words " said section 118 " .

*The Forestry Act 1967 (c. 10)*

In section 9(4)(d), for the words " the Town and Country Planning (Scotland) Act 1947" there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 " .

In section 35, for the words " section 26 of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 58 of the Town and Country Planning (Scotland) Act 1972 " .

In Schedule 3, in paragraph 2, for the words " section 13 of the Town and Country Planning (Scotland) Act 1947" and "the said section 13 " there shall be substituted respectively the words " section 32 of the Town and Country Planning (Scotland) Act 1972 " and " the said section 32 " ; and in paragraph 3, for the words " the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 " .

*The Agriculture Act 1967 (c. 22)*

In section 50(3)(b), for the words " section 113(1) of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 275(1) of the Town and Country Planning (Scotland) Act 1972 " .

In section 52(2)(g), for the words " the Town and Country Planning (Scotland) Act 1947" there shall be substituted the words " the Town and Country Planning (Scotland) Act 1972 " .

*The Civic Amenities Act 1967 (c. 69)*

In section 28(4)—

- (a) in subsection (2) (as substituted for Scotland), for the words from " Subsections (4) " to "entry" there shall be substituted the words " Subsections (1) to (5) of section 266 of the Scottish Planning Act ", and for the words " subsection (7) of the said section 99 " there shall be substituted the words " subsections (4) and (5) of the said section 266 " ;
- (b) in subsection (3) (as substituted for Scotland), for the words " 100 to 102 " there shall be substituted the words " 267 to 270 " , and the words from " other than " to " section 100 " shall be omitted.

In section 30(1), for the words " 'the Scottish Planning Act' means the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " ' the Scottish Planning Act' means the Town and Country Planning (Scotland) Act 1972 " .

*The Public Expenditure and Receipts Act 1968 (c. 14)*

In Schedule 3, for paragraph 7(a) there shall be substituted:—

- “(a) The Town and Country Planning (Scotland) Act 1972 section 134(9)”.

*The Agriculture (Miscellaneous Provisions) Act 1968 (c. 34)*

In section 14(2), for the words "section 34, 35 or 39(3) of the Town and Country Planning (Scotland) Act 1947" there shall be substituted the words " section 102 or 110 of the Town and Country Planning (Scotland) Act 1972 " .



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### *The Town and Country Planning (Scotland) Act 1969 (c. 30)*

In section 59, after the words "listed building" there shall be inserted the words " (as defined by section 52 of the Town and Country Planning (Scotland) Act 1972) ".

### *The Transport Act 1968 (c. 73)*

In section 108—

- (a) in subsection (2), for the words " section 31 of the Town and Country Planning (Scotland) Act 1947 ", " the said Act of 1947" and "the said section 31" there shall be substituted respectively the words " section 63 of the Town and Country Planning (Scotland) Act 1972 ", "the said Act of 1972 " and " the said section 63 " ;
- (b) in subsection (3), for the words " the said Act of 1947 " there shall be substituted the words " the Town and Country Planning (Scotland) Act 1947 " .

In section 112(3)(d). for the words "section 31 of the Town and Country Planning (Scotland) Act 1947 " there shall be substituted the words " section 63 of the Town and Country Planning (Scotland) Act 1972 " .

In section 139(1)(b) and (c), for the words " section 17 of the Town and Country Planning (Scotland) Act 1947 ", " section 38 of the Town and Country Planning (Scotland) Act 1959 " and " section 41 of the said Act of 1959 " there shall be substituted respectively the words " section 169, 177 or 178 of the Town and Country Planning (Scotland) Act 1972 ", " section 182 of the said Act of 1972 " and " section 185 of the said Act of 1972 " .

In section 141(2), for the words "section 113(1) of the Town and Country Planning (Scotland) Act 1947" there shall be substituted the words " section 275(1) of the Town and Country Planning (Scotland) Act 1972 " .

### *The Post Office Act 1969 (c. 48)*

In section 58, for the words set out in the first column below there shall be substituted the words set out opposite to them in the second column below:—

|  |  |
|--|--|
| " Subsections (4) to (6) and subsection (9) of section 99 of the Town and Country Planning (Scotland) Act 1947 " | " Sections 265(8) and 266(1) to (3) and (6) of the Town and Country Planning (Scotland) Act 1972 " |
| " the said section 99 "  | " the said section 265 "   |
| " section 99(4) "  | " section 266(1) "   |
| " section 99(9) "  | " section 265(8) "   |

In Schedule 4—

- (a) in paragraph 92(1), for the words from " section 70(1)" to "undertakers)" and for the words "section 113(1) of the Act of 1947" there shall be substituted respectively the words " section 212(1) of the Town and Country Planning (Scotland) Act 1972 " and " section 211 of that Act "; and in paragraph 92(2), for the words " The said section 70 " there shall be substituted the words " The said section 212 " .
- (b) in paragraph 93(1), sub-paragraphs (iii), (vi), (xvi) and (xxxii) shall be omitted and after sub-paragraph (xxxiii) there shall be inserted—
  - “(xxxiv) sections 19, 37, 45, 46, 108(2), 117, 118, 119, 138, 154(3), 170, 171, 172, 175, 181, 195(6), 199(2), 202(3), 205, 212, 214

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to 230, 233(7), 242 and 266(6)(b) of, and Schedules 8 and 9, paragraphs 1 to 3 of Schedule 17, and Schedule 18 to, the Town and Country Planning (Scotland) Act 1972”.

- (c) in paragraph 93(2), sub-paragraphs (a), (d), (h) and (r) shall be omitted and after sub-paragraph (s) there shall be inserted—
- “(t) sections 195(6), 214 to 230 and 266(6)(b) of, and Schedule 8 and paragraph 4 of Schedule 18 to, the Town and Country Planning (Scotland) Act 1972”.
- (d) in paragraph 93(4), sub-paragraphs (a), (b) and (i) shall be omitted and after sub-paragraph (j) there shall be inserted—
- “(k) sections 138(3), 154(3) and 214 to 230 of, and Schedule 8 to, the Town and Country Planning (Scotland) Act 1972”.

In Schedule 9—

- (a) in paragraph 27, for the words set out in the first column below (in each place where they occur in that paragraph) there shall be substituted the words set out opposite to them in the second column below:—

|   |  |
|---|--|
| " Parts VII and XII of the Town and Country Planning Act 1971 "                     | " Parts VII and XII of the Town and Country Planning (Scotland) Act 1972 "                     |
| " Section 78 of the Town and Country Planning Act 1971 "                            | " Section 76 of the Town and Country Planning (Scotland) Act 1972 "                            |
| " Section 34 of the Town and Country Planning Act 1971 "                            | " Section 31 of the Town and Country Planning (Scotland) Act 1972 "                            |
| " Minister of Housing and Local Government "  | " Secretary of State "   |
| " section 70 of the Town and Country Planning (Scotland) Act 1969 "                 | " section 212 of the Town and Country Planning (Scotland) Act 1972 "                           |
| " the Town and Country Planning (Scotland) Act 1947 "                               | " the Town and Country Planning (Scotland) Act 1972 "  |
| " sections 66 and 67 of the Town and Country Planning (Scotland) Act 1969 "         | " sections 38 and 39 of the Town and Country Planning (Scotland) Act 1972 "                    |
| " Subsections (5) and (7) of section 43 of the Town and Country Planning Act 1971 " | " Subsections (5) and (7) of section 40 of the Town and Country Planning (Scotland) Act 1972 " |
| " sections 41 and 42 of that Act "  | " sections 38 and 39 of that Act "   |

- (b) in paragraph 28, for the words set out in the first column below there shall be substituted the words set out opposite to them in the second column below:—

|   |  |
|---|--|
| " section 83 of the Town and Country Planning (Scotland) Act 1947 " | " section 253 of the Town and Country Planning (Scotland) Act 1972 " |
| " section 36 of the Town and Country Planning (Scotland) Act 1959 " | " section 24 of the said Act of 1972 "                               |
| " the said Act of 1947 " (in paragraph 28(2))                       | " the said Act of 1972 "   |

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- (c) in paragraph 29, for the words " section 72(1) of the Town and Country Planning (Scotland) Act 1947 " and " section 15 of the Town and Country Planning (Scotland) Act 1969 " there shall be substituted respectively the words " paragraph 28 of Schedule 22 to the Town and Country Planning (Scotland) Act 1972 " and " section 84 of the said Act of 1972 ".

*The Civil Aviation Act 1971 (c. 75)*

In section 14—

- (a) in subsection (6), for the words " section 220 ", " Act 1971 " and " section 209 " there shall be substituted respectively the words " section 209 " , "(Scotland) Act 1972" and " section 198 " ;
- (b) in subsection 7, for the words " Section 128 " and " Act 1971 " there shall be substituted respectively the words " Section 118 " and " (Scotland) Act 1972 ".

In section 17, for the words set out in the first column below there shall be substituted the words set out opposite to them in the second column below:—

|   |  |
|---|--|
| " section 18 or 20 of or paragraph 1 of Schedule 5 to the Town and Country Planning (Scotland) Act 1947 " | " section 153, 154, 158, 176(2) or 226(1) of the Town and Country Planning (Scotland) Act 1972 " |
| " the said section 20 "   | " the said section 153 "   |
| " section 19 of the said Act of 1947 "  | " section 42 of the said Act of 1972 "   |
| " section 43 of the Town and Country Planning (Scotland) Act 1954 "                                       | " section 157 of the said Act of 1972 "  |
| " section 17 of the said Act of 1947 "  | " section 169 of the said Act of 1972 "  |
| " subsection (1B) or (2) of the said section 17 "   | " section 170(2) or 175(1) of the said Act of 1972 "   |
| " the said section 19 "   | " the said section 42 "  |
| " Part II of the said Act of 1947 "   | " Part III of the said Act of 1972 ".  |

In Schedule 5—

- (a) in paragraph 5, sub-paragraphs (a), (d), (j), (n) and (cc) shall be omitted and after paragraph (ff) there shall be inserted—
- “(gg) sections 19, 37, 45, 46, 108(2), 117, 118, 119, 138, 154(3), 170, 171, 172, 175, 181, 195(6), 198(3)(b), 199(2), 202(3), 205, 212, 214 to 230, 233(7), 242, 266(6)(b) of, and Schedules 8 and 9, paragraphs 1 to 3 of Schedule 17, and Schedule 18 to, the Town and Country Planning (Scotland) Act 1972”;
- (b) in paragraph 6, sub-paragraphs (a), (c), (e) and (m) shall be omitted and after paragraph (ri) there shall be inserted—
- “(o) section 195(6), 214 to 230 and 266(6)(b) of, and Schedule 8 and paragraph 4 of Schedule 18 to, the Town and Country Planning (Scotland) Act 1972”;
- (c) in paragraph 7, sub-paragraphs (a), (b) and (h) shall be omitted and after paragraph (i) there shall be inserted—
- “(j) sections 138(3), 154(3) and 214 to 230 of, and Schedule 8 to, the Town and Country Planning (Scotland) Act 1972”;

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- (d) in paragraph 9, for the words " section 70 of the Town and Country Planning (Scotland) Act 1969", "the Town and Country Planning (Scotland) Act 1947 " and " Section 71(2) of the said Act of 1969 " there shall be substituted respectively the words " section 212 of the Town and Country Planning (Scotland) Act 1972 " , " that Act" and " Section 214(2)(b) of the said Act of 1972 " .

*The Local Employment Act 1972 (c.5)*

In section 16(3), for paragraph (b) there shall be substituted—

“(b) subsection (8) of section 265 and subsections (1) to (4) and (6) of section 266 of the Town and Country Planning (Scotland) Act 1972,”  
and for the words " 99 respectively " there shall be substituted the words " 265 respectively " .

In section 17(3), for the words " 12(4)" and " 1947" there shall be substituted respectively the words " 65(1) " and " 1972 " .

In section 21(1), in the definition of "industrial building", for the words from " section 21 " to the end of the definition there shall be substituted the words " section 64 of the Town and Country Planning (Scotland) Act 1972 " .

*The Town and Country Planning (Amendment) Act 1972 (c. )*

For section 9 there shall be substituted the following section:—

- “9 (1) This section applies to all buildings other than—
- (a) listed buildings, and
  - (b) excepted buildings within the meaning of section 56(2) of the Town and Country Planning (Scotland) Act 1972 (hereinafter in this Act referred to as "the Act of 1972") (buildings, that is to say, excepted from the power of local planning authorities to serve building preservation notices in respect of non-listed buildings).
- (2) If it appears to a local planning authority that, in the interests of preserving the character or appearance of any part of their district which is for the time being a conservation area, there should be power to control the demolition of the buildings therein to which this section applies, or any one or more of those buildings, they may direct that the buildings or building in question be subject to control under this section; and while such a direction is in force as respects any building, the provisions of the Act of 1972 specified in Part I of Schedule 3 to this Act shall have effect in relation to the building subject to and in accordance with the provisions of that Part.
- (3) A local planning authority making a direction under subsection (2) above shall forthwith submit it to the Secretary of State for confirmation, and the Secretary of State may confirm the direction in the form in which it is submitted to him, confirm it subject to the exclusion of any building or buildings specified in the confirmation, or refuse to confirm it.
- (4) A direction under subsection (2) above shall come into force on the day on which it is confirmed by the Secretary of State or, if it contains a declaration by the local planning authority that it is expedient that it should have immediate effect, on the day on which it is made.
- (5) A local planning authority may by a direction made under this subsection, which shall not require confirmation by the Secretary of State but shall take effect on the day on

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which it is made, revoke any direction under subsection (2) above, or vary any such direction so as to exclude any building or buildings therefrom.

- (6) Where a building to which a direction under subsection (2) above relates becomes a listed building or ceases to be in a conservation area, the direction shall cease to be in force as respects that building ; and, in the case of a direction containing such a declaration as is mentioned in subsection (4) above—
- (a) if during the period of six months beginning with the date on which the direction is made the Secretary of State notifies the local planning authority that he does not propose to confirm it, the direction shall cease to be in force as from the day on which the notification is received by them,
  - (b) if during that period the Secretary of State confirms the direction subject to the exclusion of a specified building or buildings, the direction shall thereupon cease to be in force as respects that building or those buildings,
  - (c) if neither of the above paragraphs applies, the direction shall cease to be in force at the end of that period unless the Secretary of State has by then confirmed it in the form in which it was submitted to him.
- (7) The provisions of Part II of Schedule 3 to this Act shall have effect for the purpose of supplementing the preceding provisions of this section.
- (8) The preceding provisions of this section and the said Schedule 3 shall be construed as one with the Act of 1972.”

In section 10(1), for the words "or, in Scotland, section 1 of the Civic Amenities Act 1967" there shall be substituted the words " or section 262 of the Act of 1972 ".

For Schedule 3 there shall be substituted the following Schedule :—

### “SCHEDULE 3

#### PROVISIONS AS TO CONTROL OF DEMOLITION IN CONSERVATION AREAS

#### **PART I**

##### APPLICATION OF CERTAIN PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972

- 1 Section 53 of the Town and Country Planning (Scotland) Act 1972 (hereinafter referred to as " the Act of 1972 ") (requirement of consent of local planning authority or Secretary of State to works affecting listed buildings) shall apply in relation to any works for the demolition of the building as if it were a listed building, but with the omission of subsections (2)(b) and (3); and subsections (3), (5) and (6) of section 54 of that Act and Parts I and II of Schedule 10 thereto (supplementary) shall apply accordingly in relation to listed building consent for any such works, but—
- (a) with the said subsection (3) modified by the substitution, for the reference to the desirability of preserving the building or any features of special architectural or historic interest which it possesses, of a reference to the desirability of preserving the character or appearance of the conservation area, and
  - (b) with the omission from the said Parts I and II of paragraph 5, paragraph 6, sub-paragraphs (2) and (3)(6) of paragraph 7 and paragraph 10.

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- 2 Sections 92 to 95 of the Act of 1972 (listed building enforcement notices) shall apply in relation to the building as if it were a listed building, but—
- (a) with section 92(1) modified by the substitution, for the words " the character of the building as one of special architectural or historic interest ", of the words " the character or appearance of the conservation area in which the building is situated ",
  - (b) with section 93(1) modified by the substitution of the following for paragraph (a)—
    - “(a) that power to control the demolition of the building is not necessary in the interests of preserving the character or appearance of the conservation area in which it is situated”,
- and
- (c) with the omission from section 93(5) of paragraphs (b) and (c).
- 3 Section 161 of the Act of 1972 (compensation) shall have effect on the revocation or modification as mentioned in subsection (1) of that section of any listed building consent granted in respect of the building ; and section 179 of that Act and Schedule 17 thereto (listed building purchase notices) shall have effect where listed building consent in respect of the building is refused, granted subject to conditions, revoked or modified as mentioned in subsection (1) of the said section 179.
- 4 If the building is Crown land, section 253(1)(6) of the Act of 1972 shall have effect with respect to the application of any provision thereto by virtue of this Part of this Schedule.

## PART II

### SUPPLEMENTARY

- 5 On the confirmation by the Secretary of State of any direction made under subsection (2) of section 9 of this Act by a local planning authority, or the making by any local planning authority of a direction under subsection (5) of that section, a copy of the direction and confirmation or of the direction, as the case may be, certified by the clerk of the authority to be a true copy, shall be deposited by that authority with the clerk of any local authority in whose district any building to which the direction relates is situated.
- In this paragraph "local authority" means a county council or the town council of a burgh.
- 6 Every local authority with whom a copy of any direction is deposited under paragraph 5 above shall compile and keep available for public inspection free of charge at reasonable hours and at a convenient place a list containing particulars of any building in their district to which the direction relates.
- 7 A local planning authority making a direction under subsection (2) of the said section 9 containing such a declaration as is mentioned in subsection (4) of that section shall forthwith serve on every person who is an owner, lessee or occupier of any building to which the direction relates a notice stating that the direction has been made and explaining its effect, and, on being notified by the Secretary of State of his decision with respect to confirmation of the direction, shall forthwith notify every such person of the decision and where any direction under the said subsection (2) not containing such a declaration is confirmed by the Secretary of

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- State, or a direction is made under subsection (5) of the said section 9, the local planning authority making the direction shall forthwith serve on every person who is an owner, lessee or occupier of any building affected by the direction a notice stating that the direction has been made and confirmed or, as the case may be, made, and (unless it is a direction under the said subsection (5)) explaining its effect.
- 8 (1) If a direction under subsection (2) of the said section 9 containing such a declaration as is mentioned in subsection (4) of that section ceases to be in force as respects any building by virtue of paragraph (a), (b) or (c) of subsection (6) of that section, then, subject to a claim in that behalf being made to the local planning authority within the prescribed time and in the prescribed manner, any person who at the time when the direction was made had an interest in the building shall be entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the direction.
- (2) The loss or damage in respect of which compensation is payable under sub-paragraph (1) above shall include a sum payable in respect of a breach of contract caused by the necessity of countermanding any works to the building on account of the direction being in force with respect thereto.
- 9 (1) The following provisions of this paragraph shall have effect where any direction under sub-paragraph (2) of the said section 9 ceases to be in force as respects any building, but, in the case of sub-paragraph (4), not where the direction ceases to be in force by reason of the building becoming a listed building.
- (2) The fact that the direction has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 53 or 94 of the Act of 1972 committed by him with respect to the building while the direction was in force.
- (3) Any proceedings on or arising out of an application for listed building consent made while the direction was in force shall lapse, and any listed building consent granted with respect to the building while the notice was in force shall also lapse.
- (4) Any listed building enforcement notice served by the local planning authority while the direction was in force shall cease to have effect, and any proceedings thereon under sections 92 and 93 of the Act of 1972 shall lapse, but section 95(1) and (2) of that Act shall continue to have effect as respects any expenses incurred by the local authority, owner, lessee or occupier as therein mentioned and with respect to any sums paid on account of such expenses.”

## SCHEDULE 22

Section 277.

### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

##### GENERAL PROVISIONS

- 1 (1) In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision in this Act, it shall not be invalidated by the repeal but shall have effect as if done under that provision.

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- (2) Sub-paragraph (1) of this paragraph applies, in particular, to any order, regulation, rule, development plan or amendment or alteration of a development plan, application, objection, representation, determination, decision, reference, appeal, declaration, agreement, arrangement, claim or apportionment made, payment made or recovered, report or proposal submitted, list or amendment of a list compiled or made, permission granted, consent, approval or authorisation given, certificate, permit, information or direction issued or given, enforcement or other notice or copy served, published or registered, inquiry held, delegation effected, register kept and requirement imposed.
- (3) In relation to any permission which (whether by virtue of an enactment repealed by this Act or otherwise) was deemed to be granted under an enactment repealed by this Act, sub-paragraph (1) of this paragraph shall apply as it applies to permission granted under such an enactment.
- (4) Sub-paragraph (1) of this paragraph shall not apply to any regulations or order revoked as from the commencement of this Act in the exercise of the powers conferred by section 28 of this Act.
- 2 Without prejudice to section 276 of, and Schedule 2: to, this Act, where any Act (whether passed before, or in the same Session as this Act) or any document refers, either expressly or by implication, to an enactment repealed by this Act, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to the corresponding provision of this Act.
- 3 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.
- 4 Without prejudice to paragraph 1 of this Schedule, my reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act shall, except where the context otherwise requires, be construed as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of the corresponding provisions of the enactments repealed by this Act.
- 5 (1) Nothing in this Act shall affect the enactments repealed thereby in their operation in relation to offences committed before the commencement of this Act.
- (2) Where an offence, for the continuance of which a penalty was provided, has been committed under an enactment repealed by this Act, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provision of this Act.
- 6 (1) Any reference in this Act to an order or scheme made or confirmed under an enactment which is not repealed by, and re-enacted (with or without modifications) in, this Act, shall be construed as a reference to any order or scheme so made or confirmed whether before or after the commencement of this Act.
- (2) Without prejudice to sub-paragraph (1) of this paragraph, any reference in this Act to an order or scheme made or confirmed under an enactment contained in the New Towns (Scotland) Act 1968, or under any other such enactment as is mentioned in



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that sub-paragraph, shall be construed as including a reference to any order or scheme made or confirmed under any corresponding provisions of an enactment repealed by the said Act of 1968, or repealed by the enactment in question, as the case may be.

## PART II

### CENTRAL AND LOCAL ADMINISTRATION

#### *Transfer of property and officers to local planning authorities*

- 7 Nothing in this Act shall affect, or be treated as having affected, the operation of any regulations made by virtue of section 97 of the Act of 1947 (provisions for transfer of property and officers to local planning authorities and for other matters consequential upon or supplementary to section 2 of that Act) in so far as any such regulations do not have effect in accordance with paragraph 1 of this Schedule.

## PART III

### DEVELOPMENT PLANS

#### *Effect of existing commencement orders*

- 8 (1) In relation to so much of any order made under section 104 of the Act of 1969 (commencement) as brings into operation any of the provisions of that Act specified in the Table below, paragraphs 1 and 2 of this Schedule shall have effect subject to this paragraph.
- (2) So far as the order brings any of the said provisions into operation it shall have effect as if it were an order made under section 18(2) of this Act repealing the provisions of this Act set out opposite to the first-mentioned provisions in the said Table.
- (3) Any transitional provision made by the order in connection with any of the said provisions of the Act of 1969 which it brings into operation shall be construed so as to produce a corresponding effect in connection with the provisions of this Act which by virtue of this paragraph it is treated as repealing.

### TABLE

| Provision of Act of 1969 brought into operation                   | Provision of this Act treated as repealed                                   |
|---|---|
| In Schedule 9, paragraph 4.                                       | In Schedule 4, paragraphs 2, 3, 4 and 6.                                    |
| In Schedule 9, paragraph 34.                                      | In Schedule 4, paragraph 8.   |
| In Schedule 11, the repeal of sections 3 to 9 of the Act of 1947. | In Schedule 4, paragraph 9, and in Schedule 3, the corresponding provision. |
| In Schedule 11, the repeal of section 33 of the Act of 1947.      | In Schedule 4, paragraph 5.   |

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|--|---|
| Provision of Act of 1969 brought into operation  | Provision of this Act treated as repealed |
| In Schedule 11, the repeal of the definition of "development plan" in section 113(1) of the Act of 1947. | In Schedule 4, paragraph 7.               |

## PART IV

### GENERAL PLANNING CONTROL

#### *Planning permission: general*

- 9 Subsection (1) of section 20 of this Act applies (subject to the provisions of that section) to the carrying out of development whether before or after the commencement of this Act, except that it does not apply to development carried out on or before the appointed day.
- 10 In sections 23 and 24 of this Act references to an application for planning permission do not include references to any application made before 16th August 1959.
- 11 Subsection (2)(b) of section 23, and the other provisions of that section relating to subsection (2)(b), do not apply to any application made before 18th May 1970.
- 12 Where by virtue of the proviso to subsection (3) of section 3 of the Town and Country Planning (Amendment) Act 1951 (works for making good war damage which were begun between the appointed day and 13th December 1950) any works were, immediately before the commencement of this Act, treated for the purposes of that Act as if planning permission had been granted unconditionally in respect thereof, those works shall be so treated for the purposes of this Act also.

#### *Review of planning decisions and orders under Part V of Act of 1954*

- 13 For the purposes of paragraph 1 of this Schedule, any direction given under section 47(3) or (4) of the Act of 1954, whether before or (by virtue of paragraph 66 of this Schedule) after the commencement of this Act, as well as any direction given under section 23 of that Act, shall be treated as a direction which could have been given under section 35 of this Act.

#### *Duration of planning permission*

- 14 Sections 38 and 39 of this Act do not apply to planning permissions granted or deemed to have been granted before 8th December 1969.
- 15 (1) Subject to sub-paragraph (2) of this paragraph, every planning permission granted or deemed to have been granted before 8th December 1969 shall, if the development to which it relates had not been begun before the beginning of 1969, be deemed to have been granted subject to a condition that the development must be begun not later than the expiration of five years beginning with 8th December 1969.
- (2) Sub-paragraph (1) of this paragraph does not apply—
- (a) to any planning permission which was granted or deemed to be granted before 8th December 1969 subject to an express condition that the

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- development to which it relates should be begun, or be completed, not later than a specified date or within a specified period ; or
- (b) to any such planning permission as is mentioned in section 38(3) of this Act.
- 16 (1) Subject to sub-paragraph (2) of this paragraph, where before 8th December 1969 outline planning permission (as defined by section 39 of this Act) has been granted for development consisting in or including the carrying out of building or other operations, and the development has not been begun before the beginning of 1969, that planning permission shall be deemed to have been granted subject to conditions to the following effect—
- (a) that, in the case of any reserved matter (as defined in that section), application for approval must be made not later than the expiration of three years beginning with 8th December 1969 ; and
- (b) that the development to which the permission relates must be begun not later than whichever is the later of the following dates—
- (i) the expiration of five years from 8th December 1969 ; or
- (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- (2) Sub-paragraph (1) of this paragraph does not apply to any planning permission granted before 8th December 1969 subject to an express condition that the development to which it relates should be begun, or be completed, or that application for approval of any reserved matter should be made, not later than a specified date or within a specified period.
- 17 (1) In sections 27(3), 40(1), (5), (6) and (7), 41 and 43(6) of this Act references to sections 38 and 39 of this Act shall respectively include references to paragraphs 15 and 16 of this Schedule.
- (2) In sections 136(3), 158(7), 169(4) and 226(5) of this Act references to the conditions referred to in sections 38 and 39 of this Act shall include references to the conditions referred to in paragraphs 15 and 16 of this Schedule.
- 18 Until the coming into operation of the first regulations to be made for the purposes of paragraph (c) of section 40(3) of this Act (or the corresponding enactment previously in force), regulations made for the purposes of section 99(2) of the Land Commission Act 1967 shall have effect as if made also for the purposes of that paragraph.

## PART V

### ADDITIONAL CONTROL IN SPECIAL CIRCUMSTANCES

#### *Buildings of architectural or historic interest*

- 19 Section 53(1) of this Act does not apply to any works executed or caused to be executed before 3rd August 1970.
- 20 (1) Where, before 3rd August 1970, consent under a building preservation order was given, either by the local planning authority or by the Secretary of State on appeal, for the execution of any works, the consent shall operate in respect of those works as listed building consent, subject to the same conditions (if any) as were attached to the consent under the building preservation order.

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- (2) In the case of demolition works for which consent was given under a building preservation order compliance with section 53(2)(6) of this Act shall not be required.

*Replacement of trees*

- 21 Section 57 of this Act does not apply in relation to planning permission granted before 28th August 1967.

*Industrial development*

- 22 (1) So much of sections 64 to 70 of this Act as corresponds to provisions of the Industrial Development Act 1966 does not apply in relation to any application for planning permission made, or any industrial development certificate issued, before 19th August 1966; and so much of those sections as corresponds to provisions of the Local Employment Act 1960 does not apply in relation to any application for planning permission made before 1st April 1960.
- (2) Section 68(3)(b) of this Act does not apply to any industrial development certificate issued before 1st April 1969.
- (3) In relation to an application for planning permission made before 1st April 1960, " industrial building " has the meaning assigned to it in section 15 of the Distribution of Industry Act 1945.
- (4) In relation to a relevant application (as defined in subsection (4) of section 66 of this Act) on which a planning decision was made before 5th August 1965, that section shall have effect as if it contained provisions corresponding to those of section 19 of the Local Employment Act 1960 without the amendments made by section 21 of the Control of Office and Industrial Development Act 1965.
- 23 Without prejudice to Part I of this Schedule, any order in force at the commencement of this Act under section 19 of the Control of Office and Industrial Development Act 1965 shall have effect as an order under section 67 of this Act, and section 66 of this Act shall accordingly have effect subject to the provisions of that order.

*Office development*

- 24 (1) Sections 72 and 73 of this Act do not apply to any application for planning permission made before 5th August 1965.
- (2) Section 76 of this Act does not apply to any planning permission granted before 5th August 1965 and, in relation to any planning permission granted on or after 5th August 1965 and before 8th December 1969, shall have effect as if it contained provisions corresponding to section 7 of the Control of Office and Industrial Development Act 1965 (so far as applicable to such a permission) without the amendments made by section 85 of the Act of 1969.
- (3) Section 74(2) of this Act does not apply to any application for planning permission made before 8th December 1969 and sections 77 and 78 of this Act do not apply to any planning permission granted before 8th December 1969.
- 25 Without prejudice to Part I of this Schedule, any order in force at the passing of this Act under section 2(7) of the Control of Office and Industrial Development Act 1965 shall have effect as an order under subsection (8) of section 73 of this

Act, and subsection (7) of that section shall accordingly have effect subject to the provisions of that order.

## PART VI

### ENFORCEMENT OF CONTROL

#### *Enforcement notices under enactments in force before 8th December 1969*

- 26 (1) This paragraph applies to any enforcement notice which was served before 8th December 1969 on the owner, lessee and occupier of the land to which it related under section 21 of the Act of 1947 or to which paragraph 27 or 28 of this Schedule applies.
- (2) In relation to any such notice—
- (a) the provisions of this Act (other than this Schedule) shall not apply ;
  - (b) notwithstanding their repeal or amendment by the Act of 1969, the provisions of the Act of 1947 and of any other Act passed before the Act of 1969 shall, subject to the subsequent provisions of this Schedule, have effect as they would have had effect in relation to the notice if the Act of 1969 and this Act had not been passed.
- (3) Nothing in this paragraph shall prevent the withdrawal, on or after 8th December 1969, of an enforcement notice so served or the service thereafter of an enforcement notice under Part V of this Act.

#### *Enforcement notices served by virtue of section 72 of Act of 1947*

- 27 (1) This paragraph applies to any enforcement notice served before the commencement of this Act by virtue of section 72 of the Act of 1947 (which related to development contravening planning control under the enactments repealed by that Act), being a notice which had not ceased for all purposes to have effect before the commencement of this Act.
- (2) The repeal by this Act of the said section 72 shall not invalidate any enforcement notice to which this paragraph applies.
- 28 In so far as an enforcement notice could, if this Act had not been passed, have been served by virtue of section 72 of the Act of 1947 at a time on or after the date of the commencement of this Act, in respect of any works or use of land of a description to which that section applied, there shall subsist by virtue of this paragraph a corresponding power in the like circumstances to serve an enforcement notice (to the like effect as that which could have been so served) in respect of those works or that use of land.
- 29 (1) Where an enforcement notice served by virtue of paragraph 28 of this Schedule, was or is served in respect of any works being government war works within the meaning of the Requisitioned Land and War Works Act 1945, then, subject to the following provisions of this paragraph—
- (a) if the steps required by the notice have been taken by the owner, lessee or occupier of the land, any expenses reasonably incurred in that behalf shall be recoverable from the authority by whom the notice was served ;

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- (b) where the steps required by the notice have been taken by that authority, the authority shall not be entitled, under section 22 of the Act of 1947, to recover the expenses incurred by them in that behalf.
- (2) Where under section 2(1)(b) of the Compensation (Defence) Act 1939 compensation has been paid equal to the full cost (as estimated for the purposes of that compensation) of taking the steps required by the enforcement notice, sub-paragraph (1) of this paragraph shall not apply.
- (3) Where compensation has been paid in respect of the land, being either compensation under the said section 2(1)(b) but not equal to the full cost (as so estimated) of taking those steps, or being compensation under section 3(4) of that Act, the amount which by virtue of sub-paragraph (1) of this paragraph is recoverable from the authority by whom the enforcement notice was served, or, as the case may be, is not recoverable by that authority, shall be reduced so far as may be just having regard to the compensation so paid.
- 30 (1) The power of a local planning authority under Part III of this Act to grant planning permission for the retention on land of buildings or works constructed or carried out before the date of application, or for the continuance of a use of land instituted before that date, shall include power to grant such permission in respect of any buildings or other works, or use of land, in respect of which that authority are empowered to serve an enforcement notice by virtue of paragraph 28 of this Schedule.
- (2) Where permission is so granted, paragraphs 27 to 29 of this Schedule shall cease to apply to the works or use to which the permission relates, but without prejudice to the application thereto of any provisions of Part V of this Act with respect to the contravention of conditions subject to which planning permission has been granted.
- 31 Where in pursuance of paragraph 76(3) of this Schedule permission is granted for the retention on land of works, or the continuance of a use, authorised as mentioned in the said paragraph 76(3), such of the provisions of paragraphs 27 to 30 of this Schedule as (apart from this paragraph) would be applicable thereto shall cease to apply to those works or that use, but without prejudice to the application thereto of any provisions of Part V of this Act with respect to the contravention of conditions subject to which planning permission has been granted.
- 32 The repeal by this Act of section 72 of the Act of 1947 shall not affect the operation of any regulations made under subsection (8) of that section (which enabled provision to be made by regulations for applying the provisions of that section to contraventions, committed before the appointed day, of restrictions under enactments other than those relating to town and country planning) or of the provisions of that section as applied by any such regulations.

*Enforcement of building preservation orders*

- 33 The repeal by the Act of 1969 of section 27 of the Act of 1947 shall not prevent a local planning authority from taking such proceedings as could have been taken but for the repeal to enforce any building preservation order made under that section and for securing the restoration of a building to its former state ; and in relation to any such proceedings the provisions of the order, and of any provisions of the Act of 1947 incorporated therein, shall continue to have the same effect as if the Act of 1969 had not been passed.

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*Enforcement of duties as to trees*

- 34 Subsection (3) of section 99 of this Act shall not have effect in relation to a notice served under that section before 8th December 1969, but in relation to such a notice subsection (5)(b) of section 14 of the Civic Amenities Act 1967 shall apply in the form in which it was originally enacted.

**PART VII**

ACQUISITION OF LAND ETC.

*Consent of Minister to acquisition, appropriation or disposal of land*

- 35 Nothing in Part I of this Schedule shall be construed as validating any transaction whereby a local authority purported, in the exercise of a power conferred by an enactment repealed by this Act, but without the consent of the Minister then required by that enactment—
- (a) to acquire land by agreement in pursuance of a contract made before 16th August 1959 ; or
  - (b) to appropriate or dispose of land before that date,
- notwithstanding that the transaction could have been validly effected without that consent under the corresponding provisions of Part VI of this Act.

*Existing compulsory purchase orders*

- 36 (1) Sections 102 and 103 of this Act shall not apply, and (notwithstanding their repeal by the Act of 1969) sections 34 and 35 of the Act of 1947 shall continue to apply to any land the acquisition of which was, immediately before 8th December 1969, authorised by a compulsory purchase order made by a local authority or statutory undertakers or by a Minister, or was then proposed to be authorised by such an order which had not been confirmed by a Minister or, as the case may be, had been prepared in draft by a Minister, but with respect to which a notice had then been published in accordance with paragraph 3(a) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (2) The validity of a compulsory purchase order made under section 34, 35 or 38 of the Act of 1947 shall not be affected by the repeal by the Act of 1969 of the section under which the order was made; and a compulsory purchase order made (but not confirmed), or made in draft, before the repeal of that section took effect may be confirmed or made thereunder as if the Act of 1969 had not been passed.
- 37 The repeals effected by this Act shall not affect the validity of any order authorising the compulsory acquisition of any land—
- (a) under section 34(2) of the Act of 1947 (which enabled the Minister of Works or the Postmaster-General, during the period before a development plan had become operative with respect to any area, to be authorised in certain circumstances to acquire land compulsorily);
  - (b) under section 35(2) of that Act (which enabled certain local authorities, during any such period, to be authorised in certain circumstances to acquire land compulsorily); or

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(c) under subsection (3) of section 35 of that Act in a case where the power conferred by that subsection was exercisable in lieu of the exercise of the power conferred by subsection (2) thereof,  
or of any notice served or other thing done in pursuance of any such order.

38 Any compulsory purchase order made or confirmed under Part I of the Act of 1945 (whether before or after the appointed day) shall, if in force immediately before the commencement of this Act, continue in force and shall have effect as if it had been made under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 as applied by Part VI of this Act.

*Application of Part VI to land acquired or  
authorised to be acquired under previous enactments*

39 The provisions of Part VI of this Act shall have effect in relation to land acquired, or authorised to be acquired, in pursuance of any such order as is mentioned in paragraph 37 of this Schedule as if—

- (a) in the case of land acquired, or authorised to be acquired, by a local authority, the land had been acquired, or authorised to be acquired, by that local authority under section 102 of this Act;
- (b) in the case of land acquired, or authorised to be acquired, by a Minister, the land had been acquired, or authorised to be acquired, by that Minister under section 103 of this Act.

40 For the purposes of Part VI of this Act—

- (a) any land acquired by a local authority in pursuance of a compulsory purchase order under Part I of the Act of 1945 shall be deemed to have been acquired under section 102 of this Act;
- (b) any land acquired by a Minister in pursuance of any such order shall be deemed to have been acquired by him under section 103 of this Act;
- (c) any land acquired by a local authority by agreement under the Act of 1945 shall be deemed to have been acquired under section 109 of this Act.

41 The reference in subsection (1) of section 122 of this Act to the acquisition of land under section 102 or 109 of this Act shall include a reference to the acquisition of land under section 35 or 37 of the Act of 1947; and the reference in that subsection to the appropriation of land for purposes for which land can be or could have been acquired under the provisions there mentioned is a reference to the appropriation of land for those purposes whether before or after the commencement of this Act.

*Provisions as to Central Land Board*

42 Section 117 of this Act shall have effect in relation to land acquired by the Central Land Board under section 40 of the Act of 1947 as it has effect in relation to land acquired by a local authority for planning purposes (as defined by section 122(1) of this Act).



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## PART VIII

### COMPENSATION UNDER PART VII OF THIS ACT

#### *Compensation under Part V of Act of 1954*

- 43 (1) Subject to the following provisions of this paragraph, for the purposes of the construction of sections 147 to 150 of this Act in accordance with Part I of this Schedule, any compensation (whether by way of principal or interest) under Part V of the Act of 1954, and any claim for, or notice registered in respect of, any such compensation, as well as any compensation under Part II of that Act, or any claim for, or notice registered in respect of, compensation under the said Part II, shall be treated as compensation or, as the case may be, a claim for, or a notice registered in respect of compensation, under provisions of that Act corresponding to those of Part VII of this Act.
- (2) For the purposes of the construction of section 147 of this Act in accordance with sub-paragraph (1) of this paragraph in relation to Part V of the Act of 1954, any reference to a planning decision shall be construed as including a reference to an order under section 19 of the Act of 1947.
- (3) Where compensation under Part V of the Act of 1954 became or becomes payable in respect of an order modifying planning permission, then (notwithstanding anything in the preceding provisions of this paragraph) the provisions of sections 148 and 150 of this Act shall not apply to development in accordance with that permission as modified by the order.

#### *Provision excluding recovery of compensation*

- 44 For the purposes of the construction, in accordance with Part I of this Schedule, of section 149(4) of this Act—
- (a) the provisions of section 54(6) of the Act of 1954 as originally enacted ; and
  - (b) those provisions as applied by any regulations made under section 54(8) of that Act,
- as well as the provisions of the said section 54(6) as amended by section 49 of the Act of 1959, shall be treated as provisions corresponding to those of section 244 of this Act;

## PART IX

### COMPENSATION UNDER PART VIII OF THIS ACT

#### *Compensation to statutory undertakers*

- 45 Subsection (3) of section 154 of this Act shall not apply where the refusal or grant of planning permission referred to in subsection (1)(c) of that section was before 8th December 1969.

#### *Contribution by Secretary of State towards compensation*

- 46 For the purposes of the construction of section 156(1) of this Act in accordance with Part I of this Schedule, any compensation which could have been claimed and would

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have been payable under Part V of the Act of 1954, as well as any compensation which could have been claimed and would have been payable under Part II of that Act, shall be treated as compensation which could have been claimed and would have been payable under provisions of that Act corresponding to the provisions of Part VII of this Act.

*Recovery of compensation*

- 47 For the purposes of the construction of section 157(3) of this Act in accordance with Part I of this Schedule, any grant paid—
- (a) under the provisions of the section substituted by section 52 of the Act of 1954 for section 89 of the Act of 1947, but without the amendments made by the Local Government and Miscellaneous Financial Provisions (Scotland) Act 1958 or the Local Government (Scotland) Act 1966 ; or
  - (b) under the provisions of Part IX of the Act of 1947 as originally enacted, as well as any grant paid under the provisions of the said section 89 shall be treated as a grant paid under provisions corresponding to those of Part XIII of this Act.

**PART X**

BLIGHT NOTICES

*Notices served before 8th December 1969 or 18th May 1970*

- 48 In relation to a notice served under section 38 of the Act of 1959 before 8th December 1969 or (in the case of such a notice served by a heritable creditor) 18th May 1970, and to any hereditament or agricultural unit which is the subject of the notice, sections 183 to 196 of this Act shall, on and after that date, have effect as if they contained the provisions in Part IV of and Schedule 5 to the Act of 1959 without any of the amendments made by Part IV of the Act of 1969.

*Temporary inclusion of additional description of blighted land*

- 49 (1) For the purposes of the application of sections 181 to 196 of this Act to an area to which this paragraph applies—
- (a) the description of land contained in section 38(1)(b) of the Act of 1959 shall be included among the specified descriptions as defined in section 181(6) of this Act; and
  - (b) in sections 182(3) and 195(2) of this Act references to paragraph (b) of section 181(1) of this Act shall include references to the said section 38(1)(b).
- (2) This paragraph applies to any area for which no local plan is in force under Part II of this Act—
- (a) allocating any land in the area for the purposes of such functions as are mentioned in section 181(1)(a) of this Act; or
  - (b) defining any land in the area as the site of proposed development for the purposes of any such functions.

## PART XI

### HIGHWAYS

#### *Provisions as to telegraphic lines*

- 50 (1) In relation to an order made under section 46 of the Act of 1947 before 1st October 1969 or, as the case may be, an order under section 22 of the Act of 1945 in respect of which the notice required by Schedule 6 to the Act of 1947 was published before that date, section 209(1), (2) and (3) of this Act shall have effect as if references to a telegraphic line belonging to or used by the Post Office were references to a telegraphic line belonging to or used by the Postmaster-General.
- (2) Where the period referred to in paragraph (a) of subsection (3) of section 209 of this Act began to run before, and was current on, the said date, that paragraph shall have effect as if the reference to notice having been given by the Post Office before the end of that period included a reference to notice having been so given by the Postmaster-General, and paragraph (c) of that subsection shall have effect as if the reference to the Post Office included a reference to the Postmaster-General.

## PART XII

### STATUTORY UNDERTAKERS

#### *Application of ss. 214 to 220 to matters arising before 8th December 1969*

- 51 (1) This paragraph shall have effect as respects the application, by virtue of Part I of this Schedule, of the provisions of this Act hereinafter specified in relation to matters arising before 8th December 1969 (in this paragraph referred to as "the relevant date").
- (2) In relation to any application for planning permission made before the relevant date or any appeal from the decision on an application so made, section 214 of this Act shall have effect as if it contained provisions corresponding to paragraph 1(1) of Schedule 5 to the Act of 1947 and as if subsection (2)(b) were omitted.
- (3) In relation to any decision made before the relevant date, section 215 of this Act shall have effect as if it contained provisions corresponding to paragraph 2(1)(a) of the said Schedule 5.
- (4) In relation to any order of which notice has been given under paragraph 3(2) of the said Schedule 5 before the relevant date, section 216. of this Act shall have effect as if it contained provisions corresponding to the said paragraph 3(2).
- (5) In relation to any order of which notice has been given under paragraph 4(2) of the said Schedule 5 before the relevant date, section 217. of this Act shall have effect as if it contained provisions corresponding to the said paragraph 4(2).
- (6) In relation to a compulsory purchase order made or confirmed before the relevant date, section 218 of this Act shall have effect as if it contained provisions corresponding to section 42(4)(6) of the Act of 1947.

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- (7) In relation to any order made before the relevant date under section 24 of the Act of 1945, section 220 of this Act shall have effect as if it contained provisions corresponding to section 24(7) of the Act of 1945.

*Extinguishment of rights: notices served before 8th December 1969*

- 52 In relation to a notice served before 8th December 1969, section 219(1) of this Act shall have effect with the omission—

- (a) of the words from " if satisfied " to " appropriated " ; and
- (b) of the words from " of twenty-eight days " to " as may be ".

*Application of section 219 to land acquired by Central Land Board*

- 53 In section 219(1) of this Act, the reference to land acquired by a Minister, a local authority or statutory undertakers under Part VI of this Act shall be construed as including a reference to land acquired by the Central Land Board under Part IV of the Act of 1947, as well as to land acquired under the said Part IV by a Minister, a local authority or statutory undertakers.

*Right to compensation for decisions made before 8th December 1969*

- 54 In its application, by virtue of Part I of this Schedule, to a decision made before 8th December 1969, section 226 of this Act shall have effect as if for subsection (1) (a) there were substituted provisions corresponding to paragraph 1(a) or (b) of Schedule 4 to the Act of 1945 and as if subsection (5) contained a proviso corresponding to paragraph 2(2) of Schedule 5 to the Act of 1947.

*Enactments applying section 24 of Act of 1945*

- 55 (1) This paragraph shall have effect for the purposes of any enactment which applies the provisions of section 24 of the Act of 1945 with adaptations consisting of or including adaptations of the references in that section to a purchasing authority or to the purchasing or appropriating authority.
- (2) Any such enactment shall be construed (in accordance with Part I of this Schedule or section 38 of the Interpretation Act 1889) as applying the provisions of section 219 and section 226(2) of this Act with corresponding adaptations of the references in those provisions to a Minister, a local planning authority or statutory undertakers, or to the acquiring or appropriating authority, as the case may require.

### PART XIII

#### VALIDITY OF PLANNING DECISIONS ETC.

*Orders made and action taken before 16th August 1959*

- 56 (1) Notwithstanding anything in Part I of this Schedule, the provisions of section 231 of this Act shall not have effect in relation to—
- (a) any order made before 16th August 1959 under any of the provisions of the Act of 1947 corresponding to the provisions of this Act under which the orders mentioned in subsection (2) of that section can be made; or

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(b) any action on the part of the Secretary of State taken before the said 16th August under any of the provisions of that Act or of the Act of 1954 corresponding to the provisions of this Act under which action of the descriptions mentioned in subsection (3) of that section can be taken, and section 233 does not apply to any such order or action as is mentioned in this sub-paragraph.

(2) In relation to any action which, in accordance with any provisions of the Act of 1947 corresponding to provisions of Part XI of this Act, was required to be taken by the Secretary of State and the appropriate Minister, the reference in sub-paragraph (1) of this paragraph to the Secretary of State shall be construed as a reference to the Secretary of State and the appropriate Minister.

57 Section 234 of this Act does not apply to any decision of the Secretary of State made before 16th August 1959 under any of the provisions of the Act of 1947 corresponding to the provisions of this Act mentioned in subsection (2) of that section.

*Directions under Part V of Act of 1954*

58 For the purposes of the construction, in accordance with Part I of this Schedule, of section 231(3)(c) of this Act (but without prejudice to paragraph 56(1) of this Schedule) any directions given on or after 16th August 1959 by the Secretary of State under section 47(3) or (4) of the Act of 1954, as well as any direction given by the Secretary of State on or after that day under section 23 of that Act, shall be treated as a direction given under provisions of that Act corresponding to the provisions of section 35 of this Act.

## PART XIV

### FINANCIAL PROVISIONS

#### *Grants*

59 Nothing in this Act shall affect the payment (whether before or after the commencement of this Act) of any grant in respect of any period before the commencement of this Act.

60 Section 237 of this Act does not apply to any year earlier than the year ending on a date in 1968.

#### *Recovery of sums from acquiring authorities*

61 (1) In relation to any acquisition or sale of an interest in land in pursuance of a notice to treat served, or contract made, before 30th October 1958—

- (a) section 244 of this Act shall not apply ;
- (b) the repeals effected by this Act shall not affect any right of recovering any sum in respect thereof under the provisions of section 54(6) of the Act of 1954 as originally enacted, or under those provisions as applied by regulations made under section 54(8) of that Act.

(2) Subject to sub-paragraph (1) of this paragraph, section 244 of this Act shall have effect in relation to interests in land acquired or sold as therein mentioned

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whether before or after the commencement of this Act; and for the purposes of the construction of that section in accordance with Part I of this Schedule, any notice recorded under the provisions of section 29 of the Act of 1954 as applied by Part V of that Act, as well as any notice recorded under those provisions as applied by Part IV of that Act, shall be treated as a notice recorded under provisions of that Act corresponding to the provisions of this Act referred to in section 244 of this Act, and references in that section to compensation specified in a notice shall be construed accordingly.

- 62 Section 245 of this Act shall have effect in relation to interests in land acquired or sold as therein mentioned whether before or after the commencement of this Act, except that it shall not have effect in relation to any acquisition or sale in pursuance of a notice to treat served, or contract made, before 13th August 1947.

*Treatment of sums received under section 248(4) before 1st April 1968*

- 63 Any sums received by the Secretary of State before 1st April 1968 by virtue of the provisions re-enacted in the provisions mentioned in section 248(4) of this Act shall be treated as paid in satisfaction, or part satisfaction, of such one or more of the instalments payable under subsections (2) and (3) of that section as the Treasury may determine.

## **PART XV**

### **SPECIAL CASES**

#### *Minerals*

- 64 In relation to any time before 10th April 1966, section 252 of this Act shall have effect as if for references to the Mines (Working Facilities and Support) Act 1966 there were substituted references to the Mines (Working Facilities and Support) Act 1923 ; and accordingly regulations made before that date which are in force at the commencement of this Act under section 78 of the Act of 1947, shall have effect as if made under the said section 252 and as if, in relation to any time on or after the said 10th April, references in them to the said Act of 1923 were references to the corresponding provisions of the said Act of 1966.

#### *National Coal Board*

- 65 Until the coming into operation of the first regulations made under section 259 of this Act after 8th December 1969 the provisions of the Act of 1947 applied by regulations under section 86(1) of that Act in relation to the National Coal Board and land of that Board shall have effect as so applied as if Part XI of this Act contained provisions corresponding to the Act of 1947 without the amendments made by sections 70 to 72 of the Act of 1969.

## PART XVI

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Rights and liabilities in respect of certain payments*

- 66 (1) The repeals effected by this Act shall not affect any right to, or claim for, or any liability in respect of, any payment under an enactment to which this paragraph applies ; and any such right, claim or liability shall have effect and may be enforced, and moneys in respect of any such payment shall be applicable or may be raised, in accordance with the provisions of the enactment in question (including the provisions of any other enactment which, immediately before the commencement of this Act, had effect for the purposes of that enactment) as if this Act had not been passed, and any direction or proceedings relating thereto may' be given, brought or continued accordingly.
- (2) This paragraph applies to the following enactments, that is to say—
- (a) Parts I and V of the Act of 1954 ;
  - (b) section 54(1) to (5) of that Act;
  - (c) the scheme made under section 56 of the Act of 1947 ;
  - (d) any other enactment which (if contained in an Act) was not repealed by, and re-enacted (with or without modifications) in this Act or (if not contained in an Act) has effect otherwise than by virtue of an enactment so repealed and re-enacted
- (3) Without prejudice to the preceding provisions of this paragraph, any proceedings relating to any such claim as is mentioned in section 124(1) of this Act may be brought or continued, and shall be determined in accordance with the relevant provisions (that is to say, the provisions of the Act of 1947 and of Schedule 1 to the Act of 1954 and any other enactment having effect for the purposes thereof) as if this Act had not been passed.
- (4) Sub-paragraph (1) of this paragraph shall have effect in relation to any such right, claim or liability as is therein mentioned notwithstanding that, immediately before the commencement of this Act, the right, claim or liability had not yet accrued or been made or become enforceable, as the case may be.

Provided that, in relation to any such claim which had not been made before the commencement of this Act, so much of that sub-paragraph as provides that the claim shall have effect in accordance with the provisions therein mentioned shall be construed as providing that the claim may be made in accordance with those provisions, and, when made, shall have effect accordingly.

#### *Registration of payments under s. 58 of Act of 1954*

- 67 (1) The repeals effected by this Act shall not affect the operation of subsection (1) of section 58 of the Act of 1954, in so far as that subsection would have continued to have effect if this Act had not been passed.
- (2) In subsection (1) of the said section 58, the references to subsection (7) of section 54 of that Act and to paragraph (a) of the proviso to that subsection shall be construed as including references respectively to subsection (1) and to subsection (2) of section 245 of this Act.

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*Status: This is the original version (as it was originally enacted).*

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*Entitlement to, and amount of, compensation etc. in cases arising before 25th February 1963*

- 68 Notwithstanding Part I of this Schedule, the following provisions of this Act, that is to say, sections 157(4), 158(3)(c) and (6), in section 169(2) the words "or which would contravene the condition set out in Schedule 16 to this Act", section 169(3), section 263(1) to (4), paragraph 14 of Schedule 6 and Schedule 16 do not affect—
- (a) any determination arising out of a notice to treat served before 25th February 1963, or served at any time in respect of a purchase notice or notice under section 38(2) of the Act of 1959 (or any corresponding enactment previously in force) which was served before that date;
  - (b) any other determination under the Act of 1947 in respect of or arising out of a purchase notice served before that date;
  - (c) any claim for compensation under section 18(1) or 20 of the Act of 1947 (or any corresponding enactment previously in force) which arose before that date.

*Definition of " local authority "*

- 69 For the purposes of the construction, in accordance with Part I of this Schedule, of any enactment which incorporates the definition of " local authority " in the Act of 1947, section 204 and the reference to it in section 275(1) of this Act shall be disregarded.

*Saving for powers of Post Office*

- 70 Except as provided by section 209 of this Act. nothing in the provisions of this Act specified in Part I of Schedule 19 to this Act or in any order or regulations made thereunder shall affect any powers or duties of the Post Office under the provisions of the Telegraph Acts 1863 to 1916 or apply to any telegraphic lines (within the meaning of the Telegraph Act 1878) placed or maintained by virtue of any of the provisions of those Acts.

*Saving in respect of works below high-water mark*

- 71 Nothing in the provisions of this Act specified in Part I of Schedule 19 to this Act shall authorise the execution of any works (whether of construction, demolition or alteration) on, over or under tidal lands below high-water of ordinary spring tides, except—
- (a) with the consent of any persons whose consent would have been required if this Act had not been passed ; and
  - (b) in accordance with such plans and sections, and subject to such restrictions and conditions as may be approved by the Board of Trade or the Secretary of State before the works are begun.

*Land Compensation (Scotland) Act 1963 s. 39*

- 72 Any reference in this Act to the power conferred by section 39 of the Land Compensation (Scotland) Act 1963 to withdraw a notice to treat shall, in relation to any notice to treat falling within section 48 of that Act, be construed as a reference to the corresponding power conferred by section 5(2) of the Acquisition of Land (Assessment of Compensation) Act 1919.



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*Status: This is the original version (as it was originally enacted).*

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*References to Ministers: previous Transfer of Functions Orders*

- 73 (1) Where the functions of a Minister under any enactment re-enacted or referred to in this Act have at any time been exercisable by another Minister or other Ministers, references in the relevant provision of this Act shall, as respects any such time, be construed as references to the other Minister or Ministers.
- (2) In this paragraph " Minister " includes the Board of Trade and the Treasury.

*Schemes and agreements under enactments repealed by Act of 1947*

- 74 (1) The repeal effected by this Act shall not affect the operation of—
- (a) any such scheme as was mentioned in paragraph 6 of Schedule 10 to the Act of 1947 (which related to certain schemes made under the Town and Country Planning (Scotland) Act 1932 and the Town Planning (Scotland) Act 1925) in so far as, by virtue of that paragraph, the scheme continued to have effect immediately before the commencement of this Act; or
  - (b) any order made under that paragraph (which empowered the Minister to make provision by order for winding up any such scheme) in so far as the order continued to have effect immediately before the commencement of this Act.
- (2) Any power to make orders under paragraph 6 of that Schedule shall continue to be exercisable notwithstanding the said repeal.
- 75 (1) The repeal effected by this Act shall not affect the operation of any such agreement as was mentioned in paragraph 10 of Schedule 10 to the Act of 1947 (which related to certain agreements made before the appointed day for restricting the planning, development or use of land), or of any order discharging or modifying a restriction imposed by such an agreement, in so far as any such agreement or order was in force immediately before the commencement of this Act; and any such agreement may be enforced as if this Act had not been passed.
- (2) Nothing in any such agreement shall be construed as restricting the exercise, in relation to land to which the agreement applies, of any powers exercisable by any Minister or authority under this Act, so long as those powers are exercised in accordance with the provisions of the development plan, or in accordance with any directions which may have been given by the Secretary of State by virtue of paragraph 5 of Schedule 4 to this Act, or as requiring the exercise of any such powers otherwise than in accordance with such provisions or directions.
- (3) If the Secretary of State is satisfied, on application made to him by any person being a party to any such agreement, or a person entitled to land affected thereby, that any restriction on the development or use of the land imposed by the agreement is inconsistent with the proper planning or development of the area comprising the land, he may by order discharge or modify that restriction so far as appears to him to be expedient.
- (4) Without prejudice to sub-paragraph (3) of this paragraph, if any person being a party to any such agreement (whether as originally made or as modified under that sub-paragraph), or a person entitled to land affected thereby, claims that the agreement ought to be modified or rescinded, having regard to the provisions of this Act or to anything done under this Act or under the Act of 1947, he may refer to arbitration the question whether the agreement should be so modified or rescinded, and the

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arbiter may make such award as appears to him to be just having regard to all the circumstances.

*Development authorised under enactments repealed by Act of 1947*

- 76 (1) Where any works on land existing at the appointed day, or any use to which land was put on that day, had been authorised by a permission granted subject to conditions under a scheme under the Town and Country Planning (Scotland) Act 1932 (or under an enactment repealed by that Act) or under an order made under section 10(1) of that Act (in the subsequent provisions of this Schedule referred to as "a planning scheme" and "an interim development order ") the provisions of Parts III and V of this Act, the provisions of Part IX of this Act relating to purchase notices, and the provisions of sections 214 to 217 of this Act, shall apply in relation to those works or that use as if the conditions had been imposed on the grant of planning permission.
- (2) Without prejudice to the generality of sub-paragraph (1) of this paragraph, where any such permission was granted subject to conditions (in whatever form) restricting the period for which the works or use might be continued on the land, then, if that period had not expired at the appointed day and the works were or are not removed, or the use discontinued, at the end of that period, the provisions of Part V of this Act relating to enforcement notices shall apply in relation thereto as if the works had been carried out, or the use begun, as the case may be, at the end of that period and without the grant of planning permission in that behalf.
- (3) The power of a local planning authority under Part III of this Act to grant permission for the retention on land of buildings or works constructed or carried out before the date of the application, or the continuance of any use of land instituted before that date, shall include power to grant such permission in respect of any works or use authorised by a permission granted subject to any such conditions as are mentioned in sub-paragraph (2) of this paragraph.
- (4) Where at any time before the appointed day it was determined under the Building Restrictions (War-Time Contraventions) Act 1946 that any works on land or any use of land should be deemed to comply with planning control (within the meaning of that Act) subject to any conditions specified in the determination, the provisions of this paragraph shall apply in relation to those works or that use as if those conditions had been imposed on the grant of permission under a planning scheme or an interim development order.
- (5) Provision may be made by regulations under this Act for applying the preceding provisions of this paragraph, subject to such adaptations and modifications as may be specified in the regulations, to works on land carried out, or uses of land begun, at any time before the appointed day, in accordance with permission granted subject to conditions under any enactment repealed by the Act of 1947, other than the enactments relating to town and country planning; and for the purposes of this provision any works or use in respect of which a notice was served under subsection (1) of section 1 of the Restriction of Ribbon Development (Temporary Development) Act 1943 or was deemed by virtue of subsection (4) of that section to have been so served, shall be treated as carried out or begun in accordance with permission granted subject to a condition restricting the period for which the works or use might be continued on the land.
- 77 (1) Where permission for any development of land was granted, at any time after 10th November 1943 and before the appointed day, on an application in that behalf made under an interim development order, then, if and so far as that development

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was not carried out before the appointed day and the permission was in force immediately before that day, planning permission shall be deemed to have been granted in respect thereof subject to the like conditions (if any) as were imposed by the permission under the interim development order as it had effect immediately before the appointed day:

Provided that this sub-paragraph shall not apply in relation to any development for which permission was required before the appointed day under the Restriction of Ribbon Development Act 1935 unless that permission was also granted.

- (2) The provisions of section 42 of this Act shall apply in relation to planning permission which is deemed to have been granted by virtue of this paragraph as if it had been granted on an application under Part III of this Act; and, in relation to any order made under that section for the revocation or modification of any such permission, any reference in section 153(3) of this Act to the grant of permission shall be construed as a reference to the grant of the permission under the interim development order.
  - (3) Where permission for any development of land was granted as mentioned in sub-paragraph (1) of this paragraph, and permission for that development was also granted under the Restriction of Ribbon Development Act 1935 then, if the permission so granted under the said Act of 1935 was granted subject to conditions, those conditions shall be treated for the purposes of this paragraph as conditions imposed by the permission granted under the interim development order.
- 78 (1) Where any works for the erection or alteration of a building had been begun but not completed before the appointed day, then if—
- (a) immediately before that day those works could have been completed in conformity with the provisions of a planning scheme or of permission granted thereunder, or in accordance with permission granted by or under an interim development order; and
  - (b) where any permission was required under the Restriction of Ribbon Development Act 1935 for the carrying out of those works, that permission was granted,
- planning permission shall be deemed to have been granted in respect of the completion of those works.
- (2) The planning permission deemed to have been granted by virtue of this paragraph shall be deemed to have been so granted subject to any conditions applicable thereto under the scheme or the permission granted by or under the interim development order, as the case may be, and to any conditions imposed by the permission (if any) granted under the Restriction of Ribbon Development Act 1935 and shall include permission to use the building, when erected or altered—
    - (a) where the purpose for which it could be so used was prescribed by or under the planning scheme, or by the permission granted by or under the interim development order, as the case may be, for that purpose ;
    - (b) in any other case, for the purpose for which the building, or the building as altered, was designed.
  - (3) In relation to any such works as are mentioned in sub-paragraph (1) of this paragraph, being works in respect of which permission was granted after 10th November 1943, on an application in that behalf made under an interim development order, the provisions of this paragraph shall have effect in substitution for the provisions of paragraph 77 of this Schedule.

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- 79 (1) Any reference in Part VII of this Act, or in Schedule 13 thereto, to a planning decision shall, where the context so admits, include a reference to any decision deemed to have been made by virtue of the provisions of paragraph 77 or paragraph 78 of this Schedule.
- (2) Sub-paragraph (1) of this paragraph shall have effect without prejudice to the provisions of Part I of this Schedule.

*Supplementary*

- 80 (1) Where in this Act (including this Schedule except Part I thereof) express provision is made in respect of any matter, the provisions of Part I of this Schedule, in so far as they are applicable to that matter, shall have effect subject to that express provision.
- (2) Except as provided by sub-paragraph (1) of this paragraph, the mention in any provisions of this Act (including this Schedule except Part I thereof) of any matter to which Part I of this Schedule is applicable shall not be construed as affecting the generality of the provisions of Part I of this Schedule.

SCHEDULE 23

Section 277.

REPEALS

| Chapter                | Short Title  | Extent of Repeal  |
|------------------------|--|---|
| 8 & 9 Geo. 6. c. 33.   | The Town and Country Planning (Scotland) Act 1945. | The whole Act.  |
| 10 & 11 Geo. 6. c. 53. | The Town and Country Planning (Scotland) Act 1947. | Sections 1 to 43.<br>Section 44(2).<br>Section 46 except subsection (8).<br>Sections 47 to 108.<br>Section 109(2) to (6).<br>Sections 110 to 112.<br>Section 113(2) to (4).<br>Schedules 1 to 7.<br>In Schedule 8, the entry relating to the Town and Country Planning (Scotland) Act 1945.<br>Schedules 9 to 11. |
| 12 & 13 Geo. 6. c. 32. | The Special Roads Act 1949.                        | Section 9(2) and (4).   |
| 12 & 13 Geo. 6. c. 67. | The Civil Aviation Act 1949.                       | Section 30(5).  |

| Chapter                 | Short Title   | Extent of Repeal  |
|-------------------------|---|---|
| 14 Geo. 6. c. 39.       | The Public Utilities Street Works Act 1950.         | In Schedule 4, paragraph 10(a).<br>In Schedule 5, the entry relating to the Town and Country Planning (Scotland) Act 1947.  |
| 14 & 15 Geo. 6. c. 19.  | The Town and Country Planning (Amendment) Act 1951. | The whole Act.  |
| 14 & 15 Geo. 6. c. 160. | The Mineral Workings Act 1951.                      | Section 31.<br>Section 43(3).   |
| 1 & 2 Eliz. 2. c. 16.   | The Town and Country Planning Act 1953.             | The whole Act.  |
| 2 & 3 Eliz. 2. c. 73.   | The Town and Country Planning (Scotland) Act 1954.  | Sections 1 to 54.<br>Sections 56 to 68.<br>Section 70.<br>Schedules 1 to 9.   |
| 5 & 6 Eliz. 2. c. 20.   | The House of Commons Disqualification Act 1957.     | In Schedule 1, in Part II, the words "A Planning Inquiry Commission constituted under Part VI of the Town and Country Planning (Scotland) Act 1969" and the words "A Joint Planning Inquiry Commission constituted under Part VI of the Town and Country Planning (Scotland) Act 1969". |
| 7 & 8 Eliz. 2. c. 70.   | The Town and Country Planning (Scotland) Act 1959.  | Sections 1 to 13.<br>Sections 17 to 22.<br>Sections 31 to 43.<br>Section 49.<br>Section 50 except subsection (4).<br>Sections 51 to 53.<br>Section 55, except subsections (1)(a) and (3).<br>Schedules 1 to 3.<br>Schedules 5 and 6.  |

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| Chapter               | Short Title  | Extent of Repeal  |
|-----------------------|--|---|
|                       |  | Schedule 7, except the entry relating to section 55 of the Town and Country Planning (Scotland) Act 1954.   |
|                       |  | Schedules 8 and 9.  |
| 8 & 9 Eliz. 2. c. 18. | The Local Employment Act 1960.                             | Sections 16 to 22.<br>Section 26(1) and (3).  |
| 8 & 9 Eliz. 2. c. 62. | The Caravan Sites and Control of Development Act 1960.     | Sections 21 and 22.   |
| 1963 c. 17.           | The Town and Country Planning Act 1963.                    | The whole Act.  |
| 1965 c. 16.           | The Airports Authority Act 1965.                           | Section 17(7)(d).   |
| 1965 c. 33.           | The Control of Office and Industrial Development Act 1965. | The whole Act.  |
| 1966 c. 4.            | The Mines (Working Facilities and Support) Act 1966.       | In Schedule 2, paragraph 3.   |
| 1966 c. 34.           | The Industrial Development Act 1966.                       | Part III.<br>Section 31(3).<br>In Schedule 3, in Part II, the entry relating to section 17 of the Local Employment Act 1960, and Part III.  |
| 1966 c. 51.           | The Local Government (Scotland) Act 1966.                  | Section 8.  |
| 1967 c. 69.           | The Civic Amenities Act 1967.                              | Section 1.<br>Section 3.<br>Section 6.<br>Section 8.<br>Section 11.<br>Part II except section 15(2).<br>In section 28(1), paragraph (a) and, in paragraph (c), the words "section 6, section 14".<br>In section 30(1), the definition of " the Scottish Planning Act of 1969 ". |

| Chapter     | Short Title  | Extent of Repeal  |
|-------------|--|---|
| 1968 c. 13. | The National Loans Act 1968.                       | Section 11.   |
| 1968 c. 41. | The Countryside Act 1968.                          | Sections 25 and 26.   |
| 1969 c. 30. | The Town and Country Planning (Scotland) Act 1969. | Sections 1 to 27.<br>Section 28 except paragraph (b).<br>Sections 29 to 31.<br>Sections 33 to 38.<br>Sections 40 to 57.<br>Sections 60 to 97.<br>Sections 99 to 101.<br>Section 102(a).<br>Section 105.<br>Section 107.<br>Section 108(2).<br>Schedules 1 to 9.<br>Schedule 10 except paragraph 11.<br>Schedule 11. |
| 1969 c. 48. | The Post Office Act 1969.                          | In Schedule 4, paragraphs 37, 42 and 92(3).<br><br>In Schedule 9, in paragraph 27, in each of sub-paragraphs (7), (9) and (15), the words from " In the application " to the end of the sub-paragraph.  |
| 1970 c. 43. | The Trees Act 1970.                                | Section 1.  |
| 1971 c. 18. | The Land Commission (Dissolution) Act 1971.        | In Schedule 2, paragraphs 3 and 4 and Appendix B.   |
| 1971 c. 62. | The Tribunals and Inquiries Act 1971.              | In Schedule 3, the entries relating to the Town and Country Planning (Scotland) Act 1959 and the Town and Country Planning (Scotland) Act 1969.   |
| 1971 c. 75. | The Civil Aviation Act 1971.                       | In section 14(9), in paragraph (c), the words from " and for " to the end of the paragraph, and paragraph (d).  |

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*Status: This is the original version (as it was originally enacted).*

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| Chapter     | Short Title   | Extent of Repeal  |
|-------------|---|---|
| 1972 c. 5.  | The Local Employment Act 1972.                      | In Schedule 5, paragraph 9(3).<br>In Schedule 3, the entry relating to the Local Employment Act 1960. |
| 1972 c. 42. | The Town and Country Planning (Amendment) Act 1972. | Sections 7(2) and 12(1)(b).   |

## SCHEDULE 24

Section 278.

## GENERAL VESTING DECLARATIONS

## PART I

## GENERAL PROVISIONS

*Execution of general vesting declarations*

- 1 (1) Where a compulsory purchase order authorising an acquiring authority to acquire any land has come into operation, the authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form (in this Schedule referred to as " a general vesting declaration ") vesting the land in themselves as from the end of such period as may be specified in the declaration (not being less than twenty-eight days) from the date on which the service of notices required by paragraph 4 below is completed.
- (2) A general vesting declaration shall contain a particular description of the lands affected or a description by reference of those lands in the manner provided by section 61 of the Conveyancing (Scotland) Act 1874.
- 2 (1) Before making a general vesting declaration with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include in the notice of the making or confirmation of the order which is required to be published or served by paragraph 6 of Schedule 1 to the Acquisition Act 1947 or any other provision of the relevant enactments corresponding to that paragraph, or in a notice given subsequently and before the service of the notice to treat in respect of that land—
  - (a) such a statement of the effect of paragraphs 1 to 8 of this Schedule as may be prescribed; and
  - (b) a notification to the effect that every person who, if a general vesting declaration were made in respect of all the land comprised in the order in respect of which notice to treat has not been given, would be entitled to claim compensation in respect of any such land is invited to give information to the authority making the declaration in the prescribed form with respect to his name and address and the land in question.
- (2) The requirements of the relevant enactments with respect to the publication and service of a notice of the making or confirmation of a compulsory purchase order



shall apply to a notice under this paragraph given subsequently to the first-mentioned notice.

- 3 A general vesting declaration shall not be executed before the end of the period of two months beginning with the date of the first publication of the notice complying with paragraph 2(1) above, or such longer period, if any, as may be specified in the notice:

Provided that, with the consent in writing of every occupier of any of the land specified in the declaration, the acquiring authority may execute a general vesting declaration before the end of that period of two months, or of the longer period so specified, as the case may be.

- 4 As soon as may be after executing a general vesting declaration, the acquiring authority shall serve—

- (a) on every occupier of any of the land specified in the declaration (other than land in which there subsists a short tenancy or a long tenancy which is about to expire); and
- (b) on every other person who has given information to the authority with respect to any of that land in pursuance of the invitation published and served under paragraph 2(1) above,

a notice in the prescribed form specifying the land and stating the effect of the declaration.

- 5 For the purposes of this Schedule, a certificate by the acquiring authority that the service of notices required by paragraph 4 above was completed on a date specified in the certificate shall be conclusive evidence of the fact so stated.

#### *Effect of general vesting declaration*

- 6 At the end of the period specified in a general vesting declaration, the provisions of the Lands Clauses Acts and of section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (both as incorporated by Schedule 2 to the Acquisition Act 1947) and of the Land Compensation (Scotland) Act 1963 shall apply as if, on the date on which the declaration was made, a notice to treat had been served on every person on whom, under section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (on the assumption that they required to take the whole of the land specified in the declaration and had knowledge of all the parties referred to in that section) the acquiring authority could have served such a notice, other than—

- (a) any person entitled to an interest in the land in respect of which such a notice had actually been served before the end of that period; and
- (b) any person entitled to a short tenancy or a long tenancy which is about to expire.

- 7 At the end of the period specified in a general vesting declaration, the land specified in the declaration, together with the right to enter upon and take possession of it, shall vest in the acquiring authority as if the circumstances in which under the said Act of 1845 an authority authorised to purchase land compulsorily have any power to expedite a notarial instrument (whether for vesting land or any interest in land in themselves or for extinguishing the whole or part of any feu-duty, ground annual or rent, or other payment or incumbrance) had arisen in respect of all the land and all interests therein, and the acquiring authority had duly exercised that power accordingly at the end of that period.

- 8 Where any land specified in a general vesting declaration is land in which there subsists a short tenancy or a long tenancy which is about to expire—
- (a) the right of entry conferred by paragraph 7 above shall not be exercisable in respect of that land unless, after serving a notice to treat in respect of that tenancy, the acquiring authority have served upon every occupier of any of the land in which the tenancy subsists a notice stating that, at the end of such period as is specified in the notice (not being less than fourteen days) from the date on which the notice is served, they intend to enter upon and take possession of such land as is specified in the notice, and that period has expired; and
  - (b) the vesting of the land in the acquiring authority shall be subject to the tenancy until that period expires, or the tenancy comes to an end, whichever first occurs.

*Recovery of compensation overpaid*

- 9 The provisions of paragraphs 10 to 14 below shall have effect where, after the acquiring authority have made a general vesting declaration in respect of any land, a person claims compensation in respect of the acquisition by the authority of an interest in any land by virtue of the declaration, and the authority pay compensation in respect of that interest.
- 10 If, in a case falling within paragraph 9 above, it is subsequently shown—
- (a) that the land, or the claimant's interest in it, was subject to an incumbrance which was not disclosed in the particulars of his claim; and
  - (b) that by reason of that incumbrance the compensation paid exceeded the compensation to which the claimant was entitled in respect of that interest,
- the acquiring authority may recover the amount of the excess from the claimant.
- 11 If in a case falling within paragraph 9 above, it is subsequently shown that the claimant was not entitled to the interest in question, either in the whole or in part of the land to which the claim related, the acquiring authority may recover from him an amount equal to the compensation paid, or to so much of that compensation as, on a proper apportionment thereof, is attributable to that part of the land, as the case may be.
- 12 Any question arising under paragraph 10 or 11 above—
- (a) as to the amount of the compensation to which the claimant was entitled in respect of an interest in land; or
  - (b) as to the apportionment of any compensation paid,
- shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such question, the provisions of section 9 of the Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications.
- 13 Subject to paragraph 12 above, any amount recoverable by the acquiring authority under paragraph 10 or 11 above shall be recoverable in any court of competent jurisdiction.
- 14 Any sum recovered under paragraph 10 or 11 above in respect of land by an acquiring authority who are a local authority shall be applied towards the repayment of any debt incurred in acquiring or redeveloping that land or if no debt was so incurred shall be paid into the account out of which the compensation in respect of the acquisition of that land was paid.

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*Penalty for false information in claiming compensation*

- 15 (1) If any person, for the purpose of obtaining for himself or for any other person any compensation in respect of the acquisition by the acquiring authority of an interest in land by virtue of a general vesting declaration—
- (a) knowingly or recklessly makes a statement which is false in a material particular; or
  - (b) with intent to deceive produces, furnishes, sends or otherwise makes use of any book, account, or other document which is false in a material particular; or
  - (c) with intent to deceive withholds any material information,
- he shall be guilty of an offence.
- (2) Any person guilty of an offence under this paragraph shall (without prejudice to the recovery of any sum under paragraph 10 or 11 above) be liable—
- (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

**PART II**

SUPPLEMENTARY PROVISIONS

- 16 The provisions contained in this Part of this Schedule shall have effect for the purposes of paragraphs 6 to 8 above.

*Exclusion of power of entry under the Acquisition Act 1947*

- 17 Paragraph 3 of Schedule 2 to the Acquisition Act 1947 (power to enter upon land after service of notice to treat) shall not apply to land specified in a general vesting declaration under this Act.

*Restriction on withdrawal of constructive notice to treat*

- 18 The power conferred by section 39 of the Land Compensation (Scotland) Act 1963 to withdraw notice to treat shall not be exercisable, in respect of a notice to treat which is deemed to be served under paragraphs 6 to 8 above, at any time after the interest in respect of which the notice is deemed to be served has vested in an acquiring authority by virtue of paragraph 7 above.

*Objection to severance*

- 19 Paragraph 4 of Schedule 2 to the Acquisition Act 1947 shall not apply to land in respect of which a general vesting declaration is made under this Act.
- 20 (1) If a general vesting declaration under this Act comprises part only of a house, building or factory, or of a park or garden belonging to a house, any person who is able to sell the whole of the house, building, factory, park or garden may by notice served on the acquiring authority (in this Part of this Schedule referred to as a "notice of objection to severance") require them to purchase his interest in the whole.

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- (2) Except as provided by paragraph 29 below, a notice of objection to severance served by any person shall not have effect if it is served more than twenty-eight days after the date on which the notice required by paragraph 4 above is served on him.
- 21 Where a notice of objection to severance is served in respect of a person's interest in any land (in this Part of this Schedule referred to as " the land proposed to be severed "), and is so served within the time allowed in accordance with paragraph 20(2) above, then, notwithstanding anything in paragraph 7 above.—
- (a) that interest shall not vest in the acquiring authority, and
  - (b) if he is entitled to possession of that land, the acquiring authority shall not be entitled to enter upon or take possession of it,
- until the notice has been disposed of in accordance with the following provisions of this Schedule.
- 22 Within three months after a person has served on an acquiring authority a notice of objection to severance, the acquiring authority shall either—
- (a) serve notice on him withdrawing the notice to treat deemed to have been served on him in respect of his interest in the land proposed to be severed, or
  - (b) serve notice on him that the general vesting declaration shall have effect, in relation to his interest in the land proposed to be severed, as if the whole of that land had been comprised in the declaration (and in the compulsory purchase order, if part only of that land was comprised in that order), or
  - (c) refer the notice of objection to severance to the Lands Tribunal and notify him that it has been so referred.
- 23 If the acquiring authority do not take action in accordance with the last preceding paragraph within the period allowed by that paragraph, then at the end of that period they shall be deemed to have acted in accordance with sub-paragraph (a) of that paragraph.
- 24 Where in accordance with paragraph 22 or 23 above the notice to treat deemed to have been served in respect of a person's interest in the land proposed to be severed is withdrawn, or is deemed to have been withdrawn.—
- (a) that interest shall not vest in the acquiring authority by virtue of the general vesting declaration, and
  - (b) if he is entitled to possession of that land, the acquiring authority shall not be entitled by virtue of that declaration to enter upon or take possession of it.
- 25 Where an acquiring authority take action in accordance with sub-paragraph (b) of paragraph 22 above, the general vesting declaration (and, where applicable, the compulsory purchase order) shall have effect as mentioned in that sub-paragraph, whether apart from this Schedule the acquiring authority could have been authorised to acquire the interest in question in the whole of the land proposed to be severed or not.
- 26 Where in accordance with paragraph 22(c) above an acquiring authority refer a notice of objection to severance to the Lands Tribunal, and on that reference the Tribunal determines that the part of the land proposed to be severed which is comprised in the general vesting declaration can be taken—
- (a) in the case of a house, building or factory, without material detriment, or
  - (b) in the case of a park or garden, without seriously affecting the amenity or convenience of the house,

paragraph 21 above shall thereupon cease to have effect in relation to that notice.

- 27 (1) If on such a reference the Lands Tribunal does not make a determination in accordance with the last preceding paragraph, the Tribunal shall determine the area of that land (being the whole of it or a part of it which includes the part comprised in the general vesting declaration) which the acquiring authority ought to be required to take; and the general vesting declaration shall have effect, in relation to the interest in that area of the person who served the notice of objection to severance, as if the whole of that area had been comprised in the general vesting declaration, whether apart from this Schedule the acquiring authority could have been authorised to acquire that interest in the whole of that area or not.
- (2) Where the preceding sub-paragraph applies, and part of the area determined by the Lands Tribunal was not comprised in the compulsory purchase order, the general vesting declaration shall have effect as mentioned in the preceding sub-paragraph as if the whole of that area had been comprised in the compulsory purchase order as well as in the declaration.
- 28 Where by virtue of paragraph 22(a), 23, 25 or 27 above a general vesting declaration is to have effect in relation to a different area of land from that originally comprised in the declaration, the acquiring authority shall alter accordingly the description of the land affected by the declaration.
- 29 (1) Where in accordance with paragraph 20(1) above a person is entitled to serve a notice of objection to severance, and it is proved—
- (a) that he never received the notice required by paragraph 4 above to be served on him, or received that notice less than twenty-eight days before, or on or after, the date on which the period specified in the general vesting declaration expired, and
  - (b) that a notice of objection to severance served by him was served not more than twenty-eight days after the date on which he first had knowledge of the execution of the general vesting declaration,
- that notice shall have effect notwithstanding that it is served after the time allowed in accordance with paragraph 20(2) above has expired.
- (2) Where, in the circumstances specified in the preceding sub-paragraph, a person serves a notice of objection to severance after the end of the period specified in the general vesting declaration.—
- (a) paragraphs 21 and 24 above shall not have effect in relation to that notice;
  - (b) paragraph 22 above shall have effect in relation to that notice as if sub-paragraph (a) of that paragraph were omitted;
  - (c) paragraph 23 above shall have effect in relation to that notice with the substitution, for the words " sub-paragraph (a) " , of the words " sub-paragraph (b) "; and
  - (d) paragraph 26 above shall not have effect in relation to that notice, but without prejudice to the making by the Tribunal of any such determination as is mentioned in that paragraph.

#### *Compensation*

- 30 Where any of the land specified in a general vesting declaration under this Act has become vested in an acquiring authority by virtue of paragraphs 6 to 8 above, the acquiring authority shall be liable to pay the like compensation, and the like interest

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on the compensation agreed or awarded, as they would have been required to pay if they had taken possession of the land under paragraph 3 of Schedule 2 to the Acquisition Act 1947.

- 31 Sections 56 to 60 and sections 63 to 66 of the Lands Clauses Consolidation (Scotland) Act 1845 (absent and untraced owners) and sections 117 to 119 of the said Act (interests omitted from purchase) shall not apply to the compensation to be paid for any interest in land in respect of which a notice to treat is deemed to have been served by virtue of paragraphs 6 to 8 above.

#### *Charges and tenancies*

- 32 (1) Where land specified in a general vesting declaration under this Act is, together with other land not so specified, charged with a charge, such proportion of the charge as may be apportioned under section 109 of the Lands Clauses Consolidation (Scotland) Act 1845, to the first mentioned land shall, subject to sub-paragraph (3) of this paragraph, be treated as having been extinguished by virtue of paragraphs 6 to 8 above on the vesting of that land in the acquiring authority under those paragraphs.
- (2) Where by virtue of the preceding sub-paragraph a portion of a charge is treated as having been extinguished, the provisions of sections 108 to 111 of the said Act of 1845 shall have effect as if the extinguishment had taken place under section 110 of that Act.
- (3) If, in the circumstances described in sub-paragraph (1) of this paragraph, the person entitled to the charge and the owner of the land subject thereto enter into an agreement to that effect, the said sections 108 to 111, shall have effect as if, at the time of the vesting of the land in the acquiring authority under paragraphs 6 to 8 above, the person entitled to the charge had released that land from the charge on the condition mentioned in section 109 of the said Act of 1845; and in that case no part of the charge shall be treated as having been extinguished as regards the remaining part of the land charged therewith.
- (4) In this paragraph " charge " means any such feu-duty, ground annual or rent or other payment or incumbrance as is mentioned in the words introductory to sections 107 to 111 of the said Act of 1845.
- 33 Where land specified in a general vesting declaration under this Act is, together with other land not so specified, comprised in a tenancy for a term of years unexpired, section 112 of the Lands Clauses Consolidation (Scotland) Act 1845, shall have effect in relation thereto as if for references to the time of the apportionment of rent therein mentioned there were substituted references to the time of the vesting of the tenancy in the acquiring authority.
- 34 Where any of the land specified in a general vesting declaration under this Act has become vested in an acquiring authority under paragraphs 6 to 8 above, any person who, in consequence thereof, is relieved from any liability (whether in respect of a feu-duty, ground annual, rent, interest on a heritable security or any other payment) and makes any payment as in satisfaction or part satisfaction of that liability shall, if he shows that when he made the payment he did not know of the facts which constituted the cause of his being so relieved, or of one or more of those facts, be entitled to recover the sum paid from the person to whom it was paid.

### *Miscellaneous*

- 35 Where, after land has become vested in an acquiring authority under paragraphs 6 to 8 above, a person retains possession of any document relating to the title to the land, he shall be deemed to have given to the acquiring authority an acknowledgment in writing of the right of the acquiring authority to production of that document and to delivery of copies thereof and (except where he retains possession of the document as heritable creditor or as trustee or otherwise in a fiduciary capacity) an undertaking for safe custody thereof.
- 36 (1) The time within which a question of disputed compensation, arising out of an acquisition of an interest in land in respect of which a notice to treat is deemed to have been served by virtue of paragraphs 6 to 8 above, may be referred to the Lands Tribunal shall be six years from the date at which the person claiming compensation, or a person from whom he derives title, first knew, or could reasonably be expected to have known, of the vesting of the interest by virtue of those paragraphs.
- (2) In reckoning the period of six years referred to in sub-paragraph (1) of this paragraph, no account shall be taken of any period during which the person claiming compensation or the person from whom he derives title was in minority or less age or was under legal disability.
- 37 At the end of the period specified in a general vesting declaration or, if a notice of objection to severance is served under this Schedule, when that notice has been disposed of in accordance with the provisions of this Schedule, that declaration, if still being proceeded with or, as the case may be, that declaration as altered under paragraph 28 above, shall be recorded in the General Register of Sasines, and on being so recorded shall have the same effect as a conveyance registered in accordance with section 80 of the Lands Clauses Consolidation (Scotland) Act 1845.

## **PART III**

### INTERPRETATION

- 38 (1) In this Schedule " short tenancy " means a tenancy for a year or from year to year or any lesser interest, and " long tenancy which is about to expire ", in relation to a general vesting declaration, means a tenancy granted for an interest greater than a short tenancy, but having at the date of the declaration a period still to run which is not more than the specified period (that is to say, such period, longer than one year, as may for the purposes of this paragraph be specified in the declaration in relation to the land in which the tenancy subsists).
- (2) In determining for the purposes of this paragraph what period a tenancy still has to run at the date of a general vesting declaration it shall be assumed—
- (a) that the tenant will exercise any option to renew the tenancy, and will not exercise any option to terminate the tenancy, then or thereafter available to him, and
- (b) that the landlord will exercise any option to terminate the tenancy then or thereafter available to him.
- 39 In this Schedule—
- " Acquisition Act 1947 " means the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

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" relevant enactments ", in relation to an acquiring authority, means the enactments under which that authority may acquire or be authorised to acquire land compulsorily and which prescribe a procedure for effecting the compulsory acquisition of land by them by means of a compulsory purchase order;

" land ", in relation to compulsory acquisition by an acquiring authority, has the same meaning as in the relevant enactments.