



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART VI

ACQUISITION AND APPROPRIATION OF LAND AND RELATED PROVISIONS

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 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

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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.
- (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.

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- (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
 - (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 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 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

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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.