

*Status: Point in time view as at 17/09/2003.*

*Changes to legislation: Housing (Scotland) Act 1987, PART II is up to date with all changes known to be in force on or before 18 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 8

#### PART II

##### POWERS OF LOCAL AUTHORITY IN RELATION TO ACQUISITION OF LAND FOR HOUSING ACTION AREAS

- 3 (1) Subject to the provisions of sub-paragraph (2), where a local authority have published and served, in accordance with the provisions of section 94, a notice of the passing of a draft resolution made under section 89, 90 or 91 the local authority, from the date of the said publication and service, shall have power to purchase land by agreement in the area to which the said draft resolution relates, in order themselves to undertake, or otherwise secure, the demolition, or improvement to the standard specified under section 90(3) or by virtue of section 91(3) (as the case may be), of the houses or buildings.
- (2) Where under sub-paragraph (1) the local authority purchase a house identified in accordance with section 92(4)(c), they may also purchase any other part of the building so identified if in their opinion it is necessary to purchase such other part in order to integrate it with that house.

##### *Land adjoining housing action area*

- 4 —Where a local authority determine to acquire any land comprised in an area declared by them to be a housing action area, they may acquire also—
- (a) any land which is surrounded by the housing action area; and
  - (b) any land adjoining the housing action area,
- if the acquisition is reasonably necessary for the purpose of securing an area of convenient shape and dimensions or is reasonably necessary for the satisfactory development or use of the housing action area.

##### *Further provisions relating to acquisition of land*

- 5 (1) In so far as a resolution passed under section 89 or 91 provides that some or all of the buildings in a housing action area should be demolished, the powers of acquiring land comprised in or surrounded by or adjoining such an area conferred on a local authority by Part IV and this Schedule shall not be restricted by the fact that buildings within that area have been demolished since the area was declared to be a housing action area.
- (2) Land for the purposes of Part IV and this Schedule may be acquired by a local authority by agreement under section 70 of the Local Government (Scotland) Act 1973 (acquisition of land by agreement).
- (3) Subject to the provisions of sub-paragraph (4), a local authority may be authorised by the Secretary of State to purchase land compulsorily for the same purposes as they

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may acquire land by agreement under paragraphs 3 and 4, and the <sup>M1</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to any such compulsory purchase as if this Act had been in force immediately before the commencement of that Act, but subject to the following modifications—

- (a) the compulsory purchase order shall not be in the form prescribed under paragraph 2 of Schedule 1 to that Act, but shall be in a form prescribed under this paragraph;
- (b) the notices referred to in paragraphs 3 and 6 of the said Schedule 1 shall not be in the form prescribed under those paragraphs, but shall be in a form prescribed under this paragraph;
- (c) the order shall show separately the houses in the housing action area which do not meet the tolerable standard and, as the case may be, that standard along with any other standard specified under section 90 or by virtue of section 91 and the land proposed to be purchased outside the area;
- (d) the order as confirmed by the Secretary of State shall not authorise the local authority to purchase any house on less favourable terms with respect to compensation than the terms on which the order would have authorised them to purchase the house if the order had been confirmed without modification;
- (e) if the Secretary of State is of opinion that any land included by a local authority in a housing action area ought not to have been so included, he shall on confirming the order so modify it as to exclude that land for all purposes from that area;
- (f) in section 1 of that Act, any reference to the said Schedule 1 shall be construed as a reference to that Schedule as modified by this sub-paragraph;
- (g) in Part IV of that Schedule any reference to that Act or that Schedule and any reference to any regulation made thereunder shall be construed respectively as a reference to that Act as modified by this sub-paragraph and as including a reference to any regulation made under this sub-paragraph;
- (h) section 3 of that Act (power to extinguish certain public rights of way over land acquired) shall be omitted.

(4) Where a local authority have published and served notice of a final resolution in accordance with the provisions of paragraph 1 declaring an area to be—

- (a) a housing action area for demolition, they shall submit any order authorising the compulsory purchase of land in the area to the Secretary of State within a period of 6 months from the date of the said publication and service,
- (b) a housing action area for improvement or for demolition and improvement, any such order as aforesaid shall not be made by the local authority before the expiry of a period of 3 months and shall be submitted to the Secretary of State within a period of 9 months from the date of the said publication and service,

but the Secretary of State may in the circumstances of a particular case, allow such longer period for the periods of 6 months and 9 months mentioned respectively in paragraphs (a) and (b) as he thinks appropriate.

#### Marginal Citations

**M1** 1947 c. 42.

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*Land belonging to local authority*

- 6 (1) A local authority may include in a housing action area any land belonging to them which they might have included in such an area if the land had not belonged to them.
- (2) Where any land belonging to a local authority is included in a housing action area, or where any land belonging to a local authority is surrounded by or adjoins a housing action area and might have been purchased by the authority under paragraph 4 had it not been previously acquired by them, the provisions of Part IV and this Schedule shall apply in relation to any such land as if it had been purchased compulsorily by the authority as being land comprised in the housing action area or, as the case may be, as being land surrounded by or adjoining the housing action area.

*Local authority may take possession of land*

- 7 —Section 11 (which provides that a local authority may take possession of land to be acquired by agreement or appropriated for the purposes of Part I) shall apply for the purposes of Part IV and this Schedule as it applies for the purposes of Part I.

*Local authority may sell or lease land*

- 8 —A local authority who have under Part IV or this Schedule purchased any land comprised in or surrounded by or adjoining a housing action area, may—
- (a) where the land was purchased for the purpose of bringing the houses in the area up to the standard specified under section 90(3) or by virtue of section 91(3), sell or lease any such house to any person subject to the condition that that person will bring the house up to at least the appropriate standard and to any other restriction or condition that they may think fit; or
  - (b) in any other case, sell or lease the land subject to such restrictions and conditions, if any, as they think fit, or may, in accordance with section 73 of the Local Government (Scotland) Act 1973 (appropriation of land), appropriate the land for any purpose for which they are authorised to acquire land.

*Extinction of rights of way servitudes, etc.*

- 9 (1) A local authority may, with the approval of the Secretary of State, by order extinguish any public right of way over any land purchased by them under Part IV or this Schedule or provide for the closing or diversion of any road in connection with the development of a housing action area.
- (2) An order made by a local authority under sub-paragraph (1) shall be made in the prescribed form and be published in the prescribed manner, and, if any objection thereto is made to the Secretary of State before the expiry of 2 months from its publication, the Secretary of State shall not approve the order until he has caused a public local inquiry to be held into the matter.
- (3) Where a local authority have resolved to purchase under Part IV or this Schedule land over which a public right of way exists, the authority may make and the Secretary of State may approve, in advance of the purchase, an order extinguishing that right as from the date on which the buildings on the land are vacated, or at the expiry of such period after that date as may be specified in the order or as the Secretary of State in approving the order may direct.

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- (4) Upon the completion by a local authority of the purchase by them of any land under Part IV or this Schedule, all private rights of way and all rights of laying down, erecting, continuing or maintaining any apparatus on, under or over that land, and all other rights or servitudes in or relating to that land, shall be extinguished, and any such apparatus shall vest in the authority; and any person who suffers loss by the extinction or vesting of any such right or apparatus as aforesaid shall be entitled to be paid by the authority compensation to be determined by the Lands Tribunal in accordance with the <sup>M2</sup>Land Compensation (Scotland) Act 1963:

Provided that this sub-paragraph shall not apply to any right vested in public undertakers of laying down, erecting, continuing or maintaining any apparatus or to any apparatus belonging to public undertakers, and shall have effect as respects other matters subject to any agreement which may be made between the local authority and the person in or to whom the right or apparatus in question is vested or belongs.

**Modifications etc. (not altering text)**

- C1** Sch. 8 para. 9 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(8), Sch. 17 paras. 33, **35(1)**
- C2** Sch. 8 para. 9 extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(9)**; S.I. 1996/218, **art. 2**

**Marginal Citations**

- M2** 1963 c. 51.

*Provisions as to apparatus of public undertakers*

- 10 (1) Where the removal or alteration of apparatus belonging to public undertakers on, under or over land purchased by a local authority under Part IV or this Schedule or on, under or over a road running over or through or adjoining any such land is reasonably necessary for the purpose of enabling the authority to exercise any of the powers conferred upon them by that Part or this Schedule, the authority shall have power to execute works for the removal or alteration of the apparatus subject to and in accordance with the provisions of this paragraph.
- (2) A local authority who intend to remove or alter any apparatus under the powers conferred by sub-paragraph (1) shall serve on the undertakers notice in writing of their intention, with particulars of the proposed works and of the manner in which they are to be executed and plans and sections thereof, and shall not commence any works until the expiry of a period of 28 days from the date of service of the notice, and the undertakers may within that period by notice in writing served on the authority—
- (a) object to the execution of the works or any of them on the ground that they are not necessary for the purpose aforesaid; or
  - (b) state requirements to which in their opinion effect ought to be given as to the manner of, or the observance of conditions in, the execution of the works, as to the execution of other works for the protection of other apparatus belonging to the undertakers, or as to the execution of other works for the provision of substituted apparatus whether permanent or temporary;
- and—
- (i) if objection is so made to any works and not withdrawn, the local authority shall not execute the works unless they are determined by arbitration to be so necessary;

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(ii) if any such requirement as aforesaid is so made and not withdrawn, the local authority shall give effect thereto unless it is determined by arbitration to be unreasonable.

(3) A local authority shall make to public undertakers reasonable compensation for any damage which is sustained by them by reason of the execution by the authority of any works under sub-paragraph (1) and which is not made good by the provision of substituted apparatus.

Any question as to the right of undertakers to recover compensation under this sub-paragraph or as to the amount thereof shall be determined by arbitration.

(4) Where the removal or alteration of apparatus belonging to public undertakers or the execution of works for the provision of substituted apparatus whether permanent or temporary is reasonably necessary for the purposes of their undertaking by reason of the stopping up, diversion or alteration of the level or width of a road by a local authority under powers exercisable by virtue of Part IV or this Schedule, such undertakers may, by notice in writing served on the authority, require them at the expense of the authority to remove or alter the apparatus or to execute the works, and, where any such requirement is so made and not withdrawn, the authority shall give effect thereto unless they serve notice in writing on the undertakers of their objection to the requirement within 28 days from the date of service of the notice upon them and the requirement is determined by arbitration to be unreasonable.

(5) At least 7 days before commencing any works which they are authorised or required under the provisions of this paragraph to execute, the local authority shall, except in case of emergency, serve on the undertakers notice in writing of their intention so to do, and the works shall be executed by the authority under the superintendence (at the expense of the authority) and to the reasonable satisfaction of the undertakers:

Provided that, if within 7 days from the date of service on them of notice under this sub-paragraph the undertakers so elect, they shall themselves execute the works in accordance with the reasonable directions and to the reasonable satisfaction of the local authority, and the reasonable costs thereof shall be repaid to the undertakers by the authority.

(6) Any difference arising between public undertakers and a local authority under sub-paragraph (5) and any matter which is by virtue of the provisions of this paragraph to be determined by arbitration shall—

- (a) in the case of a question arising under sub-paragraph (3) be referred to and determined by the Lands Tribunal;
- (b) in any other case be referred to and determined by an arbiter to be appointed, in default of agreement, by the Secretary of State.

(7) In this paragraph, references to the alteration of apparatus include references to diversion and to alterations of position or level.

**Modifications etc. (not altering text)**

**C3** Sch. 8 para. 10 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(8), Sch. 17 paras. 33, **35(1)**

**C4** Sch. 8 para. 10 extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(9)**; S.I. 1996/218, **art. 2**

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*Saving for telecommunication apparatus, etc.*

- 11 (1) Paragraph 23 of [<sup>F1</sup>the electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [<sup>F2</sup>electronic communications apparatus]) shall apply to a local authority for the purposes of any works which they are authorised to execute under Part IV or this Schedule.
- (2) Where in pursuance of an order under paragraph 9 a public right of way over land is extinguished or a road is closed or diverted, and, at the beginning of the day on which the order comes into operation, there is under, in, on, over, along or across the land or road any [<sup>F2</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F3</sup>an electronic communications code network], the operator of [<sup>F4</sup>that network] shall have the same powers in respect of that apparatus as if the order had not come into operation; but any person entitled to land over which the right of way subsisted shall be entitled to require the alteration of the apparatus.
- (3) The proviso to sub-paragraph (4) of paragraph 9 shall have effect in relation to any right conferred by or in accordance with [<sup>F1</sup>the electronic communications code] on the operator of [<sup>F3</sup>an electronic communications code network] and to [<sup>F2</sup>electronic communications apparatus] kept installed for the purposes of any [<sup>F4</sup>such network] as it has effect in relation to rights vested in and apparatus belonging to statutory undertakers.
- (4) Paragraph 1(2) of [<sup>F1</sup>the electronic communications code](alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this paragraph as it applies for the purposes of that code.
- (5) Paragraph 21 of [<sup>F1</sup>the electronic communications code](restriction on removal of [<sup>F2</sup>electronic communications apparatus]) shall apply in relation to any entitlement conferred by this paragraph to require the alteration, moving or replacement of any [<sup>F2</sup>electronic communications apparatus] as it applies in relation to an entitlement to require the removal of any such apparatus.

**Textual Amendments**

- F1** Words in Sch. 8 para. 11 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 11(a)**
- F2** Words in Sch. 8 para. 11 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 11(b)**
- F3** Words in Sch. 8 para. 11 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 11(c)**
- F4** Words in Sch. 8 para. 11 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 11(d)**

**Modifications etc. (not altering text)**

- C5** Sch. 8 para. 11 extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), Sch. 16 para. 1(1)(xli), Sch. 17 paras. 33, **35(1)**

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