



# Town and Country Planning (Scotland) Act 1959

## 1959 CHAPTER 70

### PART V

#### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **43 Land declared (otherwise than by development plan) to be subject to compulsory purchase**

(1) Where by virtue of paragraph 17 of the Tenth Schedule to the Act of 1947 (which relates to land declared by an order under section one of the Town and Country Planning (Scotland) Act, 1945, to be subject to compulsory purchase) the provisions of Part III of the Act of 1947 apply in relation to any land as mentioned in that paragraph.

- (a) the provisions of Part IV of, and the Fifth Schedule to, this Act, and
- (b) subject to the following provisions of this section, subsection (3) of section four of the Act of 1947 (which empowers the Secretary of State to amend development plans) and subsection (1) of section seven of that Act (which relates to land which has for a long period been designated by a development plan as subject to compulsory acquisition),

shall have effect in relation to that land as if it were land designated by a development plan as subject to compulsory acquisition.

(2) For the purposes of the application to any land, by virtue of the preceding subsection, of subsection (1) of section seven of the Act of 1947, the reference in the said subsection (1) to the date therein mentioned shall be construed as a reference to the date of the coming into operation of the order under section one of the Town and Country Planning (Scotland) Act, 1945, whereby the land was declared to be subject to compulsory purchase.

(3) Notwithstanding anything in subsection (1) of this section, no notice shall be served under subsection (1) of the said section seven as applied by that subsection before the end of the period of twelve months beginning with the commencement of this Act.

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- (4) In relation to any land to which subsection (1) of this section applies, subsections (2) and (3) of section seven of the Act of 1947 shall have effect with the substitution, in subsection (2) of that section, for the words " the development plan shall have effect, after the expiration of the said six months, as if the land were not designated as subject to compulsory acquisition " , of the words "on the expiration of the said six months paragraph 17 of the Tenth Schedule to this Act shall cease to apply to the land ".
- (5) Any reference in this section to subsection (1) of section seven of the Act of 1947 shall be construed as including a reference to that subsection as modified by subsection (5) of that section (which, in the case of agricultural land, substitutes a period of eight years for the period of twelve years mentioned in subsection (1)).

#### **44 Compensation for damage to requisitioned land**

- (1) In relation to compensation accruing due after the twenty-ninth day of October, nineteen hundred and fifty-eight, by virtue of paragraph (b) of subsection (1) of section two of the Compensation (Defence) Act, 1939 (which relates to compensation payable in respect of damage occurring to requisitioned land during the period of requisition), section fifty-five of the Act of 1954 (which limits the amount of that compensation) shall have effect as if any reference to the price which, at the relevant time and in the relevant circumstances, would be the compulsory purchase price of the land were a reference to the value which, at that time and in those circumstances, would be the value of such an interest in the land as is mentioned in paragraph (a) of subsection (2) of the said section fifty-five (that is to say, the dominium utile in the land, subject to any feu duty, any ground annual and any servitude or other restriction affecting the land at the relevant time, but otherwise free from burdens).
- (2) In this section " the relevant time " means the time when the compensation accrues due, and " in the relevant circumstances " means if the land were at the relevant time in the state in which it was when possession of the land was taken in the exercise of emergency powers.

#### **45 Acquisition of land in connection with town development schemes**

- (1) The power of the Secretary of State under subsection (1) of section thirteen of the Housing and Town Development (Scotland) Act, 1957, to authorise a receiving authority to acquire land compulsorily for purposes connected with a town development scheme under Part II of that Act shall, subject to the provisions of this section, be exercisable notwithstanding that it is not immediately necessary for the proper execution of the town development scheme that the land should be so acquired.
- (2) The compulsory acquisition of land shall not be authorised by virtue of the preceding subsection unless the Secretary of State is satisfied that it is likely to become, within ten years from the date on which he confirms the compulsory purchase order, necessary for the purpose mentioned in subsection (1) of this section that the land should be acquired as therein mentioned.
- (3) In this section " town development scheme " and " receiving authority " have the same meanings respectively as in the said Act of 1957.

#### **46 Acquisition of land for trunk and special roads**

Any power of the Secretary of State under section thirteen of the Restriction of Ribbon Development Act, 1955, as read with any of the following enactments, that is to say, section four of the Trunk Roads Act, 1936, section five of the Trunk Roads Act, 1946, and sections nine, ten and fourteen of the Special Roads Act, 1949, to acquire by agreement land required for a purpose mentioned in that section (as so read) shall be exercisable in respect of any land which, in the opinion of the Secretary of State, may be required for that purpose, notwithstanding that the land is not immediately required for that purpose.

#### **47 Advances to highway authorities in respect of land acquired for roads**

- (1) The power of the Secretary of State under section eight of the Development and Road Improvement Funds Act, 1909, to make advances to highway authorities shall include power to make such advances in respect of the acquisition of land by a highway authority, where the Secretary of State is satisfied that the land has been or is to be acquired by that authority with a view to the construction of a new road or the improvement of an existing road.
- (2) Where any land is acquired by a highway authority, and the Secretary of State is satisfied as mentioned in the preceding subsection, the power of the Secretary of State to make advances under the said section eight shall also include power to make such advances in respect of either or both of the following, that is to say—
  - (a) any amount by which the annual expenditure incurred by the authority in maintaining the land, during the period between its acquisition and the construction or improvement of the road in question, and in the payment of loan charges accruing due during that period in respect of any debt incurred by the authority for the purpose of acquiring the land, exceeds the annual income accruing to the authority from the land during that period; and
  - (b) any loan charges accruing due after the end of that period in respect of any money borrowed by the authority for the purpose of acquiring the land.
- (3) In this section " loan charges ", in relation to any borrowed money, means the sums required for the payment of interest on that money and for the repayment thereof either by instalments or by means of a sinking fund, and expressions used in this section and in the said section eight have the same meanings in this section as in that section.

#### **48 Amendment of s. 81 of Lands Clauses Consolidation (Scotland) Act, 1845**

- (1) Section eighty-one of the Lands Clauses Consolidation (Scotland) Act, 1845 (which relates to expenses of conveyances) shall, in relation to any conveyance of lands granted after the commencement of this Act, have effect as if any reference therein to the charges and expenses of establishing the title to the lands included a reference to any expenses necessarily incurred by the seller in taking any action he may be requested by the promoters of the undertaking to take in connection with the conveyance in question
- (2) In this section " conveyance ", " seller " and " promoters of the undertaking " have the same meanings as in the said section eighty-one.

## **49 Recovery of certain sums from acquiring authorities**

- (1) Section fifty-four of the Act of 1954 (which relates to the recovery from acquiring authorities of certain sums payable under Part I of that Act in respect of land acquired under compulsory powers) shall have effect, and shall be deemed always to have had effect, with the substitution, in subsection (2) of that section (which specifies cases in which no sum is to be recoverable thereunder), of the following paragraph for paragraph (b) (which relates to interests in land acquired for the purposes of the development or re-development of an area as a whole):—

“(b) the interest was acquired under Part I of the Town and Country Planning (Scotland) Act, 1945, or under Part III of the principal Act, or in accordance with the provisions of the said Part III as applied by section seventeen of the principal Act, and was so acquired in pursuance of a notice to treat served, or a contract made, before the eighteenth day of November, nineteen hundred and fifty-two, for the purposes of the development or re-development of any area as a whole, or was acquired in pursuance of such a notice to treat or contract under powers conferred by a local Act, and for purposes, which are certified by the Secretary of State to have been powers and purposes similar respectively to those mentioned in the preceding provisions of this paragraph; or”.

- (2) Section fifty-four of the Act of 1954 shall also have effect, and shall be deemed always to have had effect, as if the following subsection were inserted after subsection (2) of that section:—

“(2A) Without prejudice to the last preceding subsection, where the interest was acquired in pursuance of a notice to treat served, or a contract made, before the eighteenth day of November, nineteen hundred and fifty-two, and on the date of service of the notice to treat, or on the date on which the contract was made, as the case may be, the land in which the interest subsisted was used wholly or mainly for agricultural purposes, subsection (1) of this section shall not apply to so much of any payment referred to in that subsection as is attributable to any part of the land in respect of which it is certified by the Secretary of State that he is satisfied that the acquiring authority have no intention—

- (a) of using it (otherwise than temporarily) for purposes other than agricultural purposes, or
- (b) of disposing of it by way of sale, exchange or letting with a view to its being so used”.

- (3) In relation to compulsory acquisitions to which section one of this Act applies, and in relation to any sale of an interest in land by agreement in circumstances corresponding to such an acquisition, section fifty-four of the Act of 1954 shall have effect with the substitution, for subsection (6) of that section, of the following subsections:—

“(6) Where in the case of a compulsory acquisition to which section one of the Town and Country Planning (Scotland) Act, 1959, applies, or of a sale of an interest in land which (within the meaning of that Act) is a sale thereof by agreement in circumstances corresponding to such an acquisition, any of the land comprised in the acquisition or sale is land in respect of which a notice under subsection (1) of section twenty-nine, or subsection (4) of section forty-one, of this Act, or under the provisions of the said subsection (1) as applied by section forty-eight of this Act, is recorded (whether before or after the completion of the acquisition or sale) in respect of a planning decision or order

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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 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 subsection (2) of section twenty-nine of this Act) is to be treated as attributable to that land:

Provided that—

- (a) if, immediately after the completion of the acquisition or sale, there is outstanding some interest in that land to which a person other than the acquiring authority is entitled, the said sum shall not accrue due until that interest either ceases to exist or becomes vested in the acquiring authority;
- (b) no sum shall be recoverable under this subsection 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.

(6A) Where by virtue of the last preceding subsection 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 subsection (4) of section forty-one of this Act, subsections (2) and (3) of section forty-three of this Act shall have effect in relation to that sum as if it were a sum recovered as mentioned in subsection (2) of the said section forty-three.”

- (4) In subsection (4) of section sixty-four of the Act of 1954 (which provides for the payment into the Exchequer of certain sums received by the Secretary of State or the Central Land Board under that Act) the references to subsections (1) to (5) of section fifty-four of that Act, and to subsection (6) of that section, shall be construed as including references respectively to subsections (1) to (5) and to subsection (6) of that section as amended by the preceding provisions of this section.

## **50 Application of Act to Crown**

- (1) The provisions of Part I of this Act, and of the First, Second, Third and Sixth Schedules thereto, apply in relation to the acquisition of interests in land (whether compulsorily or by agreement) by government departments, being public authorities possessing compulsory purchase powers, as they apply in relation to the acquisition of interests in land by such authorities which are not government departments; and any reference in this Act to a compulsory acquisition to which section one of this Act applies, or to a sale of an interest in land by agreement in circumstances corresponding to such an acquisition, shall be construed accordingly.
- (2) The provisions of sections thirty-five and thirty-six of this Act shall apply in relation to any application for planning permission relating to Crown land as they apply in relation to applications for planning permission relating to any other land.
- (3) The rights conferred by Part IV of this Act shall be exercisable by a person who (within the meaning of that Part of this Act) 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 the provisions of Part IV of this Act, and of the Fifth Schedule to this Act, shall apply accordingly.

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- (4) In so far as any power conferred by section thirteen of the Housing and Town Development (Scotland) Act, 1957, is exercisable in respect of Crown land, that power as extended by section forty-five of this Act shall be exercisable in respect of Crown land to the like extent.
- (5) In this section " Crown land " has the same meaning as in section eighty-three of the Act of 1947.

## **51 Adjustment of unexpended balances of established development value**

The provisions of the Sixth Schedule to this Act shall have effect as to the reduction or extinguishment of unexpended balances of established development value (within the meaning of the Act of 1954) in consequence of compulsory acquisitions to which section one of this Act applies, and of sales of interests in land by agreement in circumstances corresponding to such acquisitions.

## **52 Provisions as to inquiries, notices and regulations**

- (1) Section one hundred of the Act of 1947 (which authorises the Secretary of State to hold local inquiries for the purposes of that Act) and section one hundred and one of that Act (which relates to the service of notices) shall apply for the purposes of this Act.
- (2) The Secretary of State may make regulations under this Act for any purpose for which regulations are authorised or required to be made under this Act.
- (3) Any power conferred by this Act to make an order shall include power to vary or revoke the order by a subsequent order.
- (4) Any power conferred by this Act to make regulations or orders shall be exercisable by statutory instrument.
- (5) Any statutory instrument containing regulations or an order made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **53 Financial provisions**

There shall be paid out of moneys provided by Parliament—

- (a) any administrative expenses incurred by the Secretary of State in consequence of the passing of this Act;
- (b) any sums necessary to enable any government department to make payments in pursuance of section thirteen of this Act;
- (c) any sums necessary to enable any government department to pay any compensation or additional consideration becoming payable by them under the provisions of section eighteen or nineteen of this Act, or under those provisions as extended by section twenty-two of this Act;
- (d) any increase attributable to the provisions of this Act in the sums payable out of moneys so provided under any other enactment.

## **54 Interpretation**

- (1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

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" 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 1919 " means the Acquisition of Land (Assessment of Compensation) Act, 1919 ;

" 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;

" authority to whom the Act of 1919 applies " means a government department or local or public authority within the meaning of that Act, or a person or body of persons to whom that Act applies as it applies to such a department or authority;

" compulsory acquisition " and " public authority possessing compulsory purchase powers " have the same meanings as in the Act of 1954 ;

" disposal " 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;

" function " means a power or a duty, and " grant-aided function ", in relation to a body, means a function in respect of which a grant or contribution (other than any grant under the Local Government and Miscellaneous Financial Provisions (Scotland) Act, 1958, and any Exchequer subsidy under any of the enactments specified in Part I of the Sixth Schedule to the Housing (Scotland) Act, 1950) is payable to that body by a government department out of moneys provided by Parliament;

" government department " includes a Minister of the Crown;

" local enactment " means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;

" outline application " means an application for planning permission subject to subsequent approval on any matters;

" planning decision " means a decision made on an application under Part II of the Act of 1947 ;

" planning permission " means permission under Part II of the Act of 1947 ;

" prescribed " (except in relation to matters required or authorised by this Act to be prescribed by an order) means prescribed by regulations under this Act;

" 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.

- (2) In this Act, in relation to a compulsory acquisition in pursuance of a notice to treat, " the relevant interest " means the interest acquired in pursuance of that notice, " the relevant land " means the land in which the relevant interest subsists, and " the notice to treat " means the notice to treat in pursuance of which the relevant interest is acquired.
- (3) Subject to the preceding subsections, and except in so far as the context otherwise requires, expressions used in this Act and in the Act of 1947 have the same meanings in this Act as in that Act.

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- (4) Subsections (3), (4), (6), (7) and (9) of section sixty-nine of the Act of 1954 (which relates to the interpretation of that Act) shall apply for the purposes of this Act as they apply for the purposes of that Act.
- (5) Subsections (2) and (3) of section one hundred and eight of the Act of 1947 shall apply for the purposes of the construction of references in this Act to the Third Schedule to the Act of 1947.
- (6) For the purposes of this Act a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled—
- (a) to both of them beneficially, or
  - (b) to both of them as trustee of one particular trust, or
  - (c) to both of them as personal representative of one particular person;
- and in this subsection " trustee " has the same meaning as in the Trusts (Scotland) Act, 1921.
- (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 a sale of an interest in land by agreement in circumstances corresponding to a compulsory acquisition to which section one of this Act applies is a reference to a sale thereof to a public authority possessing compulsory purchase powers, being a sale in pursuance of a contract made after the twenty-ninth day of October, nineteen hundred and fifty-eight.
- (9) 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.
- (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.

## **55 Consequential amendments and repeals**

- (1) Subject to the following provisions of this section, and without prejudice to any amendments having effect by virtue of the preceding provisions of this Act.—
- (a) the enactments specified in the Seventh Schedule to this Act shall have effect subject to the amendments specified in that Schedule; and
  - (b) the enactments specified in the Eighth Schedule to this Act are hereby repealed to the extent specified in relation thereto in the third column of that Schedule.
- (2) The amendments of section seventeen of the Act of 1947 specified in the Seventh Schedule to this Act shall not have effect in relation to any purchase notice served before the commencement of this Act, but those amendments, and the amendments made by section thirty-four of this Act, shall have effect in relation to any purchase notice served after the commencement of this Act—



- (a) under the provisions of the said section seventeen as applied by any other provisions of that Act or of the Act of 1954, or
  - (b) under any order made (whether before or after the commencement of this Act) under any other provision of the Act of 1947, except in so far as a contrary intention is expressed in any such order made after the commencement of this Act.
- (3) The amendments of, and repeals in, section fifty-five of the Act of 1954 specified in the Seventh and Eighth Schedules to this Act shall not have effect in relation to any compensation accruing due on or before the twenty-ninth day of October, nineteen hundred and fifty-eight.
- (4) The repeals specified in the Eighth Schedule to this Act shall not affect the operation of any enactment in relation to compulsory acquisitions to which section one of this Act does not apply, or in relation to sales of interests in land by agreement, not being sales in circumstances corresponding to compulsory acquisitions to which section one of this Act applies.
- (5) In accordance with subsections (1) and (2) of section thirty-four of this Act, and with the preceding provisions of this section, section seventeen of the Act of 1947 shall have effect, in relation to purchase notices served after the commencement of this Act, as set out in the Ninth Schedule to this Act.

## **56 Short title, citation, commencement and extent**

- (1) This Act may be cited as the Town and Country Planning (Scotland) Act, 1959; and the Town and Country Planning (Scotland) Acts, 1947 to 1954, and this Act, except Part II thereof, may be cited together as the Town and Country Planning (Scotland) Acts, 1947 to 1959.
- (2) The Town and Country Planning Act, 1959, is hereby repealed; and (without prejudice to the operation of subsection (1) of section thirty-eight of the Interpretation Act, 1889, which relates to the effect of repeals and re-enactments) any enactment instrument or other document referring to that Act, or any provision of that Act, in its application to Scotland shall be construed as referring to this Act or, as the case may be, the corresponding provision of this Act.
- (3) The preceding provisions of this section shall come into operation on the passing of this Act, and, save as aforesaid, this Act shall come into operation on the sixteenth day of August, nineteen hundred and fifty-nine.
- (4) For the purposes of this Act and of the application thereto of section thirty-seven of the Interpretation Act, 1889 (which relates to the exercise of statutory powers between the passing and the commencement of an Act) references to the commencement of this Act shall, notwithstanding the provisions of section thirty-six of the said Act of 1889 with respect to the construction of the expression " commencement", be construed as references to the time at which this Act, except subsections (1) and (2) of this section, comes into operation.
- (5) This Act shall extend to Scotland only.