



# Housing and Planning Act 1986

## 1986 CHAPTER 63

An Act to make further provision with respect to housing, planning and local inquiries; to provide financial assistance for the regeneration of urban areas; and for connected purposes. [7th November, 1986]

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:—

### Extent Information

**E1** For extent see s. 58(1)(2)(3).

## PART I

### HOUSING

#### *The right to buy*

**1** ..... **F1**

### Textual Amendments

**F1** S. 1 repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(4), [Sch. 12 Pt. II](#)

## **2 Discount on right to buy and similar sales.**

(1) In section 129 of the <sup>M1</sup>Housing Act 1985 (discount on exercise of right to buy), for subsections (1) and (2) substitute—

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“(1) Subject to the following provisions of this Part, a person exercising the right to buy is entitled to a discount of a percentage calculated by reference to the period which is to be taken into account in accordance with Schedule 4 (qualifying period for right to buy and discount).

(2) The discount is, subject to any order under subsection (2A)—

- (a) in the case of a house, 32 per cent. plus one per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 60 per cent. ;
- (b) in the case of a flat, 44 per cent. plus two per cent. for each complete year by which the qualifying period exceeds two years, up to a maximum of 70 per cent.

(2A) The Secretary of State may by order made with the consent of the Treasury provide that, in such cases as may be specified in the order—

- (a) the minimum percentage discount,
- (b) the percentage increase for each complete year of the qualifying period after the first two, or
- (c) the maximum percentage discount,

shall be such percentage, higher than that specified in subsection (2), as may be specified in the order.

(2B) An order—

- (a) may make different provision with respect to different cases or descriptions of case,
- (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient, and
- (c) shall be made by statutory instrument and shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.”.

(2) The amendment made by subsection (1) does not apply where—

- (a) the tenant’s notice claiming to exercise the right to buy or, as the case may be, to acquire an additional share under a shared ownership lease was served before the commencement of that subsection, and
- (b) the landlord has before commencement served its notice as to the terms of exercise of that right, that is, its notice under section 125 of, or paragraph 1(3) of Schedule 8 to, the <sup>M2</sup>Housing Act 1985,

but without prejudice to the tenant’s right to withdraw the notice served before commencement and serve a new notice.

(3) In the following provisions (which in the case of disposals at a discount require a covenant for repayment of a proportion of the discount if the dwelling-house is disposed of within five years)—

section 35(2) of the Housing Act 1985 (voluntary disposals by local authorities),

section 155(2) of that Act (disposals in pursuance of the right to buy),

section 155(3) of that Act (disposals in pursuance of the right to be granted a shared ownership lease), and

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for “five years” substitute “three years” and for “20 per cent.” substitute “one-third”.

- (4) A conveyance or lease containing the covenant required by any of the provisions mentioned in subsection (3) which was executed before the amendments made by that subsection came into force shall, provided no amount was then or had previously been payable under the covenant, have effect with such modifications as may be necessary to bring it into conformity with the amendments.

**Textual Amendments**

**F2** Entry in s. 2(3) repealed (1.10.1996) by S.I. 1996/2325, art. 4(1)-(3), Sch. 1 Pt. I

**Marginal Citations**

**M1** 1985 c. 68.

**M2** 1985 c. 68.

3 ..... F3

**Textual Amendments**

**F3** S. 3 repealed by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(3), Sch. 24

**4 Service charges and other contributions payable after exercise of right to buy.**

- (1) In section 125 of the <sup>M3</sup>Housing Act 1985 (landlord’s notice of purchase price and other matters), for subsection (4) (notice to include estimate of amount of service charges) substitute—

“(4) Where the notice states provisions which would enable the landlord to recover from the tenant—

- (a) service charges, or
- (b) improvement contributions,

the notice shall also contain the estimates and other information required by section 125A (service charges) or 125B (improvement contributions).”.

- (2) After that section insert—

**“125A Estimates and information about service charges.**

- (1) A landlord’s notice under section 125 shall state as regards service charges (excluding, in the case of a flat, charges to which subsection (2) applies)—

- (a) the landlord’s estimate of the average annual amount (at current prices) which would be payable in respect of each head of charge in the reference period, and
- (b) the aggregate of those estimated amounts,

and shall contain a statement of the reference period adopted for the purpose of the estimates.

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- (2) A landlord's notice under section 125 given in respect of a flat shall, as regards service charges in respect of repairs (including works for the making good of structural defects), contain—
- (a) the estimates required by subsection (3), together with a statement of the reference period adopted for the purpose of the estimates, and
  - (b) a statement of the effect of—
    - paragraph 16B of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant), and
    - section 450A and the regulations made under that section (right to a loan in respect of certain service charges).
- (3) The following estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period—
- (a) for works itemised in the notice, estimates of the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item, and the aggregate amounts of these estimated costs and contributions, and
  - (b) for works not so itemised, an estimate of the average annual amount (at current prices) which the landlord considers is likely to be payable by the tenant.

#### **125B Estimates and information about improvement contributions.**

- (1) A landlord's notice under section 125 given in respect of a flat shall, as regards improvement contributions, contain—
- (a) the estimates required by this section, together with a statement of the reference period adopted for the purpose of the estimates, and
  - (b) a statement of the effect of paragraph 16C of Schedule 6 (which restricts by reference to the estimates the amounts payable by the tenant).
- (2) Estimates are required for works in respect of which the landlord considers that costs may be incurred in the reference period.
- (3) The works to which the estimates relate shall be itemised and the estimates shall show—
- (a) the amount (at current prices) of the likely cost of, and of the tenant's likely contribution in respect of, each item, and
  - (b) the aggregate amounts of those estimated costs and contributions.

#### **125C Reference period for purposes of ss. 125A and 125B.**

- (1) The reference period for the purposes of the estimates required by section 125A or 125B is the period—
- (a) beginning on such date not more than six months after the notice is given as the landlord may reasonably specify as being a date by which the conveyance will have been made or the lease granted, and
  - (b) ending five years after that date or, where the notice states that the conveyance or lease will provide for a service charge or improvement contribution to be calculated by reference to a specified annual period, with the end of the fifth such period beginning after that date.

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- (2) For the purpose of the estimates it shall be assumed that the conveyance will be made or the lease granted at the beginning of the reference period on the terms stated in the notice.”.
- (3) In section 127 of the <sup>M4</sup>Housing Act 1985 (valuation of dwelling-house for purposes of right to buy) in subsection (1) (basis of valuation), after paragraph (b) insert—
- “, and
- (c) on the assumption that any service charges or improvement contributions payable will not be less than the amounts to be expected in accordance with the estimates contained in the landlord’s notice under section 125.”.
- (4) In Part III of Schedule 6 to the <sup>M5</sup>Housing Act 1985 (terms of lease granted in pursuance of right to buy), after paragraph 16 insert—

#### **Service charges and other contributions payable by the tenant**

- “16A (1) The lease may require the tenant to bear a reasonable part of the costs incurred by the landlord—
- (a) in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) (repairs, making good structural defects, provision of services, etc.), or
- (b) in insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding or reinstatement, etc.),
- and to the extent that by virtue of paragraph 15(3) (effect of provision of superior lease) such obligations are not imposed on the landlord, to bear a reasonable part of the costs incurred by the landlord in contributing to costs incurred by a superior landlord or other person in discharging or, as the case may be, insuring against obligations to the like effect.
- (2) Where the lease requires the tenant to contribute to the costs of insurance, it shall provide that the tenant is entitled to inspect the relevant policy at such reasonable times as may be specified in the lease.
- (3) Where the landlord does not insure against the obligations imposed by the covenant implied by virtue of paragraph 14(3), or, as the case may be, the superior landlord or other person does not insure against his obligations to the like effect, the lease may require the tenant to pay a reasonable sum in place of the contribution he could be required to make if there were insurance.
- (4) Where in any case the obligations imposed by the covenants implied by virtue of paragraph 14(2) or (3) are modified in accordance with paragraph 14(4) (power of county court to authorise modification), the references in this paragraph are to the obligations as so modified.
- (5) This paragraph has effect subject to paragraph 16B (restrictions in certain cases as regards costs incurred in the initial period of the lease).
- “16B (1) Where a lease of a flat requires the tenant to pay service charges in respect of repairs (including works for the making good of structural defects), his

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liability in respect of costs incurred in the initial period of the lease is restricted as follows.

- (2) He is not required to pay in respect of works itemised in the estimates contained in the landlord's notice under section 125 any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.
  - (3) He is not required to pay in respect of works not so itemised at a rate exceeding—
    - (a) as regards parts of the initial period falling within the reference period for the purposes of the estimates contained in the landlord's notice under section 125, the estimated annual average amount shown in the estimates;
    - (b) as regards parts of the initial period not falling within that reference period, the average rate produced by averaging over the reference period all works for which estimates are contained in the notice ;
 together, in each case, with an inflation allowance.
  - (4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—
    - (a) if the lease includes provision for service charges to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period ;
    - (b) if the lease provides for service charges to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease ; and
    - (c) if the tenant served notice under section 142 deferring completion, the initial period ends on the date on which it would have ended if the lease had been granted on the date on which the notice was served.
- “16C (1) Where a lease of a flat requires the tenant to pay improvement contributions, his liability in respect of costs incurred in the initial period of the lease is restricted as follows.
- (2) He is not required to make any payment in respect of works for which no estimate was given in the landlord's notice under section 125.
  - (3) He is not required to pay in respect of works for which an estimate was given in that notice any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.
  - (4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—
    - (a) if the lease includes provision for improvement contributions to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period ;
    - (b) if the lease provides for improvement contributions to be calculated by reference to a specified annual period, the initial

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period continues until the end of the fifth such period beginning after the grant of the lease ; and

- (c) if the tenant served notice under section 142 deferring completion, the initial period ends on the date on which it would have ended if the lease had been granted on the date on which the notice was served.

“16D (1) The Secretary of State may by order prescribe—

- (a) the method by which inflation allowances for the purposes of paragraph 16B or 16C are to be calculated by reference to published statistics ; and
- (b) the information to be given to a tenant when he is asked to pay a service charge or improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant.

(2) An order—

- (a) may make different provision for different cases or descriptions of case, including different provision for different areas ;
- (b) may contain such incidental, supplementary or transitional provisions as the Secretary of State thinks appropriate; and
- (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

- (5) For paragraph 18 of Schedule 6 to the <sup>M6</sup>Housing Act 1985 (avoidance of certain provisions relating to service charges) substitute—

“18 Where the dwelling-house is a flat, a provision of the lease or of an agreement collateral to it is void in so far as it purports—

- (a) to authorise the recovery of such a charge as is mentioned in paragraph 16A (contributions in respect of repairs, etc.) otherwise than in accordance with that paragraph and paragraph 16B (restrictions in initial period of lease) ; or
- (b) to authorise the recovery of any charge in respect of costs incurred by the landlord—
  - (i) in discharging the obligations imposed by the covenant implied by paragraph 14(3) (rebuilding or reinstatement, &c.), or those obligations as modified in accordance with paragraph 14(4), or
  - (ii) in contributing to costs incurred by a superior landlord or other person in discharging obligations to the like effect ; or
- (c) to authorise the recovery of an improvement contribution otherwise than in accordance with paragraph 16C (restrictions in initial period of lease).”.

- (6) The amendments in this section do not apply where—

- (a) the tenant’s notice claiming to exercise the right to buy was served before the commencement of this section, and
- (b) the landlord has before commencement served his notice under section 125 of the <sup>M7</sup>Housing Act 1985 (notice of terms of exercise of right) ;

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but without prejudice to the tenant’s right to withdraw the notice served before commencement and serve a new notice.

#### Marginal Citations

**M3** 1985 c. 68.

**M4** 1985 c. 68.

**M5** 1985 c. 68.

**M6** 1985 c. 68.

**M7** 1985 c. 68.

## 5 Loans in respect of service charges.

In Part XIV of the Housing Act 1985 (loans for acquisition or improvement of housing), after section 450 insert—

*“ Loans in respect of service charges*

### **450A Right to a loan in certain cases after exercise of right to buy.**

- (1) The Secretary of State may by regulations provide that where—
  - (a) a lease of a flat has been granted in pursuance of Part V (the right to buy), and
  - (b) the landlord is the housing authority who granted the lease or another housing authority,
 the tenant has, in such circumstances as may be prescribed, a right to a loan in respect of service charges to which this section applies.
- (2) This section applies to service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land) which are payable in the period beginning with the grant of the lease and ending with the tenth anniversary of the grant or, where the lease provides for service charges to be payable by reference to a specified annual period, with the end of the tenth such period beginning after the grant of the lease.
- (3) The regulations may provide that the right—
  - (a) arises only in respect of so much of a service charge as exceeds a minimum qualifying amount and does not exceed a maximum qualifying amount, and
  - (b) does not arise unless the amount thus qualifying for a loan itself exceeds a minimum amount,
 the amounts being either prescribed or ascertained in a prescribed manner.
- (4) The regulations shall provide that the right is—
  - (a) where the landlord is a housing association, a right to an advance from the Housing Corporation, and
  - (b) in any other case, a right to leave the whole or part of the service charge outstanding.
- (5) The regulations may, as regards the procedure for exercising the right, provide—



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- (a) that a demand for service charges in respect of repairs shall inform the tenant whether, in the landlord's opinion, he is entitled to a loan and, if he is, what he must do to claim it,
- (b) that the right must be claimed within a prescribed period of the demand ; and
- (c) that on the right being claimed the lender shall inform the tenant of the terms of the loan and of the prescribed period within which the tenant may accept the offer.

(6) In this section—

“housing authority” includes any housing association within section 80 (the landlord condition for secure tenancies) ; and

“repairs” includes works for making good a structural defect.

#### **450B Power to make loans in other cases.**

(1) The Secretary of State may by regulations provide that where—

- (a) a housing authority is the landlord of a flat under a long lease granted or assigned by the authority or by another housing authority, and
- (b) the tenant is liable under the terms of the lease to pay service charges in respect of repairs (whether to the flat, the building in which it is situated or any other building or land),

the landlord or, where the landlord is a housing association, the Housing Corporation may, in such circumstances as may be prescribed, make a loan to the tenant in respect of the service charges.

(2) The regulations shall provide that the power is—

- (a) where the landlord is a housing association, a power of the Housing Corporation to make an advance, and
- (b) in any other case, a power of the landlord to leave the whole or part of the service charge outstanding.

(3) Where the tenant is entitled to a loan in pursuance of regulations under section 450A, the power conferred by regulations under this section may be exercised in respect of any part of the service charge which does not qualify for a loan under that section.

(4) In this section—

“housing authority” includes any housing association within section 80 (the landlord condition for secure tenancies) : and

“repairs” includes works for making good a structural defect.

(5) This section does not affect any other power of the landlord, or the Housing Corporation, to make loans.

#### **450C Supplementary provisions as to regulations under s. 450A or 450B.**

(1) This section applies to regulations under section 450A or 450B (regulations conferring right to loan, or power to make loan, in respect of service charges).

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- (2) The regulations may provide that the right or, as the case may be, the power does not arise in the case of any prescribed description of landlord.
- (3) The regulations shall provide that the loan—
- (a) in the case of a loan made in pursuance of regulations under section 450A (the right to a loan), shall be on such terms as may be prescribed, and
  - (b) in the case of a loan made by virtue of regulations under section 450B (power to make loan), shall be on such terms as the lender may determine subject to any provision made by the regulations ;
- and shall, in either case, be secured by a mortgage of the flat in question, but may be made whether or not the flat is adequate security for the loan.
- (4) The regulations may—
- (a) as regards the rate of interest payable on the loan, either prescribe the rate or provide that the rate shall be such reasonable rate as may be determined by the lender or, where the lender is a local authority, provide that Schedule 16 applies (local authority mortgage interest rates) ;
  - (b) as regards administrative expenses of the lender in connection with a loan, provide that the lender may charge such expenses to the borrower, to the extent that they do not exceed such amount as may be prescribed, and that the expenses so charged may, at the option of the borrower in the case of a loan under section 450A and at the option of the lender in the case of a loan under section 450B, be added to the amount of the loan.
- (5) The regulations may apply whenever the lease in question was granted or assigned and whenever the service charge in question became payable.
- (6) The regulations—
- (a) may make different provision for different cases or descriptions of case, including different provision for different areas ;
  - (b) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate ; and
  - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

#### Commencement Information

**II** S. 5 wholly in force at 13.7.1992 see s. 57(2) and S.I. 1992/1753, art. 2(1).

#### *Other Provisions with respect to public sector housing*

### **6 Consultation before disposal to private sector landlord.**

- (1) In Part IV of the <sup>M8</sup>Housing Act 1985 (secure tenancies and rights of secure tenants), after section 106 insert—

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**“106A Consultation before disposal to private sector landlord.**

- (1) The provisions of Schedule 3A have effect with respect to the duties of—
    - (a) a local authority proposing to dispose of dwelling-houses subject to secure tenancies, and
    - (b) the Secretary of State in considering whether to give his consent to such a disposal,to have regard to the views of tenants liable as a result of the disposal to cease to be secure tenants.
  - (2) In relation to a disposal to which that Schedule applies, the provisions of that Schedule apply in place of the provisions of section 105 (consultation on matters of housing management).”.
- (2) After Schedule 3 to the Housing Act 1985 insert as Schedule 3A the Schedule set out in Schedule 1 to this Act (consultation before disposal to private sector landlord).
- (3) The amendments made by this section apply to disposals after the commencement of this section.

**Marginal Citations**

**M8** 1985 c. 68.

7 ..... F4

**Textual Amendments**

**F4** Ss. 7, 13(1)–(3) repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(2), **Sch. 18**

**8 Preservation of right to buy on disposal to private sector landlord.**

- (1) In Part V of the <sup>M9</sup>Housing Act 1985 (the right to buy), after section 171 insert—

*“ Preservation of right to buy on disposal to private sector landlord*

- (1) The provisions of this Part continue to apply where a person ceases to be a secure tenant of a dwelling-house by reason of the disposal by the landlord of an interest in the dwelling-house to a person who is not an authority or body within section 80 (the landlord condition for secure tenancies).
- (2) In the following provisions of this Part—
  - (a) references to the preservation of the right to buy and to a person having the preserved right to buy are to the continued application of the provisions of this Part by virtue of this section and to a person in relation to whom those provisions so apply ;

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- (b) “qualifying disposal” means a disposal in relation to which this section applies, and
  - (c) the “former secure tenant” and the “former landlord” are the persons mentioned in subsection (1).
- (3) This section does not apply—
- (a) where the former landlord was a person against whom the right to buy could not be exercised by virtue of paragraph 1, 2 or 3 of Schedule 5 (charities and certain housing associations), or
  - (b) in such other cases as may be excepted from the operation of this section by order of the Secretary of State.
- (4) Orders under subsection (3)(b)—
- (a) may relate to particular disposals and may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**171B Extent of preserved right ; qualifying persons and dwelling-houses.**

- (1) A person to whom this section applies has the preserved right to buy so long as he occupies the relevant dwelling-house as his only or principal home, subject to the following provisions of this Part.
- (2) References in this Part to a “qualifying person” and “qualifying dwelling-house”, in relation to the preserved right to buy, are to a person who has that right and to a dwelling-house in relation to which a person has that right.
- (3) The following are the persons to whom this section applies—
  - (a) the former secure tenant, or in the case of a joint tenancy, each of them ;
  - (b) a qualifying successor as defined in subsection (4) ; and
  - (c) a person to whom a tenancy of a dwelling-house is granted jointly with a person who has the preserved right to buy in relation to that dwelling-house.
- (4) The following are qualifying successors for this purpose—
  - (a) where the former secure tenancy was not a joint tenancy, a person who, on the death of the former secure tenant, becomes by virtue of paragraph 2 or 3 of Part I of Schedule 1 to the Rent Act 1977 (surviving spouse or member of deceased tenant’s family) the statutory tenant of a dwelling-house in relation to which the former secure tenant had the preserved right to buy immediately before his death ;
  - (b) a person who becomes the tenant of a dwelling-house in pursuance of—
    - (i) a property adjustment order under section 24 of the Matrimonial Causes Act 1973, or
    - (ii) an order under Schedule 1 to the Matrimonial Homes Act 1983 transferring the tenancy,

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in place of a person who had the preserved right to buy in relation to that dwelling-house.

- (5) The relevant dwelling-house is in the first instance—
- (a) in relation to a person within paragraph (a) of subsection (3), the dwelling-house which was the subject of the qualifying disposal ;
  - (b) in relation to a person within paragraph (b) of that subsection, the dwelling-house of which he became the statutory tenant or tenant as mentioned in subsection (4)(a) or (b) ;
  - (c) in relation to a person within paragraph (c) of subsection (3), the dwelling-house of which he became a joint tenant as mentioned in that paragraph.
- (6) If a person having the preserved right to buy becomes the tenant of another dwelling-house in place of the relevant dwelling-house (whether the new dwelling-house is entirely different or partly or substantially the same as the previous dwelling-house) and the landlord is the same person as the landlord of the previous dwelling-house or, where that landlord was a company, is a connected company, the new dwelling-house becomes the relevant dwelling-house for the purposes of the preserved right to buy.

For this purpose “connected company” means a subsidiary or holding company within the meaning of section 736 of the Companies Act 1985.

### **171C Modifications of this Part in relation to preserved right.**

- (1) Where the right to buy is preserved, the provisions of this Part have effect subject to such exceptions, adaptations and other modifications as may be prescribed by regulations made by the Secretary of State.
- (2) The regulations may in particular provide—
  - (a) that paragraphs 5 to 11 of Schedule 5 (certain exceptions to the right to buy) do not apply ;
  - (b) that the right to a mortgage is exercisable against the former landlord or, if the former landlord was a housing association, against the Housing Corporation ;
  - (c) that the provisions of this Part relating to the light to be granted a shared ownership lease do not apply ; and
  - (d) that the landlord is not required to but may include a covenant for the repayment of discount, provided its terms are no more onerous than those of the covenant provided for in section 155.
- (3) The prescribed exceptions, adaptations and other modifications shall take the form of textual amendments of the provisions of this Part as they apply in cases where the right to buy is preserved ; and the first regulations, and any subsequent consolidating regulations, shall set out the provisions of this Part as they so apply.
- (4) The regulations—
  - (a) may make different provision for different cases or descriptions of case, including different provision for different areas,
  - (b) may contain such incidental, supplementary and transitional provisions as the Secretary of State considers appropriate, and

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- (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**171D Subsequent dealings ; disposal of landlord’s interest in qualifying dwelling-house.**

- (1) The disposal by the landlord of an interest in the qualifying dwelling-house, whether his whole interest or a lesser interest, does not affect the preserved right to buy, unless—
- (a) as a result of the disposal an authority or body within section 80(1) (the landlord condition for secure tenancies) becomes the landlord of the qualifying person or persons, or
  - (b) paragraph 6 of Schedule 9A applies (effect of failure to register entry protecting preserved right to buy),
- in which case the right to buy ceases to be preserved.
- (2) The disposal by the landlord of a qualifying dwelling-house of less than his whole interest as landlord of the dwelling-house, or in part of it, requires the consent of the Secretary of State, unless the disposal is to the qualifying person or persons.
- (3) Consent may be given in relation to a particular disposal or generally in relation to disposals of a particular description and may, in either case, be given subject to conditions.
- (4) A disposal made without the consent required by subsection (2) is void, except in a case where, by reason of a failure to make the entries on the land register or land charges register required by Schedule 9A, the preserved right to buy does not bind the person to whom the disposal is made.

**171E Subsequent dealings ; termination of landlord’s interest in qualifying dwelling-house.**

- (1) On the termination of the landlord’s interest in the qualifying dwelling-house—
- (a) on the occurrence of an event determining his estate or interest, or by re-entry on a breach of condition or forfeiture, or
  - (b) where the interest is a leasehold interest, by notice given by him or a superior landlord, on the expiry or surrender of the term, or otherwise (subject to subsection (2)),
- the right to buy ceases to be preserved.
- (2) The termination of the landlord’s interest by merger on his acquiring a superior interest, or on the acquisition by another person of the landlord’s interest together with a superior interest, does not affect the preserved right to buy, unless—
- (a) as a result of the acquisition an authority or body within section 80(1) (the landlord condition for secure tenancies) becomes the landlord of the qualifying person or persons, or
  - (b) paragraph 6 of Schedule 9A applies (effect of failure to register entry protecting preserved right to buy),
- in which case the right to buy ceases to be preserved.

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- (3) Where the termination of the landlord's interest as mentioned in subsection (1) is caused by the act or omission of the landlord, a qualifying person who is thereby deprived of the preserved right to buy is entitled to be compensated by him.

#### **171F Subsequent dealings : transfer of qualifying person to alternative accommodation.**

The court shall not order a qualifying person to give up possession of the qualifying dwelling-house in pursuance of section 98(1)(a) of the Rent Act 1977 (suitable alternative accommodation) unless the court is satisfied—

- (a) that the preserved right to buy will, by virtue of section 171B(6) (accommodation with same landlord or connected company), continue to be exercisable in relation to the dwelling-house offered by way of alternative accommodation and that the interest of the landlord in the new dwelling-house will be—
- (i) where the new dwelling-house is a house, not less than the interest of the landlord in the existing dwelling-house, or
  - (ii) where the new dwelling-house is a flat, not less than the interest of the landlord in the existing dwelling-house or a term of years of which 80 years or more remain unexpired, whichever is the less; or
- (b) that the landlord of the new dwelling-house will be an authority or body within section 80(1) (the landlord condition for secure tenancies).

#### **171G Land registration and related matters.**

Schedule 9A has effect with respect to registration of title and related matters arising in connection with the preservation of the right to buy.

#### **171H Disposal after notice claiming to exercise right to buy, etc.**

- (1) Where notice has been given in respect of a dwelling-house claiming to exercise the right to buy or the right to a mortgage and before the completion of the exercise of that right the dwelling-house is the subject of—
- (a) a qualifying disposal, or
  - (b) a disposal to which section 171D(1)(a) or 171E(2)(a) applies (disposal to authority or body satisfying landlord condition for secure tenancies),
- all parties shall, subject to subsection (2), be in the same position as if the disponent had become the landlord before the notice was given and had been given that notice and any further notice given by the tenant to the landlord and had taken all steps which the landlord had taken.
- (2) If the circumstances after the disposal differ in any material respect, as for example where—
- (a) the interest of the disponent in the dwelling-house after the disposal differs from that of the disponent before the disposal, or

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- (b) the right to a mortgage becomes exercisable against the Housing Corporation rather than the former landlord, or vice versa, or
- (c) any of the provisions of Schedule 5 (exceptions to the right to buy) becomes or ceases to be applicable,

all those concerned shall, as soon as practicable after the disposal, take all such steps (whether by way of amending or withdrawing and re-serving any notice or extending any period or otherwise) as may be requisite for the purpose of securing that all parties are, as nearly as may be, in the same position as they would have been if those circumstances had obtained before the disposal.”.

- (2) After Schedule 9 to the <sup>M10</sup>Housing Act 1985 insert as Schedule 9A the Schedule set out in Schedule 2 to this Act (land registration and related matters where right to buy preserved).
- (3) The amendments made by this section apply to qualifying disposals on or after the commencement of this section.

#### **Marginal Citations**

**M9** 1985 c. 68

**M10** 1985 c. 68.

## **9 Redevelopment of dwelling-house subject to secure tenancy.**

- (1) In Schedule 2 to the Housing Act 1985 (grounds for possession of dwelling houses let under secure tenancies), in Part II (grounds on which court may order possession if suitable alternative accommodation is available), after ground 10 (redevelopment by landlord) insert—

### *“ Ground 10A*

The dwelling-house is in an area which is the subject of a redevelopment scheme approved by the Secretary of State or the Housing Corporation in accordance with Part V of this Schedule and the landlord intends within a reasonable time of obtaining possession to dispose of the dwelling-house in accordance with the scheme.

*or*

Part of the dwelling-house is in such an area and the landlord intends within a reasonable time of obtaining possession to dispose of that part in accordance with the scheme and for that purpose reasonably requires possession of the dwelling-house.”.

- (2) At the end of that Schedule insert—

### **“PART V**

#### APPROVAL OF REDEVELOPMENT SCHEMES FOR PURPOSES OF GROUND 10A

- 1 (1) The Secretary of State may, on the application of the landlord, approve for the purposes of ground 10A in Part II of this Schedule a scheme for the



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disposal and redevelopment of an area of land consisting of or including the whole or part of one or more dwelling-houses.

- (2) For this purpose—
    - (a) “disposal” means a disposal of any interest in the land (including the grant of an option), and
    - (b) “redevelopment” means the demolition or reconstruction of buildings or the carrying out of other works to buildings or land ; and it is immaterial whether the disposal is to precede or follow the redevelopment.
  - (3) The Secretary of State may on the application of the landlord approve a variation of a scheme previously approved by him and may, in particular, approve a variation adding land to the area subject to the scheme.
- 2
- (1) Where a landlord proposes to apply to the Secretary of State for the approval of a scheme or variation it shall serve a notice in writing on any secure tenant of a dwelling-house affected by the proposal stating—
    - (a) the main features of the proposed scheme or, as the case may be, the scheme as proposed to be varied,
    - (b) that the landlord proposes to apply to the Secretary of State for approval of the scheme or variation, and
    - (c) the effect of such approval, by virtue of section 84 and ground 10A in Part II of this Schedule, in relation to proceedings for possession of the dwelling-house,and informing the tenant that he may, within such period as the landlord may allow (which shall be at least 28 days from service of the notice), make representations to the landlord about the proposal.
  - (2) The landlord shall not apply to the Secretary of State until it has considered any representations made to it within that period.
  - (3) In the case of a landlord to which section 105 applies (consultation on matters of housing management) the provisions of this paragraph apply in place of the provisions of that section in relation to the approval or variation of a redevelopment scheme.
- 3
- (1) In considering whether to give his approval to a scheme or variation the Secretary of State shall take into account, in particular—
    - (a) the effect of the scheme on the extent and character of housing accommodation in the neighbourhood,
    - (b) over what period of time it is proposed that the disposal and redevelopment will take place in accordance with the scheme, and
    - (c) to what extent the scheme includes provision for housing provided under the scheme to be sold or let to existing tenants or persons nominated by the landlord ;and he shall take into account any representations made to him and, so far as they are brought to his notice, any representations made to the landlord.

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- (2) The landlord shall give to the Secretary of State such information as to the representations made to it, and other relevant matters, as the Secretary of State may require.
- 4 The Secretary of State shall not approve a scheme or variation so as to include in the area subject to the scheme—
- (a) part only of one or more dwelling-houses, or
- (b) one or more dwelling-houses not themselves affected by the works involved in redevelopment but which are proposed to be disposed of along with other land which is so affected, unless he is satisfied that the inclusion is justified in the circumstances.
- 5 (1) Approval may be given subject to conditions and may be expressed to expire after a specified period.
- (2) The Secretary of State, on the application of the landlord or otherwise, may vary an approval so as to—
- (a) add, remove or vary conditions to which the approval is subject ; or
- (b) extend or restrict the period after which the approval is to expire.
- (3) Where approval is given subject to conditions, the landlord may serve a notice under section 83 (notice of proceedings for possession) specifying ground 10A notwithstanding that the conditions are not yet fulfilled but the court shall not make an order for possession on that ground unless satisfied that they are or will be fulfilled.
- 6 Where the landlord is a registered housing association, the Housing Corporation, and not the Secretary of State, has the functions conferred by this Part of this Schedule.
- 7 In this Part of this Schedule references to the landlord of a dwelling-house include any authority or body within section 80 (the landlord condition for secure tenancies) having an interest of any description in the dwelling-house.”
- (3) Section 29 of the <sup>M11</sup>Land Compensation Act 1973 (home loss payments) is amended as follows—
- (a) in subsection (1) (circumstances in which, and persons by whom, payment to be made) after paragraph (d) insert—
- “(e) the making of an order for possession on ground 10 or 10A in Part II of Schedule 2 to the Housing Act 1985 ;” ; and
- (b) in the same subsection, after paragraph (iv) insert—
- “(v) where paragraph (e) applies, the landlord.”; and
- <sup>F5</sup>(c) .....

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- (4) In section 32 of the Land Compensation Act 1973 (supplementary provisions about home loss payments), after subsection (7A) insert—

- (
- Where a landlord obtains possession by agreement of a dwelling subject to a secure tenancy within the meaning of Part IV of the Housing Act 1985 and—
- (a) notice of proceedings for possession of the dwelling has been served, or might have been served, specifying ground 10 or 10A in Part II of Schedule 2 to that Act, or
  - (b) the landlord has applied, or could apply, to the Secretary of State or the Housing Corporation for approval for the purposes of ground 10A of a redevelopment scheme including the dwelling, or part of it,
- the landlord may make to the person giving up possession a payment corresponding to any home loss payment which they would be required to make to him if an order for possession had been made on either of those grounds.”.

#### Textual Amendments

- F5** S. 9(3)(c) repealed (25. 09. 1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:1\)](#), s. 84(6), [Sch. 19 Pt.III; S.I. 1991/2067, art.3](#)

#### Marginal Citations

- M11** 1973 c. 26.

## 10 Management agreements.

For section 27 of the <sup>M12</sup>Housing Act 1985 (agreements with housing co-operatives), and the heading preceding it, substitute—

*“ Management agreements*

### 27 Management agreements.

- (1) A local housing authority may, with the approval of the Secretary of State, agree that another person shall exercise as agent of the authority in relation to—
  - (a) such of the authority’s houses as are specified in the agreement, and
  - (b) any other land so specified which is held for a related purpose, such of the authority’s management functions as are so specified.
- (2) In this Act “management agreement” and “manager”, in relation to such an agreement, mean an agreement under this section and the person with whom the agreement is made.
- (3) A management agreement shall set out the terms on which the authority’s functions are exercisable by the manager.
- (4) A management agreement may, where the manager is a body or association, provide that the manager’s functions under the agreement may be performed by a committee or sub-committee, or by an officer, of the body or association.

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- (5) The Secretary of State's approval (which may be given unconditionally or subject to conditions) is required both for the terms of the agreement and the identity of the manager.
- (6) References in this section to the management functions of a local housing authority in relation to houses or land include—
  - (a) functions conferred by any statutory provision, and
  - (b) the powers and duties of the authority as holder of an estate or interest in the houses or land in question.

### **27A Consultation required before management agreement can be approved.**

- (1) A local housing authority who propose to enter into a management agreement shall serve notice in writing on the tenant of each house to which the proposal relates informing him of—
  - (a) such details of their proposal as the authority consider appropriate, but including the identity of the person who is to be the manager under the agreement,
  - (b) the likely consequences of the agreement for the tenant, and
  - (c) the effect of the provisions of this section,
 and informing him that he may, within such reasonable period as may be specified in the notice, make representations to the authority.
- (2) The authority shall consider any representations made to them within that period and shall serve a further written notice on the tenant informing him—
  - (a) of any significant changes in their proposal, and
  - (b) that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Secretary of State his objection to the proposal,
 and informing him of the effect of subsection (5) (approval to be withheld if majority of tenants are opposed).
- (3) The Secretary of State shall not entertain an application for approval of a management agreement unless the local housing authority certify that the requirements of subsections (1) and (2) as to consultation have been complied with; and the certificate shall be accompanied by a copy of the notices given by the authority in accordance with those subsections.
- (4) The Secretary of State may require the authority to carry out such further consultation with their tenants, and to give him such information as to the results of that consultation, as he may direct.
- (5) The Secretary of State shall not give his approval if it appears to him that a majority of the tenants of the houses to which the agreement relates do not wish the proposal to proceed ; but this does not affect his general discretion to withhold his approval on grounds relating to whether the proposal has the support of the tenants or on any other ground.
- (6) In making his decision the Secretary of State may have regard to any information available to him; and the local housing authority shall give him such information as to the representations made to them by tenants and others, and other relevant matters, as he may require.

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- (7) A management agreement made with the approval of the Secretary of State is not invalidated by a failure on his part or that of the local housing authority to comply with the requirements of this section.
- (8) In the case of secure tenants the provisions of this section apply in place of the provisions of section 105 (consultation on matters of housing management) in relation to the making of a management agreement.

#### **27B Agreements with housing co-operatives under superseded provisions.**

- (1) In this section “housing co-operative” means a society, company or body of trustees with which a housing co-operative agreement was made, that is to say—
  - (a) an agreement to which paragraph 9 of Schedule 1 to the Housing Rents and Subsidies Act 1975 or Schedule 20 to the Housing Act 1980 applied or,
  - (b) an agreement made under section 27 above before the commencement of section 10 of the Housing and Planning Act 1986 (which substituted the present section 27).
- (2) A housing co-operative agreement made with a local housing authority which is in force immediately before the commencement of section 10 of the Housing and Planning Act 1986 has effect as if made under the present section 27, so that, in particular, any terms of the agreement providing for the letting of land to the housing co-operative no longer have effect except in relation to lettings made before commencement.
- (3) A housing co-operative agreement made with a new town corporation or the Development Board for Rural Wales which is in force immediately before the commencement of section 10 of the Housing and Planning Act 1986 remains in force notwithstanding that the present section 27 does not apply to such authorities.
- (4) In this Act (except in section 27) the expressions “management agreement” and “manager”, in relation to such an agreement, include a housing co-operative agreement to which subsection (2) or (3) applies and the housing co-operative with whom the agreement is made.”.

#### **Marginal Citations**

M12 1985 c. 68

### **11 Proposals for co-operative management or ownership.**

In Part II of the Housing Act 1985, after the provisions inserted by section 10 above insert—

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*“ Proposals for co-operative management or ownership*

**27C Proposals for co-operative management or ownership.**

- (1) If a qualifying tenants’ association serves written notice on the local housing authority—
  - (a) proposing that the authority should enter into a management agreement with the association with respect to houses and other land specified in the notice, or
  - (b) proposing that the association should acquire from the authority houses and other land specified in the notice at a specified price,
 the authority shall take the proposal into consideration.
- (2) If the authority have not, by the end of the period of six months after service of the notice, accepted the proposal in principle, they shall give the association a written statement of the reasons why they have not done so.
- (3) A tenants’ association is a qualifying association for the purposes of this section if—
  - (a) it is a housing association of which at least half the members are tenants of houses specified in the notice,
  - (b) it has at least 50 such members or is registered under the Industrial and Provident Societies Act 1965, and
  - (c) at least half the tenants of the specified houses are members of the association.”.

*Assured tenancies*

**12** ..... <sup>F6</sup>

**Textual Amendments**  
**F6** Ss. 12, 13(5) repealed by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(2), [Sch. 18](#)

**13 Other amendments relating to assured tenancies.**

(1) ..... <sup>F7</sup>

- (4) In section 37 of the <sup>M13</sup>Landlord and Tenant Act 1954 (compensation where an order for new tenancy precluded on certain grounds), in subsection (2) (computation of compensation) as set out in paragraph 7 of Schedule 5 to the Housing Act 1980 (application of 1.954 Act to assured tenancies), after “be” insert “the product of the appropriate multiplier and”.

The above amendment applies notwithstanding that the application to the court under section 24 of the Landlord and Tenant Act 1954 was made before the commencement of this section, unless the application has been finally disposed of within the meaning of section 64(2) of that Act before commencement.

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(5) ..... <sup>F8</sup>

(6) In Schedule 5 to the Housing Act 1980 (application of Landlord and Tenant Act 1954 to assured tenancies), for paragraph 8 (modification of provisions relating to contracting out) substitute—

“8 Section 38 applies as if the following provisions were omitted—

- (a) in subsection (1), the words “(except as provided by subsection (4) of this section)” ;
- (b) in subsection (2), the words from the beginning to the end of paragraph (b) ;
- (c) subsections (3) and (4).”

The above amendment, so far as it relates to section 38(4) of the <sup>M14</sup>Landlord and Tenant Act 1954, does not apply to an agreement both approved by the court under that provision and entered into before the commencement of this section.

**Textual Amendments**

- F7** Ss. 7, 13(1)–(3) repealed by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(2), [Sch. 18](#)
- F8** Ss. 12, 13(5) repealed by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(2), [Sch. 18](#)

**Marginal Citations**

- M13** 1954 c. 56
- M14** 1954 c. 56.

*Miscellaneous*

<sup>F9</sup>**14** .....

**Textual Amendments**

- F9** [S. 14](#) repealed (20.1.1997) by [1996 c. 52](#), s. 227, [Sch. 19 Pt. VIII](#); [S.I. 1996/2959](#), [art. 2](#)

[<sup>F10</sup>**15 Grants for improvement or repair of common parts.**

Part XV of the <sup>M15</sup>Housing Act 1985 (grants for works of improvement, repair and conversion) is amended in accordance with Schedule 3 so as to provide for a new form of grant towards the costs of works required for the improvement or repair of the common parts of a building containing one or more flats.]

**Textual Amendments**

- F10** [S. 15](#) repealed (*prosp.*) by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 194(4), 195(2), [Sch. 12 Pt. II](#)

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### Marginal Citations

M15 1985 c. 68.

## 16 Housing management : financial assistance etc.

In Part XIII of the Housing Act 1985 (general financial provisions), after section 429 insert—

### “429A Housing management : financial assistance etc.

- (1) The Secretary of State may, with the financial consent of the Treasury, give financial assistance—
  - (a) to persons managing public sector or former public sector housing, and
  - (b) to persons seeking to facilitate or encourage improvements in, or providing services in connection with, the management of such housing ;
 and may, with the like consent, make payments otherwise than by way of financial assistance in pursuance of arrangements made with any such person.
- (2) For this purpose—
  - (a) “public sector housing” means housing accommodation in which an authority or body within section 80 (the landlord condition for secure tenancies) has an interest by virtue of which it receives a rack-rent, or would do so if the premises were let at a rack-rent; and
  - (b) “former public sector housing” means housing accommodation in which such an authority, or a predecessor of such an authority or an authority abolished by the Local Government Act 1985 formerly had such an interest.
- (3) The Secretary of State may, with the consent of the Treasury, give financial assistance—
  - (a) to persons providing educational or training course in housing management,
  - (b) to persons providing services for those providing such courses, and
  - (c) to persons providing financial or other assistance for those attending such courses ;
 and may, with the like consent, make payments otherwise than by way of financial assistance in pursuance of arrangements made with any such person.
- (4) Financial assistance given by the Secretary of State under subsection (1) or (3) may be given in any form, and may in particular be given by way of grants, loans or guarantees or by incurring expenditure for the benefit of the person assisted ; but the Secretary of State shall not in giving such assistance purchase loan or share capital in a company.
- (5) Financial assistance may be given and other payments made on such terms as the Secretary of State, with the consent of the Treasury, considers appropriate ; and the terms may, in particular, include provision as to the circumstances in which the assistance or other payment must be repaid or otherwise made good to the Secretary of State and the manner in which that is to be done.



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- (6) A person receiving financial assistance under this section shall comply with the terms on which it is given and compliance may be enforced by the Secretary of State.”.

## 17 Matters to be taken into account in determining fair rent.

(1) Section 70 of the <sup>M16</sup>Rent Act 1977 (determination of fair rent) is amended as follows.

(2) In subsection (1) (matters to be taken into account), omit the word “and” before paragraph (b) and after that paragraph insert—

“, and

- (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.”.

(3) After subsection (4) insert—

“(4A) In this section “premium” has the same meaning as in Part IX of this Act, and “sum in the nature of a premium” means—

- (a) any such loan as is mentioned in section 119 or 120 of this Act,  
(b) any such excess over the reasonable price of furniture as is mentioned in section 123 of this Act, and  
(c) any such advance payment of rent as is mentioned in section 126 of this Act.”.

(4) The above amendments apply to every decision made by a rent officer or rent assessment committee after the commencement of this section, notwithstanding that the application was made before commencement or, in the case of a decision of a rent assessment committee, that the rent officer’s decision was made before commencement.

### Marginal Citations

M16 1977 c. 42.

## 18 Further provisions with respect to shared ownership leases.

The provisions of Schedule 4 have effect to exclude certain shared ownership leases from the operation of the provisions of—

- (a) the <sup>M17</sup>Rent Act 1977 and the <sup>M18</sup>Rent (Agriculture) Act 1976, and  
(b) Part I of the <sup>M19</sup>Leasehold Reform Act 1967 (right of long leaseholder to enfranchisement or extension of lease).

### Marginal Citations

M17 1977 c. 42.

M18 1976 c. 80.

M19 1967 c. 88.

*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

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**19** ..... <sup>F11</sup>

**Textual Amendments**

**F11** S. 19 repealed by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(2), [Sch. 18](#)

**[<sup>F12</sup>20 Disposal of dwellings in new towns.**

- (1) Part III of the <sup>M20</sup>New Towns Act 1981 (transfer of new town housing to district councils), is amended as follows.
- (2) After section 57 insert—

**“ Savings for other powers of disposal.**

The provisions of this Part as to the transfer of dwellings in a new town to a district council shall not be construed as restricting—

- (a) the power of the Commission under section 36 above,
- (b) The power of the development corporation under section 64 below, or
- (c) the power of the Development Board for Rural Wales under section 4 of the development of Rural Wales Act 1976,

to dispose of such dwellings to any person.”.

- (3) The following provisions (which relate to the initiation of consultations with a view to the transfer of new town housing to a district council) are repealed—  
 section 43(3) and (4),  
 section 49(b) and (c).]

**Textual Amendments**

**F12** S. 20 repealed (*prosp.*) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), ss. 194(4), 195(2), [Sch. 12 Pt. II](#)

**Marginal Citations**

**M20** 1981 c. 64.

**21 Effect of resolutions relating to housing action area or general improvement area.**

- (1) In Part VIII of the <sup>M21</sup>Housing Act 1985 (area improvement) before section 260, under the heading “Supplementary provisions” insert—

**“259A Effect of resolutions relating to housing action area or general improvement area.**

- (1) A resolution of a local housing authority passed after the commencement of this section—

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- (a) declaring an area to be a housing action area, excluding land from a housing action area or declaring that an area shall cease to be a housing action area, or
- (b) declaring an area to be a general improvement area, excluding land from a general improvement area or declaring that an area shall cease to be a general improvement area,

has effect, subject to subsection (2), from the day on which the resolution is passed.

- (2) A resolution declaring an area to be a general improvement area may be expressed to have effect from a future date, not later than four weeks after the passing of the resolution, on which the whole or part of that area will cease to be, or be included in, a housing action area.

### **259B Effect of certain resolutions passed before commencement of s. 259A.**

- (1) Where before the commencement of section 259A a local housing authority passed a resolution of any of the descriptions mentioned in the section expressed to have effect from a date after that on which it was passed—

- (a) anything done before the commencement of this section in reliance on the view that the resolution was invalid shall have effect as if the resolution had not been passed, but
- (b) otherwise, the resolution shall be taken for all purposes, both before and after the commencement of this section, to have been validly passed and to have had effect from the date on which it was expressed to have had effect ;

subject to the following provisions.

- (2) A person shall not be proceeded against in respect of anything done or omitted before the commencement of this section which would not have been an offence if the resolution had not been passed.

- (3) Where the resolution declared a housing action area or general improvement area and, before the commencement of this section, the local housing authority passed a further resolution making the like declaration in relation to the whole or part of the area to which the first resolution then related—

- (a) both resolutions are effective, notwithstanding that they relate in whole or in part to the same area ;
- (b) the area covered by both resolutions is a housing action area or general improvement area by virtue of the joint effect of the two resolutions, and in the case of a housing action area shall continue to be such an area (subject to the provisions of this Part) until the end of the period of five years beginning with the date on which the second resolution was passed ;
- (c) it is immaterial whether steps taken before the commencement of this section were taken in reliance on the first resolution or the second, but steps taken in reliance on the first shall not be proceeded with to the extent that they have been superseded by, or are inconsistent with, steps taken in reliance on the second ; and
- (d) the areas declared by the two resolutions may be treated as one for the purposes of section 245(3) or 259(3) (limit on aggregate expenditure qualifying for contributions by Secretary of State).

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- (4) The provisions of subsection (3) do not affect the powers of the Secretary of State under section 241(2)(a) and (b) (power to overrule declaration of housing action area or exclude land from area) and, so far as they relate to the duration of a housing action area, have effect subject to section 241(4) (effect of Secretary of State’s decision in such a case).”.
- (2) In consequence of the above amendment, Part VIII of the <sup>M22</sup>Housing Act 1985 is further amended as follows—
- (a) in section 239(4) (duration of housing action area), omit “beginning with the date on which the resolution is passed” ;
  - (b) in section 240(1) (steps to be taken after declaration of housing action area) omit “passing a resolution” ;
  - (c) in section 242(2) (incorporation into housing action area of land comprised in general improvement area), for “the resolution is passed declaring such an area” substitute “the area is declared” ;
  - (d) in section 250(1) (exclusion of land from, or termination of, housing action area), omit “on the date on which the resolution is passed” ;
  - (e) in section 257 (duty to publish information) for “have declared” substitute “have passed a resolution declaring” and for “assistance available” substitute “assistance which is or will be available” ;
  - (f) in section 258(1)(b) (resolution terminating general improvement area), for “an area to be no longer” substitute “that an area shall cease to be” ;
  - (g) in section 258(2) (effect of resolution excluding land from or terminating general improvement area) for “the date on which the resolution takes effect” substitute “the date on which the exclusion or cessation takes effect” and for “the exclusion or cessation” substitute “the resolution”.

#### Marginal Citations

**M21** 1985 c. 68

**M22** 1985 c. 68.

## 22 Agreements with certain housing bodies exempt from Consumer Credit Act 1974.

- (1) Section 16 of the <sup>M23</sup>Consumer Credit Act 1974 (exempt agreements) is amended as follows.
- (2) In subsection (1) (which enables orders to be made exempting agreements with certain descriptions of creditor), after paragraph (f) insert—
- “(ff) a body corporate named or specifically referred to in an order made under—
- section 156(4), 444(1) or 447(2)(a) of the Housing Act 1985,
- section 2 of the Home Purchase Assistance and Housing Corporation Guarantee Act 1978 or section 31 of the Tenant’s Rights, &c. (Scotland) Act 1980, or
- Article 154(1)(a) or 156AA of the Housing (Northern Ireland) Order 1981 or Article 10(6A) of the Housing (Northern Ireland) Order 1983; or”;

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and in subsection (3) (requirements as to consultation), in paragraph (d) (consultation with responsible Minister), for “or (f)” substitute “, (f) or (ff)”.

(3) After subsection (6) insert—

“(6A) This Act does not regulate a consumer credit agreement where the creditor is a housing authority and the agreement is secured by a land mortgage of a dwelling.

(6B) In subsection (6A) “housing authority” means—

- (a) as regards England and Wales, an authority or body within section 80(1) of the Housing Act 1985 (the landlord condition for secure tenancies), other than a housing association or a housing trust which is a charity;
- (b) as regards Scotland, a development corporation established under an order made, or having effect as if made under the New Towns (Scotland) Act 1968, the Scottish Special Housing Association or the Housing Corporation;
- (c) as regards Northern Ireland, the Northern Ireland Housing Executive.”.

(4) The above amendments apply to agreements made after the commencement of this section.

#### Marginal Citations

M23 1974 c. 37.

## 23 Determination of price for leasehold enfranchisement.

- (1) In section 9(1A) of the <sup>M24</sup>Leasehold Reform Act 1967 (determination of price payable for enfranchisement of higher value houses), in paragraph (a) (assumption that vendor is selling subject to existing tenancy) after “no right to acquire the freehold” insert “or an extended lease and, where the tenancy has been extended under this Part of this Act, that the tenancy will terminate on the original term date.”.
- (2) In section 23(5) of the Leasehold Reform Act 1967 (provisions as to tenancy granted in satisfaction of tenant’s rights under Part I), in paragraph (b) (provisions which apply as if the tenancy were granted by way of extension) at the beginning insert “section 9(1) and (1A) above.”.
- (3) The above amendments do not apply—
  - (a) where the price for enfranchisement has been determined, by agreement or otherwise, before the commencement of this section; or
  - (b) where the notice under section 8 of the Leasehold Reform Act 1967 (notice of desire to have the freehold) was given before the passing of this Act; or
  - (c) where notice under section 14 of that Act (notice of desire to have extended lease) was given before 5th March 1986.

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**Marginal Citations**

M24 1967 c. 88.

**24 Minor and consequential amendments; repeals.**

- (1) The enactments relating to housing are amended in accordance with Part I of Schedule 5 with respect to the following matters—
  - (a) the effect of a covenant for repayment of discount given on the disposal of a dwelling-house;
  - (b) the acquisition by an authority or body within section 80 of the <sup>M25</sup>Housing Act 1985 (the landlord condition for secure tenancies) of a dwelling-house subject to a statutory tenancy;
  - (c) the contents of a landlord’s notice under section 125 of that Act (notice of terms of exercise of right to buy);
  - (d) the steps to be taken where there is a change of landlord in the course of exercise of the right to buy;
  - (e) the deferment of completion in pursuance of the right to buy;
  - (f) the maximum penalty for voting in contravention of section 618(3) of the <sup>M26</sup>Housing Act 1985 (member of Common Council or committee voting on matter in which he is interested);
  - (g) the withholding of consent to the assignment by way of exchange of a secure tenancy of a dwelling-house managed by a certain description of housing association;
  - (h) grants for affording tax relief to housing associations;
  - (i) the recovery of service charges in respect of the cost of grant-aided works;
  - (j) miscellaneous corrections.
- (2) Part II of Schedule 5 contains amendments consequential on the provisions of this Part.
- (3) The enactments specified in Part I of Schedule 12 are repealed to the extent specified.

**Commencement Information**

**I2** S. 24 partly in force; s. 24(1)(j) in force at Royal Assent see s. 57(1); for commencement orders prior to 1.2.1991 see s. 57(2); s. 24(2) in force in so far as it relates to specified provisions of Sch. 5 at 17.8.1992 by S.I. 1992/1753, art. 2(2).

**Marginal Citations**

M25 1985 c. 68.

M26 1985 c. 68

**PART II**

SIMPLIFIED PLANNING ZONES

*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

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### Textual Amendments

**F13** Ss. 25, 30–34, 41 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

## Scotland

### 26 Simplified planning zones in Scotland.

- (1) In Part III of the <sup>M27</sup>Town and Country Planning (Scotland) Act 1972 (general planning control), after section 21 insert—

*“ Simplified planning zone schemes*

#### **21A Simplified planning zones.**

- (1) A simplified planning zone is an area planning in respect of which a simplified planning zone scheme is in force.
- (2) The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission for development specified in the scheme or for development of any class so specified.
- (3) Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme.
- (4) Every planning authority—
  - (a) shall consider, as soon as practicable after this section comes into operation, the question for which part or parts of their district a simplified planning zone scheme is desirable, and shall thereafter keep that question under review; and
  - (b) shall prepare a scheme for any such part for which they decide, as a result of their original consideration or of any such review, that it is desirable to do so.
- (5) The provisions of Schedule 6A to this Act have effect with respect to the making and alteration of simplified planning zone schemes and other related matters.

#### **21B Simplified planning zone schemes : conditions and limitations on planning permission.**

- (1) The conditions and limitations on planning permission which may be specified in a simplified planning zone scheme may include—
  - (a) conditions or limitations in respect of all development permitted by the scheme or in respect of particular descriptions of development so permitted, and

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- (b) conditions or limitations requiring the consent, agreement or approval of the planning authority in relation to particular descriptions of permitted development ;

and different conditions or limitations may be specified for different cases or classes of case.

- (2) Nothing in a simplified planning zone scheme shall affect the right of any person—

- (a) to do anything not amounting to development, or
- (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme ;

and no limitation or restriction subject to which permission has been granted otherwise than under the scheme shall affect the right of any person to carry out development for which permission has been granted under the scheme.

### **21C Duration of simplified planning zone scheme.**

- (1) A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of ten years beginning with that date.
- (2) Upon the scheme's ceasing to have effect planning permission under the scheme shall also cease to have effect except in a case where the development authorised by it has been begun.
- (3) The provisions of section 41(2) to (6) of this Act (which provide for the termination of planning permission if the completion of development is unreasonably delayed) apply to planning permission under a simplified planning zone scheme where development has been begun but not completed by the time the area ceases to be a simplified planning zone.
- (4) The provisions of section 40(1) to (3) of this Act apply in determining for the purposes of this section when development shall be taken to be begun.

### **21D Alteration of simplified planning scheme.**

- (1) The adoption or approval of alterations to a simplified planning zone scheme has effect as follows.
- (2) The adoption or approval of alterations providing for the inclusion of land in the simplified planning zone has effect to grant in relation to that land or such part of it as is specified in the scheme planning permission for development so specified or of any class so specified.
- (3) The adoption or approval of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified.
- (4) The adoption or approval of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions forthwith.



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- (5) The adoption or approval of alterations providing for—
- (a) the exclusion of land from the simplified planning zone,
  - (b) the withdrawal of planning permission, or
  - (c) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,
- has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of twelve months beginning with the date of the adoption or approval.
- (6) The adoption or approval of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun.

The provisions of section 40(1) to (3) of this Act apply in determining for the purposes of this subsection when development shall be taken to be begun.

## **2IE Exclusion of certain descriptions of land or development.**

- (1) The following descriptions of land may not be included in a simplified planning zone—
- (a) land in a conservation area ;
  - (b) land in a National Scenic Area ;
  - (c) land identified in the development plan for the area as part of a green belt ;
  - (d) land in respect of which a notification or order is in force under section 28 or 29 of the Wildlife and Countryside Act 1981 (areas of special scientific interest).
- (2) Where land included in a simplified planning zone becomes land of such a description, subsection (1) does not have effect to exclude it from the zone.
- (3) The Secretary of State may by order provide that no simplified planning zone scheme shall have effect to grant planning permission—
- (a) in relation to an area of land specified in the order or to areas of land of a description so specified, or
  - (b) for development of a description specified in the order.
- (4) An order under subsection (3) has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun.

The provisions of section 40(1) to (3) of this Act apply in determining for the purposes of this subsection when development shall be taken to be begun.”.

- (2) After Schedule 6 to the <sup>M28</sup>Town and Country Planning (Scotland) Act 1972 insert as Schedule 6A the Schedule set out in Part III of Schedule 6 to this Act which contains provision with respect to the making and alteration of simplified planning zone schemes and other related matters.
- (3) The <sup>M29</sup>Town and Country Planning (Scotland) Act 1972 also has effect subject to the consequential amendments specified in Part IV of Schedule 6 to this Act.

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**Marginal Citations**

**M27** 1972 c. 52.

**M28** 1972 c. 52.

**M29** 1972 c. 52.

<sup>F14</sup>**PART III**

**Textual Amendments**

**F14** Pt. III (ss. 27-29) repealed (24.9.1996) by 1996 c. 53, ss. 147, 150(2), **Sch. 3 Pt. III**

**PART IV**

**HAZARDOUS SUBSTANCES**

**30–34** ..... <sup>F16</sup>

**Textual Amendments**

**F16** Ss. 25, 30–34, 41 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

*Scotland*

**35 Hazardous substances— Scotland.**

The following shall be inserted after section 56AA of the <sup>M30</sup>Town and Country Planning (Scotland) Act 1972—

*“ Hazardous substances*

**56A Hazardous substances.**

- (1) Subject to subsection (2) of this section and to section 56B below, it shall be the duty of the planning authority to control hazardous substances in accordance with the provisions of this Act.
- (2) An urban development corporation shall control hazardous substances in their area if they are the planning authority in relation to an kinds of development.

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### **56B Hazardous substances— statutory undertakers.**

- (1) The appropriate Minister shall be the planning authority in respect of hazardous substances in relation to land to which this section applies.
- (2) This section applies—
  - (a) to operational land of statutory undertakers ;
  - (b) to land in which statutory undertakers hold, or propose to acquire, an interest with a view to the land being used as operational land.
- (3) For the purposes of this section any land to which this subsection applies but which is not operational land of statutory undertakers authorised to carry on a harbour shall be treated as if it were such operational land.
- (4) Subsection (3) above applies—
  - (a) to a wharf ; and
  - (b) to harbour land,as defined in the Harbours Act 1964.
- (5) Any question whether subsection (3) above applies to land shall be determined by the Secretary of State and the Minister who is the appropriate Minister in relation to operational land of statutory undertakers who are authorised to carry on harbour undertakings.

### **56C Requirement of hazardous substances consent.**

- (1) Subject to the provisions of this Part of this Act, the presence of a hazardous substance on, over or under land requires the consent of the planning authority (in this Act referred to as “hazardous substances consent”) unless the aggregate quantity of the substance—
  - (a) on, under or over the land ;
  - (b) on, under or over other land which is within 500 metres of it and controlled by the same person ; or
  - (c) in or on a structure controlled by the same person any part of which is within 500 metres of it,is less than the controlled quantity.
- (2) The temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless it is unloaded.
- (3) The Secretary of State—
  - (a) shall by regulations specify—
    - (i) the substances that are hazardous substances for the purposes of this Act ;
    - (ii) the quantity which is to be the controlled quantity of any such substance ;
  - (b) may by regulations provide that hazardous substances consent is not required or is only required—
    - (i) in relation to land of prescribed descriptions ;
    - (ii) by reason of the presence of hazardous substances in prescribed circumstances ;

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- (c) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance for the purposes of this Act.
- (4) Regulations which—
  - (a) are made by virtue of sub-paragraph (i) of subsection (3)(a) above ; or
  - (b) are made by virtue of sub-paragraph (ii) of that paragraph and reduce the controlled quantity of a substance.
 may make such transitional provision as appears to the Secretary of State to be appropriate.
- (5) The power to make such transitional provision includes, without prejudice to its generality, power to apply section 38 of the Housing and Planning Act 1986 subject to such modifications as appear to the Secretary of State to be appropriate.
- (6) Regulations under this section may make different provision for different cases or descriptions of cases.
- (7) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973 are to be treated as being one person for the purposes of this section and sections 56D to 56L and 97B below.

#### **56D Applications for hazardous substances consent.**

- (1) Provision may be made by regulations with respect to—
  - (a) the form and manner in which applications for hazardous substances consent are to be made ;
  - (b) the particulars which they are to contain and the evidence by which they are to be verified ;
  - (c) the manner in which they are to be advertised ; and
  - (d) the time within which they are to be dealt with.
- (2) Regulations may provide that an application for hazardous substances consent, or an appeal against the refusal of such an application or against the imposition of a condition on such a consent, 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 those mentioned in sections 23(1), 24(2) and (4) and 26(3) of this Act ; and
  - (b) make provision as to who is to be treated as the owner of land for the purposes of any provision of the regulations.
- (3) If any person issues a certificate which purports to comply with the requirements of regulations made by virtue of subsection (2) 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 level 3 on the standard scale.

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(4) Regulations—

- (a) may require an applicant for hazardous substances consent or the planning authority or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed ;
- (b) may require the planning authority to conduct appropriate consultations before determining applications for hazardous substances consent ;
- (c) may provide for the manner in which such a consultation is to be carried out and the time within which—
  - (i) such a consultation ;
  - (ii) any stage in such a consultation,is to be completed ;
- (d) may require the planning authority to determine applications for hazardous substances consent within such time as may be prescribed ;
- (e) may require the planning authority to give prescribed persons or bodies prescribed information about applications for hazardous substances consent including information as to the manner in which such applications have been dealt with.

(5) In subsection (4) above “appropriate consultations” means—

- (a) consultations—
  - (i) in the case of a planning authority other than the appropriate Minister, with the Health and Safety Executive ; and
  - (ii) in the case of the appropriate Minister, with the Health and Safety Commission, and
- (b) consultations with such persons or bodies as may be prescribed.

(6) Regulations under this section may make different provision for different cases or descriptions of cases.

**56E Determination of applications for hazardous substances consent.**

- (1) Subject to the following provisions of this Act, where an application is made to a planning authority for hazardous substances consent, that authority, in dealing with the application, shall have regard to any material considerations, and—
  - (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit ; or
  - (b) may refuse hazardous substances consent.
- (2) Without prejudice to the generality of subsection (1) above, in dealing with an application the authority shall have regard—
  - (a) to any current or contemplated use of the land to which the application relates ;
  - (b) to the way in which land in the vicinity is being used or is likely to be used ;
  - (c) to any planning permission that has been granted for development of land in the vicinity ;
  - (d) to the provisions of the development plan ; and

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- (e) to any advice which the Health and Safety Executive or Health and Safety Commission have given following consultations in pursuance of regulations under section 56D(4) above.
- (3) If an application relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (4) It shall be the duty of a planning authority, when granting hazardous substances consent, to include in that consent—
- (a) a description of the land to which the consent relates ;
  - (b) a description of the hazardous substance or substances to which it relates ; and
  - (c) in respect of each hazardous substance to which it relates, a statement of the maximum amount permitted by the consent to be present at any one time and of all conditions relating to that substance subject to which the consent is granted.
- (5) Without prejudice to the generality of subsection (1) above, a planning authority may grant hazardous substances consent subject to conditions with respect to any of the following—
- (a) how and where any hazardous substance to which the consent relates is to be kept or used ;
  - (b) times between which any such substance may be present ;
  - (c) the permanent removal of any such substance—
    - (i) on or before a date specified in the consent ; or
    - (ii) before the end of a period specified in it and commencing on the date on which it is granted ;
  - (d) the consent being conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission,
- but a planning authority other than the appropriate Minister may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive have advised the authority that any consent they might grant should be subject.

#### **56F References to regional planning authority and Secretary of State and appeals.**

- (1) Subject to subsections (2) and (3) below, sections 32 to 34 of this Act and section 179 (reference of applications to regional planning authority) of the Local Government (Scotland) Act 1973 shall have effect in relation to applications for hazardous substances consent and to decisions on such applications as though they were applications for planning permission.
- (2) In the application of sections 32 to 34 of this Act to hazardous substances consent—
- (a) section 32(4) and section 33(5) and (7) shall be omitted ;
  - (b) the words “and in such manner as may be prescribed” shall be substituted for the words in section 33(2) following “time” ;
  - (c) in section 34, the words “by the development order” shall be omitted from both places where they occur.

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- (3) Subsections (1) and (2) above do not have effect in relation to applications for hazardous substances consent relating to land to which section 56B of this Act applies or to decisions on such applications.

#### **56G Deemed hazardous substances consent by virtue of authorisation of government department.**

- (1) Where—
- (a) the authorisation of a government department 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 ; and
  - (b) the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent,
- the department may, on granting that authorisation, also direct that hazardous substances consent for that development shall be deemed to be granted subject to such conditions (if any) as may be specified in the directions.
- (2) The department shall consult the Health and Safety Commission before issuing any such directions.
- (3) The provisions of this Act (except Parts VII and XII shall apply in relation to any hazardous substances consent 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, as applied by section 56F of this Act.
- (4) The reference in subsection (1) above to the authorisation of a government department is to be construed in accordance with section 37(3) of this Act.

#### **56H Grants of hazardous substances consent without compliance with conditions previously attached.**

- (1) This section applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted or is deemed to have been granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which hazardous substances consent should be granted, and—
- (a) if they determine that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or that it should be granted unconditionally, they shall grant hazardous substances consent accordingly ; and
  - (b) if they determine that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, they shall refuse the application.
- (3) Where—
- (a) hazardous substances consent has been granted or is deemed to have been granted for the presence on, over or under land of more than one hazardous substance ; and
  - (b) an application under this section does not relate to all the substances,

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the planning authority shall only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate.

- (4) Where—
- (a) more than one hazardous substances consent has been granted or is deemed to have been granted in respect of the same land ; and
  - (b) an application under this section does not relate to all the consents,
- the planning authority shall only have regard to any consent to which the application does not relate to the extent that it has implications for a consent to which the application does relate.
- (5) Regulations may make provision in relation to applications under this section corresponding to any provision that may be made by regulations under section 56D of this Act in relation to applications for hazardous substances consent.

#### **56J Power to revoke or modify hazardous substance consent.**

- (1) If it appears to the planning authority that—
- (a) there has been a material change of use of land to which a hazardous substances consent relates ; or
  - (b) planning permission has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced,
- they may by order—
- (i) if the consent relates only to one substance, revoke it ;
  - (ii) if it relates to more than one, revoke it or revoke it so far as it relates to a specified substance.
- (2) The planning authority may by order—
- (a) revoke a hazardous substances consent which relates to only one substance if it appears to them that that substance has not for at least 5 years been present on, under or over the land to which the consent relates in a quantity equal to or exceeding the controlled quantity ; and
  - (b) revoke a hazardous substances consent which relates to a number of substances if it appears to them that none of those substances has for at least 5 years been so present.
- (3) The planning authority may by order revoke a hazardous substances consent or modify it to such extent as they consider expedient if it appears to them, having regard to any material consideration, that it is expedient to revoke or modify it.
- (4) An order under this section shall specify the grounds on which it is being made.
- (5) An order under this section, other than an order relating to land to which section 56B of this Act applies, 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 modification as he considers expedient.



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- (6) Where a planning authority submit an order under this section to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order on—
  - (a) any person who is an owner, occupier or lessee of the whole or any part of the land to which the order relates ; and
  - (b) 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 28 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 planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.
- (7) Where an order under this section has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on every person who was entitled to be served with notice under subsection (6) of this section.
- (8) Section 159 of this Act shall have effect where a hazardous substances consent is revoked or modified by an order made in the exercise of the power conferred by subsection (3) of this section as it has effect where an order is made under section 49 of this Act.

#### **56K Provisions as to effect of hazardous substances consent and change of control of land.**

- (1) Without prejudice to the provisions of this Part of this Act, any hazardous substances consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being interested in the land.
- (2) A hazardous substances consent is revoked if there is a change in the person in control of part of the land to which it relates unless an application for the continuation of the consent has previously been made to the planning authority.
- (3) Regulations may make provision in relation to applications under subsection (2) above corresponding to any provision that may be made by regulations under section 56D of this Act in relation to applications for hazardous substances consent.
- (4) When such application is made, the authority, having regard to any material consideration—
  - (a) may modify the consent in any way they consider appropriate ; or
  - (b) may revoke it.
- (5) Without prejudice to the generality of subsection (4) above, in dealing with an application the authority shall have regard—
  - (a) to the matters to which a planning authority are required to have regard by section 56E(2)(a) to (d) above; and
  - (b) to any advice which the Health and Safety Executive or Health and Safety Commission have given following consultations in pursuance of regulations under subsection (3) above.
- (6) If an application relates to more than one consent, the authority may make different determinations in relation to each.

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- (7) If a consent relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (8) It shall be the duty of a planning authority, when continuing hazardous substances consent, to attach to the consent one of the following—
  - (a) a statement that is unchanged in relation to the matters included in it by virtue of section 56E(4) above ;
  - (b) a statement of any change in respect of those matters.
- (9) The modifications which a planning authority may make by virtue of subsection (4)(a) above include, without prejudice to the generality of that paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in section 56E(5) above.
- (10) Subject to subsection (11) below, sections 32 to 34 of this Act and section 179 of the Local Government (Scotland) Act 1973 shall have effect in relation to applications under subsection (2) above and to decisions on such applications as though they were applications for planning permission.
- (11) In the application of sections 32 to 34 of this Act by virtue of subsection (10) above—
  - (a) section 32(4) and section 33(5) and (7) shall be omitted ;
  - (b) the words “and in such manner as may be prescribed” shall be substituted for the words in section 33 (2) following “time” ;
  - (c) in section 34—
    - (i) the words “by the development order” shall be omitted from the first place where they occur; and
    - (ii) the words “the application shall be deemed to have been granted” shall be substituted for the words following paragraph (b).
- (12) Where the authority modify or revoke the consent, they shall pay to the person in control of the whole of the land before the change compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

#### **56L Offences.**

- (1) Subject to this Part of this Act, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.
- (2) There is a contravention of hazardous substances control—
  - (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, under or over land and either—
    - (i) there is no hazardous substances consent for the presence of the substance ; or
    - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent ;
  - (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.

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- (3) In subsection (1) above “the appropriate person” means—
- (a) in relation to a contravention falling within paragraph (a) of subsection (2) above—
    - (i) any person knowingly causing the substance to be present on, over or under the land ;
    - (ii) any person allowing it to be so present ; and
  - (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the occupier of the land.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding, the statutory maximum ; or
  - (b) on conviction on indictment, to a fine,
- and if the contravention is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £200 for each day on which it continues or on conviction on indictment to a fine.
- (5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence ; or
  - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (6) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a) above, it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—
- (a) if the case falls within paragraph (a)(i)—
    - (i) that the substance was present ; or
    - (ii) that it was present in a quantity equal to or exceeding the controlled quantity ;
  - (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b) above, it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that he was failing to comply with a condition subject to which hazardous substances consent had been granted.

### **56M Emergencies.**

- (1) If it appears to the Secretary of State—
- (a) either—
    - (i) that the community or part of it is being or is likely to be deprived of an essential service or commodity ; or
    - (ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it ; and

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- (b) that the presence of a hazardous substance on, over or under land specified in the direction in circumstances such that hazardous substances consent would be required, is necessary for the effective provision of that service or commodity,

he may direct that, subject to such conditions or exceptions as he thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control so long as the direction remains in force.

- (2) A direction under this section—
  - (a) may be withdrawn at any time ;
  - (b) shall in any case cease to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Secretary of State’s power to give a further direction.
- (3) Subject to subsection (4) below, the Secretary of State shall send a copy of any such direction to the planning authority in relation to the land.
- (4) Where the land is land to which section 56B of this Act applies, the Secretary of State shall send the copy to the authority which would be the planning authority in relation to that land but for that section.

#### **56N Registers, etc.**

- (1) Every planning authority shall keep, in such manner as may be prescribed, a register containing such information as may be so prescribed with respect—
  - (a) to applications for hazardous substances consent—
    - (i) made to that authority, or
    - (ii) made to the appropriate Minister with respect to land in relation to which, but for section 56B of this Act, that authority would be the planning authority ;

and including information as to the manner in which such applications have been dealt with ;

  - (b) to hazardous substances consent deemed to be granted under section 38 of the Housing and Planning Act 1986 with respect to land in relation to which that authority is or but for section 56B of this Act would be, the planning authority ;
  - (c) to revocations or modifications of hazardous substances consent granted with respect to such land ; and
  - (d) to directions under section 56M above sent to the authority by the Secretary of State.
- (2) Where with respect to any land the appropriate Minister exercises any of the functions of a planning authority for the purposes of hazardous substances control he shall send to the authority which, but for section 56B of this Act, would be the planning authority for those purposes in relation to that land any such information as appears to him to be required by them for the purposes of maintaining a register under this section.
- (3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

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## 56O Health and safety requirements.

- (1) Nothing in—
- (a) any hazardous substances consent granted or deemed to be granted under—
    - (i) the preceding provisions of this Act ; or
    - (ii) section 38 of the Housing and Planning Act 1986; or
  - (b) any hazardous substances contravention notice issued under section 97B of this Act,
- shall require or allow anything to be done in contravention of any of the relevant statutory provisions or any prohibition notice or improvement notice served under or by virtue of any of those provisions ; and to the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.
- (2) Where it appears to a planning authority who have granted or are deemed to have granted a hazardous substances consent or who have issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by subsection (1) above, the authority shall, as soon as is reasonably practicable, consult the appropriate body with regard to the matter.
- (3) If the appropriate body advise the authority that the consent or notice is rendered wholly void, the authority shall revoke it.
- (4) If they advise that part of the consent or notice is rendered void, the authority shall so modify it as to render it wholly operative.
- (5) In this section—
- “the appropriate body” means—
- (a) in relation to a planning authority other than the appropriate Minister, the Health and Safety Executive; and
  - (b) in relation to the appropriate Minister, the Health and Safety Commission ; and
- “relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in Part I of the Health and Safety at Work etc. Act 1974.”.

### Commencement Information

**I3** [S. 35](#) wholly in force; [s. 35](#) not in force at Royal Assent see [s. 57\(2\)](#); [s. 35](#) in force for specified purposes at 18.2.1993 and wholly in force at 1.5.1993 by [S.I. 1993/273](#), [arts. 3, 5\(1\)](#).

### Marginal Citations

**M30** [1972 c. 52](#).

## 36 Hazardous substances contravention notices.

The following shall be inserted after section 97A of the <sup>M31</sup>Town and Country Planning (Scotland) Act 1972—

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*“ Hazardous substances*

**97B Power to issue hazardous substances contravention notice.**

- (1) Subject to subsection (2) below, where it appears to the planning authority that there is or has been a contravention of hazardous substances control they may issue a hazardous substances contravention notice if they consider it expedient to do so having regard to any material consideration.
- (2) A planning authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.
- (3) In this Act “hazardous substances contravention notice” means a notice—
  - (a) specifying an alleged contravention of hazardous substances control ;  
and
  - (b) requiring such steps as may be specified in the notice to be taken to remedy the contravention.
- (4) A copy of a hazardous substances contravention notice shall be served—
  - (a) on the owner, the lessee and the occupier of the land to which it relates ;  
and
  - (b) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
  - (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect ;
  - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where a planning authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (3)(b) above, if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.
- (8) The planning authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before it takes effect.
- (9) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.
- (10) The Secretary of State may by regulations—

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- (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by this section ;
  - (b) provide—
    - (i) for appeals to him against hazardous substances contravention notices ;
    - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought ;
    - (iii) for the procedure to be followed on such appeals ;
    - (iv) for the directions that may be given on such an appeal ;
    - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 85, 231(3) and 233 of this Act ;
  - (c) direct that any of the provisions of sections 86 to 89A of this Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations ;
  - (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.
- (11) If any person appeals against a hazardous substances contravention notice, the notice shall be of no effect pending the final determination or the withdrawal of the appeal.
- (12) Regulations under this section may make different provisions for different cases or descriptions of cases.”.

#### Commencement Information

**I4** S. 36 wholly in force; s. 36 not in force at Royal Assent see s. 57(2); s. 36 in force for specified purposes at 18.2.1993 and wholly in force at 1.5.1993 by S.I. 1993/273, arts. 3, 5(1).

#### Marginal Citations

**M31** 1972 c. 52.

### 37 Consequential amendments.

The enactments mentioned in Part II of Schedule 7 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this Part of this Act.

#### Commencement Information

**I5** S. 37 wholly in force; s. 37 not in force at Royal Assent see s. 57(2); s. 37 in force at 18.2.1993 so far as it relates to para. 4 of Sch. 7 Pt. II and at 1.5.1993 so far as it relates to paras. 1-3, 5-8 of Sch. 7 Pt. II by S.I. 1993/273, arts. 4, 5(2).

### 38 Transitional (Scotland).

- (1) Until the end of the transitional period—

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- (a) no offence is committed under section 56L of the <sup>M32</sup>Town and Country Planning (Scotland) Act 1972 ; and
  - (b) no hazardous substances contravention notice may be issued, in relation to a hazardous substance which is on, under or over any land,
- if the substance was present on, under or over the land at any time within the establishment period and—
- (i) in a case in which at the commencement date notification in respect of the substance was required by any of the Notification Regulations, both the conditions specified in subsection (2) below were satisfied ; and
  - (ii) in a case in which at that date such notification was not so required, the condition specified in paragraph (b) of that subsection is satisfied.
- (2) The conditions mentioned in subsection (1) above are—
- (a) that notification required by the Notification Regulations was given before the commencement date ; and
  - (b) that the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.
- (3) Where a hazardous substance was present on, under or over any land at any time within the establishment period, hazardous substances consent may be claimed in respect of its presence.
- (4) A claim shall be made in the prescribed form before the end of the transitional period and shall contain the prescribed information as to the presence of the substance during the establishment period and as to how and where it was kept and used [<sup>F17</sup>while it was so present].
- (5) Subject to subsections (6) to (8) below, the planning authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (2) above.
- (6) If at the commencement date notification in respect of the substance was required by regulation 3 or 5 of the Notification Regulations, hazardous substances consent is only to be deemed to be granted under this section if notification in respect of the substance was given before that date in accordance with those regulations.
- (7) If at the commencement date such notification was not so required, hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.
- (8) If it appears to the planning authority that a claim for hazardous substances consent does not comply with subsection (4) above, it shall be their duty, before the end of the period of two weeks from their receipt of the claim,—
- (a) to notify the claimant that in their opinion the claim is invalid; and
  - (b) to give him their reasons for that opinion.
- (9) Hazardous substances consent which is deemed to be granted under this section is [<sup>F18</sup>subject to—
- (a) the condition that] the maximum aggregate quantity of the substance that may be present—
    - (i) on, under or over the land to which the claim relates ;



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- (ii) on, under or over other land which is within 500 metres of it and controlled by the same person ; or
  - (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,
- at any one time shall not exceed the established quantity ; and
- [<sup>F19</sup>(b) such other conditions (if any) as are prescribed, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, for the purposes of this section and are applicable in the case of that consent].

(10) In this section—

“commencement date” means the date on which this Part of this Act comes into force ;

“the establishment period” means the period of 12 months immediately preceding the commencement date ;

“established quantity” means, in relation to any land—

- (a) where before the commencement date there has been a notification in respect of a substance in accordance with any of the Notification Regulations—

- (i) the quantity notified or last notified before the commencement date ;
  - or

- (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the establishment period,

whichever is the greater ;

- (b) where a notification was not required before that date by any of those regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, under or over the land at any one time within the establishment period ;

“Notification Regulations” means the <sup>M33</sup>Notification of Installations Handling Hazardous Substances Regulations 1982 ;

“the transitional period” means the period of 6 months beginning with the commencement date ;

and other expressions have the same meaning as in the <sup>M34</sup>Town and Country Planning (Scotland) Act 1972.

#### Textual Amendments

**F17** Words in s. 38(4) substituted (18.2.1993) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. II para. 12\(2\)](#); S.I. 1993/274, [art.2](#).

**F18** Words in s. 38(9) substituted (18.2.1993) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. II para. 12\(3\)\(a\)](#); S.I. 1993/274, [art.2](#).

**F19** S. 38(9)(b) substituted (18.2.1993) for s. 38(9)(b)(c) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. II para. 12\(3\)\(b\)](#); S.I. 1993/274, [art.2](#).

#### Commencement Information

**I6** S. 38 wholly in force; s. 38 not in force at Royal Assent see [s. 57\(2\)](#); s. 38 in force for specified purposes at 18.2.1993 and wholly in force at 1.5.1993 by [S.I. 1993/273](#), [arts. 3, 5\(1\)](#).

#### Marginal Citations

**M32** 1972 c. 52.

*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Housing and Planning Act 1986 is up to date with all changes known to be in force on or before 08 May 2024. 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)*

**M33** S.I. 1982/1357.

**M34** 1972 c. 52.

## PART V

### OPENCAST COAL

#### 39 Abolition of Secretary of State’s power to authorise opencast working, &c.

- (1) The following provisions of the <sup>M35</sup>Opencast Coal Act 1958 (“the 1958 Act”) shall cease to have effect—
- (a) sections 1 and 2 (authorisation by Secretary of State of opencast working of coal and associated provisions); and
  - (b) section 9(2) (buildings on land comprised in a compulsory rights order),
- but this subsection does not affect a direction given under section 2 of the 1958 Act before the day on which the repeal of that section by paragraph (a) above comes into operation, and any repeal by this Act of an enactment which relates to directions under section 2 of the 1958 Act shall have no effect in relation to directions whose effect is continued by this subsection.
- (2) The repeal of section 2(4) of the 1958 Act shall not prevent the felling of a tree that could not have been felled but for paragraph (a) of that subsection (which negated tree preservation orders).
- (3) The 1958 Act shall have effect with the amendments specified in Part I of Schedule 8 to this Act and section 29 of the <sup>M36</sup>Acquisition of Land Act 1981 shall have effect with the amendments specified in Part II of that Schedule.
- (4) The enactments specified in Part II of Schedule 12 to this Act (which include enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule.

#### Marginal Citations

**M35** 1958 c. 69.

**M36** 1981 c. 67.

## PART VI

### MISCELLANEOUS PROVISIONS

#### *England and Wales*

#### 40 Listed buildings and conservation areas.

The enactments relating to listed buildings and conservation areas are amended in accordance with Part I of Schedule 9 with respect to the following matters—

- (a) the treatment of free-standing objects and structures within the curtilage of a listed building;

*Status:* Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Housing and Planning Act 1986 is up to date with all changes known to be in force on or before 08 May 2024. 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)

- (b) the scope of the exception for urgent works to a listed building;
- (c) the grant of listed building consent subject to the subsequent approval of detail;
- (d) applications for the variation or discharge of conditions attached to listed building consent;
- (e) the extent of the exemption accorded to ecclesiastical buildings;
- (f) dangerous structure orders in respect of listed buildings;
- (g) the power of a local authority, the Secretary of State or the Historic Buildings and Monuments Commission for England to carry out urgent works for the preservation of a building;
- (h) the control of demolition in a conservation area;
- (i) the form of an application for listed building consent; and
- (j) the powers of the Secretary of State with respect to applications for listed building consent.

41 ..... F20

**Textual Amendments**

**F20** Ss. 25, 30–34, 41 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

**42 Recovery of Minister’s costs in connection with inquiries.**

- (1) The following provisions of this section apply where a Minister is authorised under or by virtue of any of the following statutory provisions to recover costs incurred by him in relation to an inquiry—
  - (a) section 250(4) of the <sup>M37</sup>Local Government Act 1972 (general provision as to costs of inquiries),
  - <sup>F21</sup>(b) .....
  - (c) section 129(1)(d) of the <sup>M38</sup>Road Traffic Regulation Act 1984 (costs of inquiry under that Act),
  - (d) ..... <sup>F22</sup>
  - (e) any other statutory provision to which this section is applied by order of the Minister.
- (2) What may be recovered by the Minister is the entire administrative cost of the inquiry, so that, in particular—
  - (a) there shall be treated as costs incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff costs and overheads of his department, and
  - (b) there shall be treated as costs incurred by the Minister holding the inquiry any costs incurred in relation to the inquiry by any other Minister or government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff costs and overheads.
- (3) The cost of an inquiry which does not take place may be recovered by the Minister from any person who would have been a party to the inquiry to the same extent, and in the same way, as the cost of an inquiry which does take place.

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- (4) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—
- (a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry,
  - (b) costs actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry,
  - (c) any costs attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and
  - (d) any legal costs or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.
- (5) An order or regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order applying this section to a statutory provision may provide for the consequential repeal of so much of that provision, or any other provision, as restricts the sum recoverable by the Minister in respect of the services of any officer engaged in the inquiry or is otherwise inconsistent with the application of the provisions of this section.

#### Textual Amendments

**F21** S. 42(1)(b) repealed (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 3(1), 4(2), **Sch. 3 Pt.I**.

**F22** S. 42(1)(d) repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(4), **Sch. 12 Pt. II**

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

**C1** S. 42 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), ss. **214(7)**, 225(2).

**C2** S. 42 applied (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), ss. **69(7)**, 76(2).

S. 42: functions shall be exercisable by the Assembly concurrently with any Minister of the Crown (16.2.2000) by [S.I. 2000/253](#), art. 2, **Sch. 1**

#### Marginal Citations

**M37** 1972 c. 70.

**M38** 1984 c. 27.

## 43 Compulsory acquisition of land on behalf of parish or community councils.

For section 125 of the <sup>M39</sup>Local Government Act 1972 (compulsory acquisition of land on behalf of parish or community councils) substitute—

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### **“125 Compulsory acquisition of land on behalf of parish or community councils.**

- (1) If a parish or community council are unable to acquire by agreement under section 124 above and on reasonable terms suitable land for a purpose for which they are authorised to acquire land other than—
  - (a) the purpose specified in section 124(1)(b) above, or
  - (b) a purpose in relation to which the power of acquisition is by an enactment expressly limited to acquisition by agreement,they may represent the case to the council of the district in which the parish or community is situated.
- (2) If the district council are satisfied that suitable land for the purpose cannot be acquired on reasonable terms by agreement, they may be authorised by the Secretary of State to purchase compulsorily the land or part of it; and the Acquisition of Land Act 1981 shall apply in relation to the purchase.
- (3) The district council in making and the Secretary of State in confirming an order for the purposes of this section shall have regard to the extent of land held in the neighbourhood by an owner and to the convenience of other property belonging to the same owner and shall, as far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner.
- (4) The order shall be carried into effect by the district council but the land when acquired shall be conveyed to the parish or community council; and accordingly in construing for the purposes of this section and of the order any enactment applying in relation to the compulsory acquisition, the parish or community council or the district council, or the two councils jointly, shall, as the case may require, be treated as the acquiring authority.
- (5) The district council may recover from the parish or community council the expenses incurred by them in connection with the acquisition of land under this section.
- (6) If a parish or community council make representations to a district council with a view to the making of an order under this section and the district council—
  - (a) refuse to make an order, or
  - (b) do not make an order within 8 weeks from the making of the representations or such longer period as may be agreed between the two councils,the parish or community council may petition the Secretary of State who may make the order, and this section and the provisions of the Acquisition of Land Act 1981 shall apply as if the order had been made by the district council and confirmed by the Secretary of State.
- (7) In the application of this section to a parish or community council for a group of parishes or communities—
  - (a) references to the parish or community shall be construed as references to the area of the group, and
  - (b) if different parts of the area of the group lie in different districts, references to the council of the district in which the parish or

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community is situated shall be construed as references to the councils of each of the districts acting jointly.”.

**Modifications etc. (not altering text)**  
**C3** S. 43 restricted by S.I. 1990/614, art. 3

**Marginal Citations**  
**M39** 1972 c. 70.

44 ..... F23

**Textual Amendments**  
**F23** S. 44 repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(4), Sch. 18 (with s. 112(3), Sch. 17 para. 35(1))

45, 46. .... F24

**Textual Amendments**  
**F24** Ss. 45, 46 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

**47 Areas which may be designated urban development areas.**

In section 134 of the <sup>M40</sup>Local Government, Planning and Land Act 1980 (power to designate urban development areas), omit subsection (2) (which restricts the power to land in metropolitan districts and certain land in or adjacent to inner London).

**Marginal Citations**  
**M40** 1980 c. 65.

**48 Repeal of unnecessary enactments.**

- (1) The following enactments are repealed—
  - (a) section 52 of the <sup>M41</sup>Requisitioned Land and War Works Act 1945 and paragraph 10 of the Schedule to the <sup>M42</sup>Requisitioned Land and War Works Act 1948 (reimbursement of expense of restoring land affected by war works, &c.);
  - (b) sections 66 to 72 of the <sup>M43</sup>Town and Country Planning Act 1971 (special control over industrial development);
  - (c) sections 250 to 252 of that Act (grants to local authorities for development of land, &c.).
- (2) The repeal does not affect the operation—

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- (a) of section 52 of the Requisitioned Land and War Works Act 1945 or paragraph 10 of the Schedule to the Requisitioned Land and War Works Act 1948 in relation to undertakings given before the repeal;
- (b) of sections 250 to 252 of the 1971 Act in relation to land for which approval for the purposes of regulations under section 250 was sought before 1st April 1986.

#### Marginal Citations

M41 1945 c. 43.

M42 1948 c. 17.

M43 1971 c. 78.

#### 49 Minor and consequential amendments; repeals.

- (1) The Town and Country Planning Act 1971, and certain related enactments, are amended in accordance with Part I of Schedule 11 with respect to the following matters—
- (a) the operation of the Use Classes Order on the subdivision of the planning unit;
  - (b) the provision which may be made by development orders;
  - (c) the construction of references to certain documents relating to access for the disabled;
  - (d) applications to vary or revoke conditions attached to planning permission;
  - (e) the procedure on appeals and applications disposed of without a local inquiry or hearing;
  - (f) purchase notices;
  - (g) local inquiries;
  - (h) the determination of appeals by inspectors; and
  - (i) daily penalties for offences;
- and that Part also contains amendments consequential on the provisions of this Part.
- (2) The enactments specified in Part III of Schedule 12 are repealed to the extent specified.

#### *Scotland*

#### 50 Listed buildings and conservation areas.

The enactments relating to listed buildings and conservation areas are amended in accordance with Part II of Schedule 9 with respect to the following matters—

- (a) the treatment of free-standing objects and structures within the curtilage of a listed building ;
- (b) late applications for listed building consent ;
  - (c) defence to proceedings under section 53 ;
  - (d) the grant of listed building consent subject to subsequent approval of detail ;
  - (e) applications for the variation or discharge of conditions attached to listed building consent ;
  - (f) the extent of the exemption accorded to ecclesiastical buildings ;

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- (g) the effect of a listed building enforcement notice ;
- (h) the power of a local authority or the Secretary of State to carry out urgent works for the preservation of a building ;
- (i) the control of demolition in a conservation area ;
- (j) the form of an application for listed building consent ;
- (k) the calling in of applications for listed building consent ; and
- (l) the application to planning authorities of provisions relating to listed buildings.

## 51 Grants for repair of buildings in town schemes.

After section 10B of the <sup>M44</sup>Town and Country Planning (Amendment) Act 1972 there shall be inserted the following section—

### “10C Grants for repair of buildings in town schemes.

- (1) The Secretary of State may make grants for the purpose of defraying in whole or in part any expenditure incurred or to be incurred in the repair of a building which—
  - (a) is comprised in a town scheme ; and
  - (b) appears to him to be of architectural or historic interest.
- (2) For the purposes of this section a building is comprised in a town scheme if—
  - (a) it is in an area—
    - (i) designated as a conservation area under section 262 of the Act of 1972 ; and
    - (ii) appearing to the Secretary of State to be of outstanding architectural or historic interest ; and
  - (b) it is included in a town scheme list or shown on a town scheme map.
- (3) In subsection (2) above—
 

“town scheme list”, means a list, compiled, after consultation with the Historic Buildings Council for Scotland, by the Secretary of State and one or more local authorities, of buildings which are to be the subject of a repair grant agreement ; and

“town scheme map” means a map, prepared after such consultation by the Secretary of State and one or more local authorities, showing buildings which are to be the subject of such an agreement.
- (4) In subsection (3) above—
 

“repair grant agreement” means an agreement between the Secretary of State and any authority who have participated in the compilation of a town scheme list or the preparation of a town scheme map under which the Secretary of State and the authority or authorities who have so participated have agreed that a specified sum of money shall be set aside for a specified period of years for the purpose of making grants for the repair of the buildings included in the town scheme list or shown on the town scheme map.
- (5) A grant under this section may be made subject to conditions imposed by the Secretary of State for such purposes as he may think fit.



*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

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- (6) Subject to subsection (7) below, before making any grant under this section the Secretary of State may consult with the Council, both as to the making of the grant and as to the conditions subject to which it should be made.
- (7) Subsection (6) above shall not apply where the making of a grant appears to the Secretary of State to be a matter of immediate urgency.
- (8) The Secretary of State may pay any grant under this section to an authority participating in a town scheme and may make arrangements with any such authority for the way in which the scheme is to be administered.
- (9) Arrangements under subsection (8) above may include such arrangements for the offer and payment of grants under this section as may be agreed between the Secretary of State and any authority or authorities participating in a town scheme.
- (10) Section 2 of the Local Authorities (Historic Buildings) Act 1962 (recovery of grants made by local authorities on disposal of property within three years) shall apply to a grant made by the Secretary of State under this section as it applies to a grant for the repair of property made by a local authority under that Act ; and any reference to a local authority in that section shall accordingly be construed, in relation to a grant under this section, as a reference to the Secretary of State.
- (11) In this section “local authority” means a regional, islands or district council.”.

**Marginal Citations**

M44 1972 c. 42.

**52 Termination of grants for redevelopment etc.**

- (1) No payment of grant under—
  - (a) Sections 237 to 239 of the <sup>M45</sup>Town and Country Planning (Scotland) Act 1972,
  - (b) section 14 of the <sup>M46</sup>Housing and Town Development (Scotland) Act 1957, and
  - (c) section 9 of the <sup>M47</sup>Local Government (Scotland) Act 1966shall be made for the financial year 1986-87 or for any subsequent financial year.
- (2) No claim for grant under the enactments mentioned in subsection (1)(a) and (b) above in respect of financial years prior to 1986-87 shall be entertained by the Secretary of State unless—
  - (a) it is received by him before this Act is passed, and
  - (b) any information reasonably required by him in relation to any such claim is received by him before the expiry of the period of two months after this Act is passed.

**Marginal Citations**

M45 1972 c. 52.

M46 1957 c. 38

*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

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**M47** 1966 c. 51.

### 53 Minor and consequential amendments; repeals.

- (1) The <sup>M48</sup>Town and Country Planning (Scotland) Act 1972, the <sup>M49</sup>Local Government (Scotland) Act 1973 and certain related enactments are amended in accordance with Part II of Schedule 11 with respect to the following matters—
- (a) directions as to modifications of local plans;
  - (b) the operation of the Use Classes Order on the sub-division of the planning unit;
  - (c) the provision that may be made by development orders;
  - (d) applications to vary or revoke conditions attached to planning permission;
  - (e) land adversely affecting the amenity of the neighbourhood;
  - (f) purchase notices;
  - (g) National Scenic Areas;
  - (h) local inquiries;
  - (i) procedure on applications and appeals disposed of without an inquiry or hearing;
  - (j) the determination of appeals by appointed persons;
  - (k) daily penalties for offences;

and that Part also contains other minor amendments and amendments consequential on the provisions of this Part.

- (2) The enactments mentioned in Part IV of Schedule 12 to this Act are repealed to the extent specified.

#### Commencement Information

**I7** S. 53(1)(2) partly in force; s. 53(1)(2) not in force at Royal Assent see s. 57(1)-(3); s. 53(1)(2) in force for specified purposes at 1.6.1996 by [S.I. 1996/1276](#), [art. 2](#)

#### Marginal Citations

**M48** 1972 c. 52.

**M49** 1973 c. 65.

### *Provisions common to England and Wales and Scotland*

### 54 Effect of modification or termination of enterprise zone scheme.

- (1) In Schedule 32 to the <sup>M50</sup>Local Government, Planning and Land Act 1980 (enterprise zones), for paragraphs 21 and 22 (effect of modification or termination of scheme on planning permission) substitute—

#### Effect on planning permission of modification or termination of scheme

“21 Modifications to a scheme do not affect planning permission under the scheme in any case where the development authorised by it has been begun before the modifications take effect.

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- “22 (1) Upon an area ceasing to be an enterprise zone planning permission under the scheme shall cease to have effect except in a case where the development authorised by it has been begun.
- (2) The following provisions (which provide for the termination of planning permission if the completion of development is unreasonably delayed) apply to planning permission under the scheme where development has been begun but not completed by the time the area ceases to be an enterprise zone—
- (a) in England and Wales, subsections (2) to (6) of section 44 of the 1971 Act;
- (b) in Scotland, subsections (2) to (6) of section 41 of the 1972 Act.”.
- (2) In paragraph 26 of that Schedule (interpretation of Part III of the Schedule), after subparagraph (1) insert—
- “(1A) The following provisions apply in determining for the purposes of this Schedule when development shall be taken to be begun—
- (a) in England and Wales, subsections (1) to (3) of section 43 of the 1971 Act;
- (b) in Scotland, subsections (1) to (3) of section 40 of the 1972 Act.”.

#### Marginal Citations

M50 1980 c. 65.

## 55 Discrimination in exercise of planning functions.

— In Part III of the <sup>M51</sup> Race Relations Act 1976 (discrimination in fields other than employment), after section 19 insert—

### “19A Discrimination by planning authorities.

- (1) It is unlawful for a planning authority to discriminate against a person in carrying out their planning functions.
- (2) In this section “planning authority” means—
- (a) in England and Wales, a county, district or London borough council, a joint planning board, a special planning board or a National Park Committee, and
- (b) in Scotland, a planning authority or regional planning authority, and includes an urban development corporation and a body having functions (whether as an enterprise zone authority or a body invited to prepare a scheme) under Schedule 32 to the Local Government, Planning and Land Act 1980.
- (3) In this section “planning functions” means—
- (a) in England and Wales, functions under the Town and Country Planning Act 1971, and such other functions as may be prescribed, and
- (b) in Scotland, functions under the Town and Country Planning (Scotland) Act 1972 or Part IX of the Local Government (Scotland) Act 1973, and such other functions as may be prescribed,

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and includes, in relation to an urban development corporation, planning functions under Part XVI of the Local Government, Planning and Land Act 1980 and, in relation to an enterprise zone authority or body invited to prepare an enterprise zone scheme, functions under Part XVIII of that Act.”.

#### Marginal Citations

M51 1976 c. 74.

## PART VII

### GENERAL PROVISIONS

#### 56 Financial provisions.

- (1) There shall be paid out of money provided by Parliament any expenses of the Secretary of State under this Act and any increase attributable to this Act in the sums so payable under any other enactment.
- (2) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.
- (3) There shall be paid out of or into the Consolidated Fund or the National Loans Fund any increase attributable to this Act in the sums so payable under any other enactment.

#### 57 Commencement.

- (1) The following provisions of this Act come into force on the day this Act is passed—
  - section 21 (effect of resolutions relating to housing action area or general improvement area);
  - section 24(1)(j), paragraphs 10 to 13 of Schedule 5, the repeals specified in the first part of Part I of Schedule 12 and section 24(3) so far as relating to those repeals (miscellaneous corrections);
  - section 52 (termination of grants for redevelopment in Scotland);
  - this Part.
- (2) The other provisions of this Act come into force on such day as may be appointed by the Secretary of State by order made by statutory instrument and—
  - (a) different days may be appointed for different provisions or different purposes; and
  - (b) an order may make such transitional provision as the Secretary of State thinks appropriate.
- (3) For the purpose of any transitional provision in this Act or an order which refers to the date of service of a notice under the <sup>M52</sup>Housing Act 1985, no account shall be taken of any steps taken under section 177 of that Act (amendment or withdrawal and re-service of notice to correct mistakes).

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#### Subordinate Legislation Made

**P1** S. 57(2) power partly exercised (11.7.1992); different dates appointed for specified provisions by S.I. 1992/1753, art. 2 (with transitional provisions)

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

**C4** Power of appointment conferred by s. 57(2) partly exercised by S.I. 1986/2262, 1987/304, 348, 754, 1554, 1607, 1759, 1939, 2277, 1988/283, 1787, 1989/430, 1990/511, 614, 797

#### Marginal Citations

**M52** 1985 c. 68.

### 58 Extent.

(1) The following provisions of this Act extend to England and Wales—

Part I (housing), except section 3, paragraphs 10(7), 14 and 17 of Schedule 5 and the associated repeals in Part I of Schedule 12;

.....<sup>F25</sup>;

<sup>F26</sup> .....

.....<sup>F25</sup>;

Part V (opencast coal);

in Part VI (miscellaneous provisions), sections 40 to 49, 54 and 55, Part I of Schedule 9, Schedule 10, Part I of Schedule 11 and Part III of Schedule 12; this Part.

(2) The following provisions of this Act extend to Scotland—

in Part I (housing), sections 3, 19 and 22, paragraphs 8, 10(7), 13, 14, 17, 18 and 42 of Schedule 5 and the associated repeals in Part I of Schedule 12;

in Part II (simplified planning zones), section 26 and Parts III and IV of Schedule 6;

<sup>F26</sup> .....

in Part IV (hazardous substances), sections 35 to 38 and Part II of Schedule 7;

Part V (opencast coal), except so far as it repeals enactments which extend to England and Wales only;

in Part VI (miscellaneous provisions), sections 50 to 55, Part II of Schedule 9, Part II of Schedule 11 and Part IV of Schedule 12;

this Part.

(3) The following provisions of this Act extend to Northern Ireland—

section 22 (amendments of Consumer Credit Act 1974), paragraph 18 of Schedule 5 (amendment relating to stamp duty),

this Part.

#### Textual Amendments

**F25** Words repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

**F26** Words in s. 58(1)(2) repealed (24.9.1996) by 1996 c. 53, ss. 147, 150(2), Sch. 3 Pt. III

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**59 Short title.**

This Act may be cited as the Housing and Planning Act 1986.

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## SCHEDULES

### SCHEDULE 1

Section 6(2).

#### SCHEDULE TO BE INSERTED IN THE HOUSING ACT 1985

#### “SCHEDULE 3A

#### CONSULTATION BEFORE DISPOSAL TO PRIVATE SECTOR LANDLORD

##### *Disposals to which this Schedule applies*

- 1 (1) This Schedule applies to the disposal by a local authority of an interest in land as a result of which a secure tenant of the authority will become the tenant of a private sector landlord.
- (2) For the purposes of this Schedule the grant of an option which if exercised would result in a secure tenant of a local authority becoming the tenant of a private sector landlord shall be treated as a disposal of the interest which is the subject of the option.
- (3) Where a disposal of land by a local authority is in part a disposal to which this Schedule applies, the provisions of this Schedule apply to that part as to a separate disposal.
- (4) In this paragraph “private sector landlord” means a person other than an authority or body within section 80 (the landlord condition for secure tenancies).

##### *Application for Secretary of State’s consent*

- 2 (1) The Secretary of State shall not entertain an application for his consent to a disposal to which this Schedule applies unless the authority certify either—
  - (a) that the requirements of paragraph 3 as to consultation have been complied with, or
  - (b) that the requirements of that paragraph as to consultation have been complied with except in relation to tenants expected to have vacated the dwelling-house in question before the disposal;and the certificate shall be accompanied by a copy of the notices given by the authority in accordance with that paragraph.
- (2) Where the certificate is in the latter form, the Secretary of State shall not determine the application until the authority certify as regards the tenants not originally consulted—
  - (a) that they have vacated the dwelling-house in question, or
  - (b) that the requirements of paragraph 3 as to consultation have been complied with;and a certificate under sub-paragraph (b) shall be accompanied by a copy of the notices given by the authority in accordance with paragraph 3.

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- (3) References in this Schedule to the Secretary of State’s consent to a disposal are to the consent required by section 32 or 43 (general requirement of consent for disposal of houses or land held for housing purposes).

*Requirements as to consultation*

- 3 (1) The requirements as to consultation referred to above are as follows.
- (2) The authority shall serve notice in writing on the tenant informing him of—
- (a) such details of their proposal as the authority consider appropriate, but including the identity of the person to whom the disposal is to be made,
  - (b) the likely consequences of the disposal for the tenant, and
  - (c) the effect of the provisions of this Schedule and of sections 171A to 171H (preservation of right to buy on disposal to private sector landlord),
- and informing him that he may, within such reasonable period as may be specified in the notice, make representations to the authority.
- (3) The authority shall consider any representations made to them within that period and shall serve a further written notice on the tenant informing him—
- (a) of any significant changes in their proposal, and
  - (b) that he may within such period as is specified (which must be at least 28 days after the service of the notice) communicate to the Secretary of State his objection to the proposal,
- and informing him of the effect of paragraph 5 (consent to be withheld if majority of tenants are opposed).

*Power to require further consultation*

- 4 The Secretary of State may require the authority to carry out such further consultation with their tenants, and to give him such information as to the results of that consultation, as he may direct.

*Consent to be withheld if majority of tenants are opposed*

- 5 (1) The Secretary of State shall not give his consent if it appears to him that a majority of the tenants of the dwelling-houses to which the application relates do not wish the disposal to proceed; but this does not affect his general discretion to refuse consent on grounds relating to whether a disposal has the support of the tenants or on any other ground.
- (2) In making his decision the Secretary of State may have regard to any information available to him; and the local authority shall give him such information as to the representations made to them by tenants and others, and other relevant matters, as he may require.

*Protection of purchasers*

- 6 The Secretary of State’s consent to a disposal is not invalidated by a failure on his part or that of the local authority to comply with the requirements of this Schedule.”



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## SCHEDULE 2

Section 8(2).

### SCHEDULE TO BE INSERTED IN THE HOUSING ACT 1985

#### “SCHEDULE 9A

#### LAND REGISTRATION AND RELATED MATTERS WHERE RIGHT TO BUY PRESERVED

##### *Statement to be contained in instrument effecting qualifying disposal*

- 1 On a qualifying disposal, the disponor shall secure that the instrument effecting the disposal—
  - (a) states that the disposal is, so far as it relates to dwelling-houses occupied by secure tenants, a disposal to which section 171A applies (preservation of right to buy on disposal to private landlord), and
  - (b) lists, to the best of the disponor’s knowledge and belief, the dwelling-houses to which the disposal relates which are occupied by secure tenants.

##### *Registration of title on qualifying disposal*

- 2 (1) Where on a qualifying disposal the disponor’s title to the dwelling-house is not registered, section 123 of the <sup>M53</sup>Land Registration Act 1925 (compulsory registration of title) applies—
  - (a) whether or not the dwelling-house is in an area in which an Order in Council under section 120 of that Act (areas of compulsory registration) is in force, and
  - (b) whether or not, where the disposal takes the form of the grant or assignment of a lease, the lease is granted for a term of more than 21 years or, as the case may be, is a lease for a term of which more than 21 years are unexpired.
- (2) In such a case the disponor shall give the disponent a certificate stating that the disponor is entitled to effect the disposal subject only to such incumbrances, rights and interests as are stated in the instrument effecting the disposal or summarised in the certificate.
- (3) Where the disponor’s interest in the dwelling-house is a lease, the certificate shall also state particulars of the lease and, with respect to each superior title—
  - (a) where it is registered, the title number;
  - (b) where it is not registered, whether it was investigated in the usual way on the grant of the disponor’s lease.
- (4) The certificate shall be—
  - (a) in a form approved by the Chief Land Registrar, and
  - (b) signed by such officer of the disponor or such other person as may be approved by the Chief Land Registrar,

and the Chief Registrar shall, for the purpose of registration of title, accept the certificate as sufficient evidence of the facts stated in it.

- 3 Where a qualifying disposal takes the form of the grant or assignment of a lease, sections 8 and 22 of the <sup>M54</sup>Land Registration Act 1925 (application for registration of leasehold land and registration of dispositions of leasehold) apply notwithstanding that it is a lease for a term of which not more than 21 years are unexpired or, as the case may be, a lease granted for a term not exceeding 21 years; and accordingly section 70(1)(k) of that Act (leases which are overriding interests) does not apply.

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*Entries on register protecting preserved right to buy*

- 4 The Chief Land Registrar on application being made for registration of a disposition of registered land or, as the case may be, of the disponee's title under a disposition of unregistered land, shall, if the instrument effecting the disposal contains the statement required by paragraph 1, enter in the register—
- (a) a notice protecting the rights of qualifying persons under this Part in relation to dwelling-houses comprised in the disposal, and
  - (b) a restriction stating the requirement of consent under section 171D(2) for certain subsequent disposals of the landlord's interest.

*Change of qualifying dwelling-house*

- 5 (1) This paragraph applies where by virtue of section 171B(6) a new dwelling-house becomes the qualifying dwelling-house which—
- (a) is entirely different from the previous qualifying dwelling-house, or
  - (b) includes new land,
- and applies to the new dwelling-house or the new land, as the case may be.
- (2) If the landlord's title is registered, the landlord shall apply for the entry on the register of—
- (a) a notice protecting the rights of the qualifying person or persons under the provisions of this Part, and
  - (b) a restriction stating the requirement of consent under section 171D(2) for certain disposals of the landlord's interest.
- (3) A qualifying person may apply for the entry of such a notice and restriction and section 64(1) of the Land Registration Act 1925 (production of land certificate) does not apply to the entry of a notice or restriction on such an application; but without prejudice to the power of the Chief Land Registrar to call for the production of the certificate by the landlord.
- (4) If the landlord's title is not registered, the rights of the qualifying person or persons under the provisions of this Part are registrable under the <sup>M55</sup>Land Charges Act 1972 in the same way as an estate contract and the landlord shall, and a qualifying person may, apply for such registration.

*Effect of non-registration*

- 6 (1) The rights of a qualifying person under this Part in relation to the qualifying dwelling-house—
- (a) shall be treated as interests to which sections 20 and 23 of the <sup>M56</sup>Land Registration Act 1925 apply (under which the transferee or grantee under a registered disposition takes free from estates and interests which are not protected on the register and are not overriding interests), and
  - (b) shall not be treated as overriding interests for the purposes of that Act, notwithstanding that the qualifying person is in actual occupation of the land.
- (2) Where by virtue of paragraph 5(4) the rights of a qualifying person under this Part in relation to the qualifying dwelling-house are registrable under the <sup>M57</sup>Land Charges Act 1972 in the same way as an estate contract, section 4(6) of that Act (under which such a contract may be void against a purchaser unless registered) applies accordingly, with

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the substitution for the reference to the contract being void of a reference to the right to buy ceasing to be preserved.

*Statement required on certain disposals on which right to buy ceases to be preserved*

- 7 (1) A conveyance of the freehold or grant of a lease of the qualifying dwelling-house to a qualifying person in pursuance of the right to buy shall state that it is made in pursuance of the provisions of this Part as they apply by virtue of section 171A (preservation of the right to buy).
- (2) Where on a conveyance of the freehold or grant of a lease of the qualifying dwelling-house to a qualifying person otherwise than in pursuance of the right to buy the dwelling-house ceases to be subject to any rights arising under this Part, the conveyance or grant shall contain a statement to that effect.
- (3) Where on a disposal of an interest in a qualifying dwelling-house the dwelling-house ceases to be subject to the rights of a qualifying person under this Part by virtue of section 171D(1)(a) or 171E(2)(a) (qualifying person becoming tenant of authority or body satisfying landlord condition for secure tenancies), the instrument by which the disposal is effected shall state that the dwelling-house ceases as a result of the disposal to be subject to any rights arising by virtue of section 171A (preservation of the right to buy).

*Removal of entries on land register*

- 8 Where the registered title to land contains an entry made by virtue of this Schedule, the Chief Land Registrar shall, for the purpose of removing or amending the entry, accept as sufficient evidence of the facts stated in it a certificate by the registered proprietor that the whole or a specified part of the land is not subject to any rights of a qualifying person under this Part.

*Liability to compensate or indemnify*

- 9 (1) An action for breach of statutory duty lies where—
- (a) the disponent on a qualifying disposal fails to comply with paragraph 1 (duty to secure inclusion of statement in instrument effecting disposal), or
  - (b) the landlord on a change of the qualifying dwelling-house fails to comply with paragraph 5(2) or (4) (duty to apply for registration protecting preserved right to buy),

and a qualifying person is deprived of the preserved right to buy by reason of the non-registration of the matters which would have been registered if that duty had been complied with.

- (2) If the Chief Land Registrar has to meet a claim under the Land Registration Acts 1925 to 1986 as a result of acting upon—
- (a) a certificate given in pursuance of paragraph 2 (certificate of title on first registration),
  - (b) a statement made in pursuance of paragraph 7 (statements required on disposal on which right to buy ceases to be preserved), or
  - (c) a certificate given in pursuance of paragraph 8 (certificate that dwelling-house has ceased to be subject to rights under this Part),

the person who gave the certificate or made the statement shall indemnify him.

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*Meaning of “disposal” and “instrument effecting disposal”*

- 10 References in this Schedule to a disposal or to the instrument effecting a disposal are to the conveyance, transfer, grant or assignment, as the case may be.”

**Marginal Citations**

- M53** 1925 c. 21.  
**M54** 1925 c. 21.  
**M55** 1972 c. 61  
**M56** 1925 c. 21.  
**M57** 1972 c. 61.

[<sup>F27</sup>SCHEDULE 3

Section 15.

COMMON PARTS GRANTS

**Textual Amendments**

- F27** Sch. 3 repealed (*prosp.*) by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 194(4), 195(2), [Sch. 12 Pt. II](#)

**PART I**

AMENDMENTS OF PART XV OF THE HOUSING ACT 1985

- 1 (1) Section 460 of the <sup>M58</sup>Housing Act 1985 (general description of main grants) is amended as follows.
- (2) In subsection (1) omit the word “and” after the reference to special grants and after the reference to repairs grants insert “common parts grants (sections 498A to 498G)”.
- (3) In subsection (2) for paragraphs (b) and (c) substitute—
- “**(b)** the improvement or repair of dwellings,  
**(c)** the improvement or repair of the common parts of a building including one or more flats, and”.

**Marginal Citations**

- M58** 1985 c. 68.

- 2 In section 462(1) of the <sup>M59</sup>Housing Act 1985 (preliminary condition for grants: the age of the property), after paragraph (b) insert
- (c)** a common parts grant in respect of a building which was erected after 2nd October 1961.”.

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#### Marginal Citations

M59 1985 c. 68.

3 In section 463(1) of the Housing Act 1985 (preliminary condition for eligibility for grant: the interest of the applicant in the property) for “may entertain an application for a grant only if” substitute “shall not entertain an application for a grant, other than an application for a common parts grant, unless”.

4 After section 464 of the Housing Act 1985 insert—

#### “ Preliminary conditions for application for common parts grant.

(1) A local housing authority shall not entertain an application for a common parts grant unless they are satisfied as regards the relevant works that the applicant either—

- (a) has a duty to carry them out, or
- (b) has power to carry them out and has a qualifying interest in the building or in a dwelling in the building,

and that, at the date of the application, at least the required proportion of the dwellings in the building is occupied by tenants.

(2) The following are qualifying interests for the purposes of subsection (1)(b)—

- (a) an estate in fee simple absolute in possession;
- (b) a term of years absolute of which not less than five years remains unexpired at the date of the application;
- (c) a tenancy to which section 1 of the Landlord and Tenant Act 1954 applies (long tenancies at low rents);
- (d) a protected tenancy, a secure tenancy, a protected occupancy or a statutory tenancy;
- (e) a tenancy which satisfies such conditions as may be prescribed by order of the Secretary of State.

(3) The required proportion mentioned in subsection (1) is three-quarters or such other proportion as may be—

- (a) prescribed for the purposes of this section by order of the Secretary of State, or
- (b) approved by him, in relation to a particular case or description of case, on application by the local housing authority;

and “tenant” for the purposes of that requirement means a person who has an interest within any of paragraphs (b) to (e) of subsection (2) by virtue of which he occupies a dwelling in the building as his only or main residence.

(4) An order under this section—

- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(5) This section has effect subject to section 513 (parsonages, applications by charities, &c.).”.

5 In section 466(1) of the <sup>M60</sup>Housing Act 1985 (grants requiring consent of the Secretary of State) for “or intermediate grant” substitute “, intermediate grant or common parts grant”.

#### Marginal Citations

M60 1985 c. 68.

6 After section 498 of the Housing Act 1985 insert—

*“ Common parts grant*

#### **Works for which common parts grants may be given.**

- (1) The works for which a common parts grant may be given are works required for the improvement or repair of the common parts of a building in which there are one or more flats, other than works for the provision of a dwelling.
- (2) For this purpose—
  - (a) “flat” means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building, and
  - (b) “common parts” includes the structure and exterior of the building and common facilities provided, whether in the building or elsewhere, for persons who include the occupiers of one or more dwellings in the building.

#### **Standard of repair to be attained.**

- (1) The local housing authority shall not, without the consent of the Secretary of State, approve an application for a common parts grant in respect of a building unless they are satisfied that on completion of the relevant works the common parts of the building will be in reasonable repair.
- (2) The Secretary of State’s consent to the approval of applications where that standard will not be attained may be given in particular cases or in relation to descriptions of case.
- (3) If in the opinion of the authority the relevant works are more extensive than is necessary for the purpose of securing that the common parts of the building will attain that standard, the authority may, with the consent of the applicant, treat the application as varied so that the relevant works include only such works as seem to the authority necessary for that purpose; and they may then approve the application as so varied.

#### **Rateable value limit.**

- (1) The local housing authority shall not approve an application for a common parts grant in respect of a building if, on the date of the application, the

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average rateable value of the dwellings in the building exceeds the limit specified for the purposes of this section by order of the Secretary of State.

- (2) The consent of the Treasury is required for the making of an order.
- (3) An order—
  - (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) For the purposes of this section—
  - (a) where a dwelling is a hereditament for which a rateable value is shown in the valuation list, the rateable value is the value shown;
  - (b) where a dwelling forms part only of such a hereditament, or consists of or forms part of more than one such hereditament, the rateable value is such value as the local housing authority, after consultation with the applicant as to an appropriate apportionment or aggregation, shall determine.
- (5) This section does not apply to buildings in housing action areas.

#### **Common parts grants are discretionary.**

- (1) A local housing authority may approve an application for a common parts grant in such circumstances as they think fit.
- (2) Subsection (1) has effect subject to the following provisions (which restrict the cases in which applications may be approved)—
  - section 465 (works already begun),
  - section 466 (cases in which consent of Secretary of State is required),
  - section 498B (standard of repair to be attained), and
  - section 498C (rateable value limit).

#### **Common parts grants: estimated expense of works.**

- (1) Where a local housing authority approve an application for a common parts grant, they shall determine the amount of the expenses which in their opinion are proper to be incurred for the execution of the relevant works and shall notify the applicant of that amount.
- (2) If, after an application for a grant has been approved, the authority are satisfied that owing to circumstances beyond the control of the applicant the relevant works will not be carried out on the basis of the estimate contained in the application, they may, on receiving a further estimate, redetermine the estimated expense in relation to the grant.
- (3) If the applicant satisfies the authority that—
  - (a) the relevant works cannot be, or could not have been, carried out without carrying out additional works, and

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- (b) this could not have been reasonably foreseen at the time the application was made,  
the authority may determine a higher amount under subsection (1).

**Common parts grant: limit on expense eligible for grant.**

- (1) Except in a case or description of case in respect of which the Secretary of State approves a higher eligible expense, the eligible expense for the purposes of a common parts grant is so much of the estimated expense as does not exceed the prescribed amount.
- (2) In subsection (1) “the prescribed amount” means an amount prescribed, or ascertained in a manner prescribed, by order of the Secretary of State.
- (3) An order—
  - (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

**Common parts grants: determination of amount.**

- (1) The amount of a common parts grant shall be fixed by the local housing authority when they approve the application, and shall not exceed the appropriate percentage of the eligible expense.
- (2) The authority shall notify the applicant of the amount of the grant together with the notification under section 498E(1) (notification of estimated expense of relevant works).
- (3) Where the authority redetermine the amount of the estimated expense under section 498E(2) (new estimate where works cannot be carried out in accordance with original estimate), they shall make such other adjustments relating to the amount of the grant as appear to them to be appropriate; but the amount of the grant shall not be increased beyond the amount which could have been notified when the application was approved if the estimate contained in the application had been of the same amount as the further estimate.
- (4) Where the authority redetermine the amount of the estimated expense under section 498E(3) (redetermination where additional works prove necessary), the eligible expense under section 498F shall be recalculated and if on the recalculation the amount of the eligible expense is greater than it was at the time when the application was approved, the amount of the grant shall be increased and the applicant notified accordingly.”

- 7 In section 499(3) of the <sup>M61</sup>Housing Act 1985 for “this Part” substitute “the following provisions of this Part down to section 507”.

**Marginal Citations**

M61 1985 c. 68.



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- 8 In section 511 of the Housing Act 1985 (payment of grants: general), in subsection (3)(b) for “or repairs grant” substitute “, repairs grant or common parts grant”.
- 9 In section 513 of the Housing Act 1985 (special cases: parsonages, applications by charities, &c.), in subsection (2) (provisions disapplied) after the reference to section 464 omit the word “and” and insert—
- “so much of section 464A(1)(b) (preliminary conditions for application for common parts grant) as requires the applicant to have a qualifying interest in the premises, and”.
- 10 (1) Section 514 of the Housing Act 1985 (power of local housing authority to carry out works with agreement of person by whom application for grant might be made) is amended as follows.
- (2) For subsection (2) (definition of “requisite interest”) substitute—
- “(2) The reference in subsection (1) to a person having the requisite interest is, except in the case of a common parts grant, to a person who has an owner’s interest in every parcel of land on which the relevant works are to be carried out; and in this subsection “owner’s interest” has the same meaning as in section 463(1)(a).
- (2A) The reference in subsection (1) to a person having the requisite interest is in the case of a common parts grant to a person who as regards the relevant works either—
- (a) has a duty to carry them out, or
- (b) has power to carry them out and has a qualifying interest in the building or in a dwelling in the building;
- and in this subsection “qualifying interest” has the same meaning as in section 464A(1)(b).”.
- 11 In section 515 of the Housing Act 1985, for subsections (2) and (3) (effect on grant of disposal by applicant of his interest in the property) substitute—
- “(2) Where an application for a grant is approved but before the certified date the applicant ceases to be a person entitled to apply for a grant of that description—
- (a) in the case of an improvement grant, intermediate grant, special grant or repairs grant, no grant shall be paid or, as the case may be, no further instalments shall be paid, and
- (b) in the case of a common parts grant, the local housing authority may refuse to pay the grant or any further instalment,
- and the authority may demand that any instalment of the grant which has been paid be repaid forthwith, together with interest from the date on which it was paid until repayment at such reasonable rate as the authority may determine.
- (3) In subsection (2) “the certified date” means the date certified by the local housing authority as the date on which the dwelling, house or, as the case may be, the common parts of the building, first become fit for occupation or use after the completion of the relevant works to the satisfaction of the authority.

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- (4) For the purposes of subsection (2) an applicant ceases to be a person entitled to apply for a grant, other than a common parts grant, if he—
- (a) ceases to have an owner’s interest in every parcel of land on which the relevant works are to be or have been carried out, or
  - (b) ceases to be a tenant of the dwelling;
- and in this subsection “owner’s interest” and “tenant” have the same meaning as in section 463(1)(a) and (b).
- (5) For the purposes of subsection (2) an applicant ceases to be a person entitled to apply for a common parts grant if he—
- (a) ceases to have a duty to carry out the relevant works, or
  - (b) ceases to have power to carry them out or to have a qualifying interest in the building or in a dwelling in the building;
- and in this subsection “qualifying interest” has the same meaning as in section 464A(1)(b).”.

- 12 In section 518 of the <sup>M62</sup>Housing Act 1985 (meaning of “dwelling for a disabled occupant” and related expressions), for subsection (3) substitute—

- “(3) In this Part “improvement”—
- (a) in relation to a dwelling for a disabled occupant, includes the doing of works required for making the dwelling suitable for his accommodation, welfare or employment, and
  - (b) in relation to the common parts of a building which includes such a dwelling, includes the doing of works required for making the common parts suitable for use by a disabled occupant of a dwelling.”.

**Marginal Citations**

**M62** 1985 c. 68.

- 13 Renumber section 519 of the <sup>M63</sup>Housing Act 1985 (meaning of “reasonable repair”) as subsection (1) of that section and after it insert—

- “(2) In determining what is “reasonable repair” in relation to the common parts of a building, a local housing authority shall have regard to—
- (a) the age and character of the building and the locality in which it is situated, and
  - (b) the character of the dwellings in the building and the period during which they are likely to be available for use as dwellings,
- and shall disregard the state of internal decorative repair of the building and the dwellings in it.”.

**Marginal Citations**

**M63** 1985 c. 68.

- 14 (1) Section 526 of the Housing Act 1985 (the index to Part XV) is amended as follows.
- (2) At the appropriate places insert—

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“common parts (for the purposes of common parts grant)	section 498A(2)(b)”
“common parts grant	sections 460 and 498A”
“flat (for the purposes of common parts grant)	section 498A(2)(a)”

- (3) In the second column of the entry relating to the expression “eligible expense” for “and 497” substitute “, 497 and 498F”.

## PART II

### AMENDMENTS OF OTHER ENACTMENTS

- 15 In section 116 of the <sup>M64</sup>Rent Act 1977 (consent of tenant to carrying out of works), in subsection (3) (cases in which county court may empower landlord to enter in absence of consent), for “improvement or intermediate grant” substitute “improvement grant, intermediate grant or common parts grant”.

#### Marginal Citations

**M64** 1977 c. 42.

- 16 (1) Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants) is amended as follows.
- (2) In section 100 (power to reimburse cost of improvements carried out by tenant), in subsection (2) (cost to be net of grant), for “or repairs grant” substitute “, repairs grant or common parts grant”.
- (3) In section 101 (rent not to be increased on account of improvements carried out by tenant), in the second part of subsection (1) (application of provision where improvement grant-aided), for “or repairs grant” substitute “, repairs grant or common parts grant”.
- 17 In section 244 of the Housing Act 1985 (powers of local housing authority with respect to environmental works in housing action area), in subsection (3) (no assistance for grant-aided works), for “or repairs grant” substitute “, repairs grant or common parts grant”.
- 18 In section 255 of the <sup>M65</sup>Housing Act 1985 (powers of local housing authority in general improvement area), in subsection (2)(b) (no assistance for grant-aided works) for “or repairs grant” substitute “, repairs grant or common parts grant”.

#### Marginal Citations

**M65** 1985 c. 68.

- 19 In section 535 of the Housing Act 1985 (exclusion of assistance under Part XVI (defective housing) where grant application pending under Part XV), in subsection (1)(a) for “or repairs grant” substitute, “repairs grant or common parts grant”.]

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## SCHEDULE 4

Section 18.

### FURTHER PROVISIONS WITH RESPECT TO SHARED OWNERSHIP LEASES

#### *The Rent Act 1977 (c. 42)*

- 1 (1) Part I of the Rent Act 1977 (preliminary provisions) is amended as follows.
- (2) After section 5 insert—

**“5A Certain shared ownership leases.**

- (1) A tenancy is not a protected tenancy if it is a qualifying shared ownership lease, that is—
- (a) a lease granted in pursuance of the right to be granted a shared ownership lease under Part V of the Housing Act 1985, or
  - (b) a lease granted by a housing association and which complies with the conditions set out in subsection (2) below.
- (2) The conditions referred to in subsection (1)(b) above are that the lease—
- (a) was granted for a term of 99 years or more and is not (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture;
  - (b) was granted at a premium, calculated by reference to the value of the dwelling-house or the cost of providing it, of not less than 25 per cent., or such other percentage as may be prescribed, of the figure by reference to which it was calculated;
  - (c) provides for the tenant to acquire additional shares in the dwelling-house on terms specified in the lease and complying with such requirements as may be prescribed;
  - (d) does not restrict the tenant’s powers to assign, mortgage or charge his interest in the dwelling-house;
  - (e) if it enables the landlord to require payment for outstanding shares in the dwelling-house, does so only in such circumstances as may be prescribed;
  - (f) provides, in the case of a house, for the tenant to acquire the landlord’s interest on terms specified in the lease and complying with such requirements as may be prescribed; and
  - (g) states the landlord’s opinion that by virtue of this section the lease is excluded from the operation of this Act.
- (3) The Secretary of State may by regulations prescribe anything requiring to be prescribed for the purposes of subsection (2) above.
- (4) The regulations may—
- (a) make different provision for different cases or descriptions of case, including different provision for different areas, and
  - (b) contain such incidental, supplementary or transitional provisions as the Secretary of State considers appropriate,
- and shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(5) In any proceedings the court may, if of opinion that it is just and equitable to do so, treat a lease as a qualifying shared ownership lease notwithstanding that the condition specified in subsection (2)(g) above is not satisfied.

(6) In this section—

“house” has the same meaning as in Part I of the Leasehold Reform Act 1967;

“housing association” has the same meaning as in the Housing Associations Act 1985; and

“lease” includes an agreement for a lease, and references to the grant of a lease shall be construed accordingly.”

(3) ..... F28

**Textual Amendments**

**F28** Sch. 4 para. 1(3) repealed by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(2), [Sch. 18](#)

*The Rent (Agriculture) Act 1976 (c. 80)*

2 In Schedule 2 to the Rent (Agriculture) Act 1976 (licences and tenancies giving rise to protected occupancy), in paragraph 3 (adaptation of provisions of Rent Act 1977 as they apply for the purposes of the 1976 Act), after sub-paragraph (2) insert—

“(2A) In section 5A (exclusion of certain shared ownership leases), in subsection (2)(g) (condition that lease states landlord’s opinion that 1977 Act does not apply) for the reference to the 1977 Act substitute a reference to this Act.”.

*Part I of the Leasehold Reform Act 1967 (c. 88)*

3 In section 1 of the Leasehold Reform Act 1967 (tenants entitled to enfranchisement or extension), after subsection (1) insert—

“(1A) The references in subsection (1)(a) and (b) to a long tenancy at a low rent do not include a tenancy excluded from the operation of this Part by section 33A of and Schedule 4A to this Act.”.

4 In section 3(2) of the Leasehold Reform Act 1967 after “long tenancy at a low rent” insert “(other than a lease excluded from the operation of this Part by section 33A of and Schedule 4A to this Act)”.

5 After section 33 of the Leasehold Reform Act 1967 insert—

**“33A Exclusion of certain shared ownership leases.**

The provisions of Schedule 4A to this Act shall have effect to exclude certain shared ownership leases from the operation of this Part of this Act”.

6 After Schedule 4 to the Leasehold Reform Act 1967 insert—

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“SCHEDULE  
4A

EXCLUSION OF CERTAIN SHARED OWNERSHIP LEASES

*Leases granted in pursuance of right to be granted a shared ownership lease*

- 1 A lease granted in pursuance of the right to be granted a shared ownership lease under Part V of the Housing Act 1985 is excluded from the operation of this Part of this Act.

*Certain leases granted by certain public authorities*

- 2 (1) A lease which—
- (a) was granted at a premium by a body mentioned in sub-paragraph (2), and
  - (b) complies with the conditions set out in sub-paragraph (3),
- is excluded from the operation of this Part at any time when the interest of the landlord belongs to such a body.
- (2) The bodies are—
- (a) a county, district or London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) the Inner London Education Authority or a joint authority established by Part IV of the Local Government Act 1985;
  - (c) the Commission for the New Towns or a development corporation established by an order made, or having effect as made, under the New Towns Act 1981;
  - (d) an urban development corporation within the meaning of Part XVI of the Local Government, Planning and Land Act 1980;
  - (e) the Development Board for Rural Wales;
- (3) The conditions are that the lease—
- (a) provides for the tenant to acquire the freehold for a consideration which is to be calculated in accordance with the lease and which is reasonable, having regard to the premium or premiums paid by the tenant under the lease, and
  - (b) states the landlord’s opinion that by virtue of this paragraph the tenancy will be excluded from the operation of this Part of this Act at any time when the interest of the landlord belongs to a body mentioned in sub-paragraph (2) above.
- (4) If, in proceedings in which it falls to be determined whether a lease complies with the condition in sub-paragraph (3)(a), the question arises whether the consideration payable by the tenant on acquiring the freehold is reasonable, it is for the landlord to show that it is.

*Certain leases granted by housing associations*

- 3 (1) A lease granted by a housing association and which complies with the conditions set out in sub-paragraph (2) is excluded from the operation of this

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Part of this Act, whether or not the interest of the landlord still belongs to such an association.

- (2) The conditions are that the lease—
    - (a) was granted for a term of 99 years or more and is not (and cannot become) terminable except in pursuance of a provision for re-entry or forfeiture;
    - (b) was granted at a premium, calculated by reference to the value of the house or the cost of providing it, of not less than 25 per cent, or such other percentage as may be prescribed, of the figure by reference to which it was calculated;
    - (c) provides for the tenant to acquire additional shares in the house on terms specified in the lease and complying with such requirements as may be prescribed;
    - (d) does not restrict the tenant’s powers to assign, mortgage or charge his interest in the house;
    - (e) if it enables the landlord to require payment for outstanding shares in the house, does so only in such circumstances as may be prescribed;
    - (f) provides for the tenant to acquire the landlord’s interest on terms specified in the lease and complying with such requirements as may be prescribed; and
    - (g) states the landlord’s opinion that by virtue of this paragraph the lease is excluded from the operation of this Part of this Act.
  - (3) In any proceedings the court may, if of the opinion that it is just and equitable to do so, treat a lease as satisfying the conditions in sub-paragraph (2) notwithstanding that the condition specified in paragraph (g) of that sub-paragraph is not satisfied.
  - (4) In this paragraph “housing association” has the same meaning as in the Housing Associations Act 1985.
- 4
- (1) A lease for the elderly granted by a registered housing association and which complies with the conditions set out in sub-paragraph (2) is excluded from the operation of this Part of this Act at any time when the interest of the landlord belongs to such an association.
  - (2) The conditions are that the lease—
    - (a) is granted at a premium which is calculated by reference to a percentage of the value of the house or of the cost of providing it,
    - (b) complies, at the time when it is granted, with such requirements as may be prescribed, and
    - (c) states the landlord’s opinion that by virtue of this paragraph the lease will be excluded from the operation of this Part of this Act at any time when the interest of the landlord belongs to a registered housing association.
  - (3) In this paragraph—

“lease for the elderly” has such meaning as may be prescribed; and

“registered housing association” has the same meaning as in the Housing Associations Act 1985.

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*Power to prescribe matters by regulations*

- 5 (1) The Secretary of State may by regulations prescribe anything requiring to be prescribed for the purposes of this Schedule.
- (2) The regulations may—
- (a) make different provision for different cases or descriptions of case, including different provision for different areas, and
  - (b) contain such incidental, supplementary or transitional provisions as the Secretary of State considers appropriate,
- and shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Interpretation*

- 6 In this Schedule “lease” means a lease at law or in equity, and references to the grant of a lease shall be construed accordingly”.

*Consequential amendments and repeals*

- 7 In the Housing Act 1980, omit section 140.
- 8 In the Local Government, Planning and Land Act 1980, omit section 156(3).
- 9 (1) The Local Government Act 1985 is amended as follows.
- (2) In Schedule 13 (application of local authority provisions to residuary bodies), in paragraph 14, after sub-paragraph (a) insert—
- “(aa) paragraph 2 of Schedule 4A to the Leasehold Reform Act 1967;” and at the end of sub-paragraph (b) insert “and” and omit sub-paragraph (d) and the word “and” preceding it.
- (3) In Schedule 14, omit paragraph 58(e).
- 10 In Part IV of the Housing Act 1985 (secure tenancies), in section 115 (meaning of “long tenancy”), in subsection (2)(c) after “1980” insert “or paragraph 3(2)(b) of Schedule 4A to the Leasehold Reform Act 1967”.

*Transitional provisions and savings*

- 11 (1) The amendments made by this Schedule apply only in relation to leases granted after the commencement of this Schedule.
- (2) This Schedule does not affect the operation of section 140 of the Housing Act 1980, the enactments applying that section and regulations made under it, in relation to leases granted before the commencement of this Schedule.



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SCHEDULE 5

Section 24(1),(2).

HOUSING: MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

MINOR AMENDMENTS

*Effect of covenant for repayment of discount*

1 (1) In section 36 of the <sup>M66</sup>Housing Act 1985 (charge to secure repayment of discount given on voluntary disposal), after subsection (3) insert—

“(3A) The covenant required by section 35 (covenant for repayment of discount) does not, by virtue of its binding successors in title of the purchaser, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this section, or a person deriving title under him; and a provision of the conveyance, grant or assignment, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with the covenant.”.

(2) In section 156 of the Housing Act 1985 (charge to secure repayment of discount given on exercise of right to buy), after subsection (3) insert—

“(3A) The covenant required by section 155 (covenant for repayment of discount) does not, by virtue of its binding successors in title of the tenant, bind a person exercising rights under a charge having priority over the charge taking effect by virtue of this section, or a person deriving title under him; and a provision of the conveyance or grant, or of a collateral agreement, is void in so far as it purports to authorise a forfeiture, or to impose a penalty or disability, in the event of any such person failing to comply with that covenant.”.

(3) In section 158 of the Housing Act 1985 (consideration for reconveyance or surrender of dwelling-house in National Park, etc. acquired in pursuance of right to buy) in subsection (3) (reduction of consideration where discount to be repaid or outstanding share to be paid for) after “shall be reduced” insert “, subject to subsection (4),”, and after that subsection insert—

“(4) Where there is a charge on the dwelling-house having priority over the charge to secure payment of the sum due under the covenant mentioned in subsection (2), the consideration shall not be reduced under subsection (3) below the amount necessary to discharge the outstanding sum secured by the first-mentioned charge at the date of the offer to reconvey or surrender.”.

<sup>F29</sup>(4) .....

(5) The above amendments apply to covenants entered into before as well as after the commencement of this paragraph.

**Textual Amendments**

**F29** Sch. 5 para. 1(4) repealed (1.10.1996) by S.I. 1996/2325, art. 4, Sch. 1 Pt. I (with art. 4(1)-(3))

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**Marginal Citations**

**M66** 1985 c. 68.

*Acquisition of dwelling-house subject to statutory tenancy*

- 2 In Part IV of the <sup>M67</sup>Housing Act 1985 (secure tenancies), before section 110 under the heading “Supplementary provisions” insert—

**Acquisition of dwelling-house subject to statutory tenancy.**

“109A Where an authority or body within section 80 (the landlord condition for secure tenancies) becomes the landlord of a dwelling-house subject to a statutory tenancy, the tenancy shall be treated for all purposes as if it were a contractual tenancy on the same terms, and the provisions of this Part apply accordingly.”.

**Marginal Citations**

**M67** 1985 c. 68.

*Landlord’s notice to mention any structural defect*

- 3 In section 125 of the Housing Act 1985 (exercise of right to buy: landlord’s notice of purchase price and certain other matters), after subsection (4) insert—

“(4A) The notice shall contain a description of any structural defect known to the landlord affecting the dwelling-house or the building in which it is situated or any other building over which the tenant will have rights under the conveyance or lease.”.

*Re-service of notices, etc. on change of landlord in course of exercise of right to buy*

- 4 (1) Section 137 of the Housing Act 1985 (change of landlord after notice claiming right to buy or right to a mortgage) is amended as follows.
- (2) Make the existing provision subsection (1) and in it after “all parties shall” insert “, subject to subsection (2),”.
- (3) After that subsection insert—

“(2) If the circumstances after the disposal differ in any material respect, as for example where—

- (a) the interest of the disponee in the dwelling-house after the disposal differs from that of the disponent before the disposal, or
- (b) the right to a mortgage becomes exercisable against the Housing Corporation rather than the landlord, or *vice versa*, or
- (c) any of the provisions of Schedule 5 (exceptions to the right to buy) becomes or ceases to be applicable,

all those concerned shall, as soon as practicable after the disposal, take all such steps (whether by way of amending or withdrawing and re-serving any notice or extending any period or otherwise) as may be requisite for the

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purpose of securing that all parties are, as nearly as may be, in the same position as they would have been if those circumstances had obtained before the disposal.”.

*Deferment of completion in pursuance of right to buy*

F305 .....

**Textual Amendments**

**F30** Sch. 5 para. 5 repealed (11.10.1993 subject to savings in S.I. 1993/2134, Sch. 1 para. 4) by 1993 c. 28, s. 187(2), Sch.22; S.I. 1993/2134, 2, 4(b), Sch. 2.

*Penalty for voting on certain housing matters*

- 6 (1) In section 618(4) of the Housing Act 1985 (penalty for member of Common Council or committee voting on housing matter relating to land in which he is interested), for “level 2 on the standard scale” substitute “level 4 on the standard scale”.
- (2) The above amendment does not apply to offences committed before the commencement of this paragraph.

*Grounds for withholding consent to assignment of secure tenancy*

- 7 In Schedule 3 to the <sup>M68</sup>Housing Act 1985 (grounds for withholding consent to assignment by way of exchange), after Ground 9 add—

*“ Ground 10*

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.”.

**Marginal Citations**

**M68** 1985 c. 68.

8 ..... F31

**Textual Amendments**

**F31** Sch. 5 para. 8 repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(2), Sch. 18 (with a saving for para. 8(1) in S.I. 1989/404, art. 3(d))

*Service charges in respect of the cost of grant-aided works*

- 9 (1) In the Landlord and Tenant Act 1985, after section 20 insert—

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**“20A Limitation of service charges: grant-aided works.**

Where relevant costs are incurred or to be incurred on the carrying out of works in respect of which a grant has been or is to be paid under Part XV of the Housing Act 1985 (grants for works of improvement, repair or conversion), the amount of the grant shall be deducted from the costs and the amount of the service charge payable shall be reduced accordingly.”.

(2) In section 21 of the Landlord and Tenant Act 1985 (request for summary of relevant costs), in subsection (5) (contents of summary) after “shall” insert “state whether any of the costs relate to works in respect of which a grant has been or is to be paid under Part XV of the Housing Act 1985 (grants for works of improvement, repair or conversion) and”.

(3) In section 47 of the Housing Act 1985 (limitation on service charges payable after disposal of house by public sector authority), after subsection (3) add—

“(4) Where relevant costs are incurred or to be incurred on the carrying out of works in respect of which a grant has been or is to be paid under Part XV (grants for works of improvement, repair or conversion), the amount of the grant shall be deducted from the costs and the amount of the service charge payable shall be reduced accordingly.”.

(4) In section 48 of the <sup>M69</sup>Housing Act 1985 (request for summary of relevant costs), after subsection (3) (contents of summary) insert—

“(3A) The summary shall also state whether any of the costs relate to works in respect of which a grant has been or is to be paid under Part XV (grants for works of improvement, repair or conversion).”.

**Marginal Citations**

M69 1985 c. 68.

*Miscellaneous corrections*

- 10 (1) ..... F32
- (2) In sections 207 and 322 of the Housing Act 1985, in the definition of “person having control” for “house” substitute “premises”.
- (3) In section 251(5)(b) of the Housing Act 1985 after “housing action” insert “area”.
- (4) In section 256(4)(b) of the Housing Act 1985 for “to the local planning authority” substitute “of the local planning authority”.
- (5) ..... F32
- (6) In section 10(2)(b) of the <sup>M70</sup>Housing Associations Act 1985, for “Schedule 3 to the Housing Act 1985” substitute “Schedule 1 to the Housing Act 1985”.
- (7) In paragraph 27 of Schedule 2 to the <sup>M71</sup>Housing (Consequential Provisions) Act 1985 for “(4)”, in both places where it occurs, substitute “(6)”.

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(8) In Schedule 3 to the Housing (Consequential Provisions) Act 1985, after paragraph 2 insert—

“(2A) Any order made under section 115(11) of the Housing Act 1974 (form of notice of compensation where land in clearance area deemed appropriated for provision of housing) which was in force immediately before the repeal of that section by this Act may be revoked or amended by regulations under section 614 of the Housing Act 1985 (general power to prescribe forms, etc. by regulations).”.

(9) The above amendments have effect from 1st April 1986.

**Textual Amendments**

**F32** Sch. 5 para. 10(1)(5) repealed by Local Government and Housing Act 1989 (c. 42, SIF 61, 81:1), s. 194(4), Sch. 12 Pt. II

**Marginal Citations**

**M70** 1985 c. 69.

**M71** 1985 c. 71.

11 (1) In sections 80(1)(a) and 81(1)(a), (3)(b) and (4)(b) of the <sup>M72</sup>Building Act 1984 (service of notices in respect of proposed demolition), after “demolition order” insert “or obstructive building order”.

(2) The above amendment to section 80 of the Building Act 1984 has effect from 1st April 1986.

**Marginal Citations**

**M72** 1984 c. 55.

12 In paragraph 14(2) of Schedule 11 and paragraph 8(2) of Schedule 22 to the <sup>M73</sup>Housing Act 1985 (procedure after compulsory purchase order has become operative), for “a copy of the notice” substitute “a copy of the order”.

**Marginal Citations**

**M73** 1985 c. 68.

<sup>F33</sup>13 .....

**Textual Amendments**

**F33** Sch. 5 para. 13 repealed (1.10.1996) by S.I. 1996/2325, art. 4, Sch. 1 Pt. I (with art. 4(1)-(3))

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**PART II**

CONSEQUENTIAL AMENDMENTS

14 ..... F34

**Textual Amendments**  
F34 Sch. 5 paras. 14, 17 repealed (S.) by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(3), Sch. 24

*Rent Act 1977*

15 In section 16 of the <sup>M74</sup>Rent Act 1977 (tenancy not protected if interest of landlord belongs to housing co-operative) for the words from “within the meaning of section 27” to the end substitute “within the meaning of section 27B of the Housing Act 1985 (agreements with housing co-operatives under certain superseded provisions) and the dwelling-house is comprised in a housing co-operative agreement within the meaning of that section”.

**Marginal Citations**  
M74 1977 c. 42.

PROSPECTIVE

16 (1) Schedule 12 to the Rent Act 1977 (procedure on application for certificate of fair rent) is amended as follows.  
(2) In paragraph (1)(c)—  
    (a) after “section 69(1)(a)” insert “or (1A)(b)”;  
    (b) after “improvement” insert “or repair”;  
    (c) after “regulated” insert “or secure”.  
(3) In paragraph 3, after “If,” insert—  
    “in the case of—  
    (a) an application under section 69(1) of this Act where the dwelling-house is not subject to a regulated tenancy, or  
    (b) an application under section 69(1A) of this Act where the dwelling-house is not subject to a secure tenancy,”  
and omit “unless the dwelling-house is subject to a regulated tenancy”.  
(4) In paragraph 4, for the words from “an application” to “regulated tenancy” substitute “—  
    (a) an application under section 69(1) of this Act where the dwelling-house is not subject to a regulated tenancy and which does not fall within paragraph 3 above, or  
    (b) an application under section 69(1A) of this Act and which does not fall within paragraph 3 above and where the dwelling-house is not subject to a secure tenancy,”.

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(5) In paragraph 5(1), for “Where the dwelling-house is subject to a regulated tenancy” substitute

“In the case of—

- (a) an application under section 69(1) of this Act where the dwelling-house is subject to a regulated tenancy, or
- (b) an application under section 69(1A) of this Act where the dwelling-house is subject to a secure tenancy.”

(6) In paragraphs 8(2) and 11, after “regulated” insert “or secure”.

(7) After paragraph 11 add—

“12 In this Schedule “secure tenancy” has the same meaning as in Part IV of the Housing Act 1985, but does not include such a tenancy where the landlord is the Housing Corporation, a housing association or a housing trust which is a charity.

In this paragraph “housing association”, “housing trust” and “charity” have the same meaning as in Part IV of the Housing Act 1985.”

17 ..... F35

**Textual Amendments**

**F35** Sch. 5 paras. 14, 17 repealed (S.) by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(3), Sch. 24

*Finance Act 1981*

18 In section 107 of the <sup>M75</sup>Finance Act 1981 (stamp duty payable on disposal of dwelling-house at a discount by certain authorities), after subsection (3A) insert—

“(3B) This section also applies to a conveyance or transfer on sale (including the grant of a lease) by a person against whom the right by buy under Part V of the Housing Act 1985 is exercisable by virtue of section 171A of that Act (preservation of right to buy on disposal to private sector landlord) to a person who is the qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling-house is the qualifying dwelling-house.”

**Commencement Information**

**I8** Sch. 5 para. 18 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

**Marginal Citations**

**M75** 1981 c. 35.

*Local Government Act 1985*

19 In paragraph 22 of Schedule 13 to the <sup>M76</sup>Local Government Act 1985 (provisions of Housing Act 1985 applying to residuary bodies) after “444,” insert “450A to 450C,”.



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**Commencement Information**

**I9** Sch. 5 para. 19 wholly in force at 17.8.1992 see s. 57(2) and S.I. 1992/1753, art. 2(2).

**Marginal Citations**

**M76** 1985 c. 51.

*Housing Act 1985*

<sup>F36</sup>20 .....

**Textual Amendments**

**F36** Sch. 5 para. 20 repealed (1.4.1995) by 1994 c. 29, s. 93, Sch. 9 Pt. I; S.I. 1994/3262, art. 4(1), Sch.

21 In section 20 of the Housing Act 1985 (houses of local authority to which management provisions apply), for “down to section 26” substitute “down to section 27B”.

22 In section 21 of the Housing Act 1985 (management powers to be exercised by local housing authority), in subsection (2) (general proposition subject to section 27), for “(agreements for exercise of housing management functions by co operative)” substitute “(management agreements)”.

23 In section 30 of the Housing Act 1985 (application of housing management provisions to new town corporations and the Development Board for Rural Wales), omit subsection (2) (which relates to section 27: management agreements).

24 Omit section 46 of the Housing Act 1985 (definition of “service charge” for the purposes of certain provisions of Part II).

25 In section 57 of the Housing Act 1985 (the index to Part II), in the entries relating to the expressions “payee and payer”, “relevant costs” and “service charge” for “section 46” substitute “section 621A”.

26 In section 80 of the Housing Act 1985 (the landlord condition for secure tenancies), for subsection (4) (housing co-operatives to which the section applies) substitute—  
“(4) This section applies to a housing co-operative within the meaning of section 27B (agreements under certain superseded provisions) where the dwelling-house is comprised in a housing co-operative agreement within the meaning of that section.”.

27 In section 117 of the Housing Act 1985 (the index to Part IV) at the appropriate places insert—

“consent (in Schedule 3A)	paragraph 2(3) of that Schedule”
“landlord (in Part V of Schedule 2)	paragraph 5 of that Part”
“management agreement and manager	sections 27(2) and 27B(4)”.



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#### Commencement Information

**I10** Sch. 5 para. 27 partly in force; Sch. 5 para. 27 not in force at Royal Assent see s. 57; Sch. 5 para. 27 partly in force at 17.8.1992 see S.I. 1992/1753, art. 2(2).

- 28 In section 127(1) of the Housing Act 1985, omit the word “and” at the end of paragraph (a).
- 29 In section 130 of the <sup>M77</sup>Housing Act 1985 (reduction of discount where previous discount given), in subsection (2) (meaning of “previous discount”) in paragraph (a) after “7” insert “or 7A” and after that paragraph insert—
- “(aa) on conveyance of the freehold, or a grant or assignment of a long lease of a dwelling-house by a person against whom the right to buy was exercisable by virtue of section 171A (preservation of right to buy on disposal to private sector landlord) to a person who was a qualifying person for the purposes of the preserved right to buy and in relation to whom that dwelling-house was the qualifying dwelling-house, or”.

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

**C5** Sch. 5 para. 29 restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 2.

#### Commencement Information

**I11** Sch. 5 para. 29 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

#### Marginal Citations

**M77** 1985 c. 68.

- 30 (1) Section 187 of the Housing Act 1985 (minor definitions for purposes of Part V (the right to buy)) is amended as follows.
- (2) In the definition of “improvement”—
- (a) after “means” insert “, in relation to a dwelling-house,”,
- (b) for “a dwelling-house”, in both places, substitute “the dwelling-house”, and
- (c) at the end (full-out after paragraph (c)) insert “and shall be similarly construed in relation to any other building or land;”.
- (3) At the appropriate place insert—
- ““improvement contribution” means an amount payable by a tenant of a flat in respect of improvements to the flat, the building in which it is situated or any other building or land, other than works carried out in discharge of any such obligations as are referred to in paragraph 16A(1) of Schedule 6 (obligations to repair, reinstate, etc.);”.
- 31 In section 188 of the Housing Act 1985 (the index to Part V) at the appropriate places insert—
- 
- “disposal and instrument effecting disposal (in Schedule 9A)                      paragraph 10 of that Schedule”

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“former landlord and former secure tenant (in relation to a qualifying disposal)	section 171A(2)(c)”
“improvement contribution	section 187”
“preserved right to buy	section 171A(2)(a)”
“qualifying disposal (in relation to the preserved right to buy)	section 171A(2)(b)”
“qualifying dwelling-house and qualifying person (in relation to the preserved right to buy)	section 171B(1)”
“reference period (for purposes of s.125A or 125B)	section 125C”
“service charge	section 621A”.

#### Commencement Information

**I12** Sch. 5 para. 31 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

32 In Part XIII of the <sup>M78</sup>Housing Act 1985 (general financial provisions), after section 427 insert—

**“427A Entitlement to subsidy in case of land subject to management agreement.**

The fact that a local housing authority or other body has entered into a management agreement, and any letting of land in connection with such an agreement—

- (a) shall be disregarded in determining that authority or body’s reckonable income or expenditure for the purposes of housing subsidy, and
- (b) shall not be regarded as a ground for recovering, withholding or reducing any sum under section 427 (recoupment of housing subsidy).”.

#### Marginal Citations

**M78** 1985 c. 68.

33 In section 434 of the Housing Act 1985 (the index to Part XIII) at the appropriate place insert—

“management agreement sections 27(2) and 27B(4)”.

34 In section 444(4) of the Housing Act 1985 (advances relevant to certain powers of local authority to give assistance), for the words from “by” to the end substitute “a housing authority”.

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

C6 Sch. 5 para. 34 restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 3.

**Commencement Information**

I13 Sch. 5 para. 34 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

- 35 In section 452 of the Housing Act 1985 (vesting of house in authority entitled to exercise power of sale), in subsection (2) omit the definition of “housing authority”.

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

C7 Sch. 5 para. 35 restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 4.

**Commencement Information**

I14 Sch. 5 para. 35 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

- 36 In section 453 of the Housing Act 1985 (power of authority which has granted shared ownership lease to make further advances), omit subsection (2) (which defines “housing authority”).

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

C8 Sch. 5 para. 36 restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 4.

**Commencement Information**

I15 Sch. 5 para. 36 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

- 37 In section 458 of the Housing Act 1985 (minor definitions), at the appropriate place insert—

““housing authority” includes any local authority, an urban development corporation, the Housing Corporation and a registered housing association;”.

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

C9 Sch. 5 para. 37 restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 4.

**Commencement Information**

I16 Sch. 5 para. 37 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

- 38 In section 459 of the Housing Act 1985 (the index to Part XIV), at the appropriate places insert—

“housing authority	sections 4(a) and 458”
“service charge	section 621 A”.

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

C10 Sch. 5 para. 38 restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 4.

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#### Commencement Information

**I17** Sch. 5 para. 38 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

39 After section 621 of the Housing Act 1985 insert—

#### “621A Meaning of “service charge” and related expressions.

- (1) In this Act “service charge” means an amount payable by a purchaser or lessee of premises—
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the vendor’s or lessor’s costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the payee, or (in the case of a lease) a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose—
  - (a) “costs” includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
- (4) In relation to a service charge—
  - (a) the “payee” means the person entitled to enforce payment of the charge, and
  - (b) the “payer” means the person liable to pay it.”.

40 (1) Schedule 4 to the <sup>M79</sup>Housing Act 1985 (the qualifying period for the right to buy) is amended as follows.

(2) After paragraph 5 insert—

#### *“ Periods during which right to buy is preserved*

5A A period qualifies under this paragraph if it is a period during which, before the relevant time—

- (a) the secure tenant, or
- (b) his spouse (if they are living together at the relevant time), or
- (c) a deceased spouse of his (if they were living together at the time of the death),

was a qualifying person for the purposes of the preserved right to buy or was the spouse of such a person and occupied the qualifying dwelling-house as his only or principal home.”.

(3) In paragraph 7 (the landlord condition for qualifying period)—

- (a) in sub-paragraph (1), in the opening words, after “subject to” insert “paragraph 7A and to”, and omit the words from “a housing co-operative” to “management functions”;

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(b) in sub-paragraph (2), omit the words from “a housing co-operative” to “1975”.

(4) After paragraph 7 insert—

“7A (1) The landlord condition shall be treated as having been satisfied in the case of a dwelling-house comprised in a housing co-operative agreement made—

(a) in England and Wales, by a local housing authority, new town corporation or the Development Board for Rural Wales, or

(b) in Scotland, by an islands or district council,

if the interest of the landlord belonged to the housing co-operative.

(2) In sub-paragraph (1) “housing co-operative agreement” and “housing co-operative”—

(a) as regards England and Wales have the same meaning as in section 27B (agreements with housing co-operatives under superseded provisions), and

(b) as regards Scotland mean an agreement made under section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 and a housing co-operative within the meaning of that section.”.

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

**C11** Sch. 5 para. 40(2)(3)(4) restricted (11.7.1992) by S.I. 1992/1753, art. 2(2), Sch. para. 5.

**Commencement Information**

**I18** Sch. 5 para. 40 wholly in force at 17.8.1992 see s. 57 and S.I. 1992/1753, art. 2(2).

**Marginal Citations**

**M79** 1985 c. 68.

41 (1) Paragraph 14 of Schedule 6 to the <sup>M80</sup>Housing Act 1985 (terms of lease granted in pursuance of right to buy: implied covenants by landlord) is amended as follows.

(2) In sub-paragraph (2), omit the words following paragraph (c).

(3) In sub-paragraph (3), for the words from the beginning to “requirement” insert “There is an implied covenant”.

(4) After sub-paragraph (3) insert—

“(3A) Sub-paragraphs (2) and (3) have effect subject to paragraph 15(3) (certain obligations not to be imposed, where landlord’s title is leasehold, by reason of provisions of superior lease).”.

**Marginal Citations**

**M80** 1985 c. 68.

*Housing Associations Act 1985*

42 In Part II of the <sup>M81</sup>Housing Associations Act 1985 (financial provisions), after section 69 insert—

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**“69A Land subject to housing management agreement.**

A housing association is not entitled to a housing association grant, revenue deficit grant or hostel deficit grant in respect of land comprised in—

- (a) a management agreement within the meaning of the Housing Act 1985 (see sections 27(2) and 27B(4) of that Act; delegation of housing management functions by certain authorities), or
- (b) an agreement to which section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 applies (agreements for exercise by housing co-operatives of certain local authority housing functions).”.

**Marginal Citations**

**M81** 1985 c. 69.

SCHEDULE 6

Sections 25(2)(3), 26(2), (3).

SIMPLIFIED PLANNING ZONES: FURTHER PROVISIONS

**PARTS I AND II**

. . . **F37**

**Textual Amendments**

**F37** Sch. 6 Pts. I, II repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

**PART III**

SCHEDULE TO BE INSERTED IN THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972

SCHEDULE 6A

SIMPLIFIED PLANNING ZONE SCHEMES

*General*

- 1 A simplified planning zone scheme shall consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the planning authority

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think appropriate for explaining or illustrating the provisions of the scheme, and shall specify—

- (a) the development or classes of development permitted by the scheme,
  - (b) the land in relation to which permission is granted ; and
  - (c) any conditions, limitations or exceptions subject to which it is granted ;
- and shall contain such other matters as may be prescribed.

#### *Proposals to make or alter scheme*

- 2 (1) A planning authority may at any time decide to make a simplified planning zone scheme or to alter a scheme adopted by them or, with the consent of the Secretary of State, to alter a scheme approved by him.
- (2) An authority who decide to make or alter a simplified planning zone scheme shall—
  - (a) notify the Secretary of State of their decision as soon as practicable, and
  - (b) determine the date on which they will begin to prepare the scheme or the alterations.

#### *Power of Secretary of State to direct making or alteration of scheme*

- 3 (1) If a person requests a planning authority to make or alter a simplified planning zone scheme but the authority—
  - (a) refuse to do so, or
  - (b) do not within the period of three months from the date of the request decide to do so,he may, subject to sub-paragraph (2), require them to refer the matter to the Secretary of State.
- (2) A person may not require the reference of the matter to the Secretary of State if—
  - (a) in the case of a request to make a scheme, a simplified planning zone scheme relating to the whole or part of the land specified in the request has been adopted or approved within the twelve months preceding his request ;
  - (b) in the case of a request to alter a scheme, the scheme to which the request relates was adopted or approved, or any alteration to it has been adopted or approved, within that period.
- (3) The Secretary of State shall, as soon as practicable after a matter is referred to him—
  - (a) send the authority a copy of any representations made to him by the applicant which have not been made to the authority, and
  - (b) notify the authority that if they wish to make any representations in the matter they should do so, in writing, within 28 days.
- (4) The Secretary of State may, after—
  - (a) considering the matter and any written representations made by the applicant or the authority, and
  - (b) carrying out such consultations with such persons as he thinks fit,give the authority a simplified planning zone direction.

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- (5) The Secretary of State shall notify the applicant and the authority of his decision and of his reasons for it.
- 4 (1) A simplified planning zone direction is—
- (a) if the request was for the making of a scheme, a direction to make a scheme which the Secretary of State considers appropriate ; and
  - (b) if the request was for the alteration of a scheme, a direction to alter it in such manner as he considers appropriate.
- (2) In either case the direction may extend to—
- (a) the land specified in the request to the authority,
  - (b) any part of the land so specified, or
  - (c) land which includes the whole or part of the land so specified ;
- and, accordingly, may direct that land shall be added to or excluded from an existing simplified planning zone.

*Publicity and consultation : general*

- 5 (1) A planning authority who propose to make or alter a simplified planning zone scheme shall proceed in accordance with this paragraph.
- (2) Subject to paragraph 6(2) below, they shall take such steps as will in their opinion secure—
- (a) that adequate publicity for their proposals is given in the area to which the scheme relates,
  - (b) that persons who may be expected to wish to make representations about the proposals are made aware that they are entitled to do so, and
  - (c) that such persons are given an adequate opportunity of making such representations ;
- and they shall consider any representations made to them within the prescribed period.
- (3) They shall then, having prepared the relevant documents, that is, the proposed scheme or alterations—
- (a) make copies of the documents available for inspection at their office, and
  - (b) send a copy of them to the Secretary of State.
- (4) Each copy of the documents made available for inspection shall be accompanied by a statement of the time within which objections may be made.
- (5) The planning authority shall before preparing the proposed scheme or alterations consult the Secretary of State and any local roads authority in whose district the proposed zone or any part of it lies as to the effect of their proposals on existing or future roads ; and when they have prepared the proposed scheme or alterations they shall send a copy to the Secretary of State and any such local roads authority.



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*Publicity and consultation : expedited procedure*

- 6 (1) The documents sent by the planning authority to the Secretary of State under paragraph 5(3) shall be accompanied by a statement—
- (a) of the steps which the authority have taken to comply with paragraph 5(2), and
  - (b) of the authority’s consultations with other persons and their consideration of the views of those persons.
- (2) Where a planning authority do not consider it appropriate to take the steps required by paragraph 5(2) of this Schedule in relation to proposals made by them under sub-paragraph (1) of that paragraph for the alteration of a simplified planning zone scheme, they may instead include, with the copies of those proposals made available for inspection and with the copy sent to the Secretary of State under paragraph (3) of that paragraph, a statement of their reasons for not taking such steps.

*Objections : local inquiry or other hearing*

- 7 (1) The planning authority may cause a local inquiry or other hearing to be held for the purpose of considering objections to their proposals for the making or alteration of a simplified planning zone scheme.
- (2) They shall hold such a local inquiry or other hearing in the case of objections made in accordance with regulations unless all the persons who have made such objections have indicated in writing that they do not wish to appear.
- (3) A local inquiry or other hearing shall be held by a person appointed by the Secretary of State or, in such cases as may be prescribed, by the authority themselves.
- (4) Regulations may—
- (a) make provision with respect to the appointment, and qualifications for appointment, of persons to hold a local inquiry or other hearing ;
  - (b) include provision enabling the Secretary of State to direct a planning authority to appoint a particular person, or one of a specified list or class of persons ;
  - (c) make provision with respect to the remuneration and allowances of the person appointed.
- (5) The <sup>M82</sup>Tribunals and Inquiries Act 1971 applies to a local inquiry or other hearing held under this paragraph as it applies to a statutory inquiry held by the Secretary of State, with the substitution in section 12(1) (statement of reasons for decision) for the references to a decision taken by the Secretary of State of references to a decision taken by a planning authority.

**Marginal Citations**

**M82** 1971 c. 62

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### *Adoption of proposals by planning authority*

- 8
- (1) After the expiry of the period afforded for making objections to proposals for the making or alteration of a simplified planning zone scheme or, if such objections were duly made within that period, after considering the objections so made, the planning authority may, subject to the following provisions of this paragraph and to paragraph 9 (calling in of proposals by Secretary of State), by resolution adopt the proposals.
  - (2) They may adopt the proposals as originally prepared or as modified so as to take account of—
    - (a) any such objections as are mentioned in sub-paragraph (1) any other objections to the proposals, or
    - (b) any other considerations which appear to the authority to be material.
  - (3) After copies of the proposals have been sent to the Secretary of State and before they have been adopted by the planning authority, the Secretary of State may, if it appears to him that the proposals are unsatisfactory, direct the authority to consider modifying the proposals in such respects as are indicated in the direction.
  - (4) An authority to whom a direction is given shall not adopt the proposals unless they satisfy the Secretary of State that they have made the modification necessary to conform with the direction or the direction is withdrawn.

### *Calling in of proposals for approval by Secretary of State*

- 9
- (1) After copies of proposals have been sent to the Secretary of State and before they have been adopted by the planning authority, the Secretary of State may direct that the proposals shall be submitted to him for his approval.
  - (2) In that event—
    - (a) the authority shall not take any further steps for the adoption of the proposals, and in particular shall not hold or proceed with a local inquiry or other hearing in respect of the proposals under paragraph 7 ; and
    - (b) the proposals shall not have effect unless approved by the Secretary of State and shall not require adoption by the authority.

### *Approval of proposals by Secretary of State*

- 10
- (1) The Secretary of State may after considering proposals submitted to him under paragraph 9 either approve them, in whole or in part and with or without modifications, or reject them.
  - (2) In considering the proposals he may take into account any matters he thinks are relevant, whether or not they were taken into account in the proposals as submitted to him.
  - (3) Where on taking the proposals into consideration the Secretary of State does not determine then to reject them, he shall, before, determining whether or not to approve them—
    - (a) consider any objections to them in accordance with regulations,

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- (b) afford to any person who made such an objection which has not been 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 such an opportunity to the authority and such other persons as he thinks fit,
- except so far as objections have already been considered, or a local inquiry or other hearing into the objections has already been held, by the authority.
- (4) In considering the proposals the Secretary of State may consult with, or consider the views of, any planning authority or any other person ; but he is under no obligation to do so, or to afford an opportunity for the making of representations or objections, or to cause a local inquiry or other hearing to be held, except as provided by subparagraph (3).

#### *Default powers*

- II (1) Where by virtue of any of the preceding provisions of this Schedule—
- (a) a simplified planning zone scheme or proposals for the alteration of such a scheme are required to be prepared, or
  - (b) steps are required to be taken for the adoption of any such scheme or proposals,
- then, if the Secretary of State is satisfied, after holding a local inquiry or other hearing, that the planning authority are not taking the steps necessary to enable them to prepare or adopt such a scheme or proposals within a reasonable period, he may make the scheme, or the alterations, as he thinks fit.
- (2) Where under this paragraph anything which ought to have been done by a planning authority is done by the Secretary of State, the preceding provisions of this Schedule apply, so far as practicable, with any necessary modifications in relation to the doing of that thing by the Secretary of State and the thing so done.
- (3) Where the Secretary of State incurs expenses under this paragraph in connection with the doing of anything which should have been done by a 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 the authority to the Secretary of State.

#### *Regulations and directions*

- 12 (1) Without prejudice to, the preceding provisions of this Schedule, the Secretary of State may make regulations with respect to the form and content of simplified planning zone schemes and with respect to the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making or alteration.
- (2) Any such regulations may in particular—
- (a) provide for the notice to be given of, or the publicity to be given to, matters included or proposed to be included in a simplified planning zone scheme and the adoption or approval of such a scheme, or of any alteration of it, or any other prescribed procedural step, and for publicity to be given to the procedure to be followed in these respects ;

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- (b) make provision with respect to the making and consideration of representations as to matters to be included in, or objections to, any such scheme or proposals for its alteration ;
  - (c) without prejudice to paragraph (b), provide for notice to be given to particular persons of the adoption or approval of a simplified planning zone scheme, or an alteration to such a scheme, if they have objected to the proposals and have notified the planning authority of their wish to receive notice, subject (if the regulations so provide) to the payment of a reasonable charge ;
  - (d) require or authorise a planning authority to consult with, or consider the views of, other persons before taking any prescribed procedural step ;
  - (e) require a 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 document which has been made public for the purpose mentioned in paragraph 5(2) or has been made available for inspection under paragraph 5(3), subject (if the regulations so provide) to the payment of a reasonable charge ;
  - (f) provide for the publication and inspection of a simplified planning zone scheme which has been adopted or approved, or any document adopted or approved altering such a scheme, and for copies of any such scheme or document to be made available on sale.
- (3) Regulations under this paragraph may extend throughout Scotland or to specified areas only and may make different provision for different cases.
- (4) Subject to the preceding provisions of this Schedule and to any regulations under this paragraph, the Secretary of State may give directions to any planning authority or to planning authorities generally—
- (a) for formulating the procedure for the carrying out of their functions under this Schedule ;
  - (b) for requiring them to give him such information as he may require for carrying out any of his functions under this Schedule.

#### PART IV

##### CONSEQUENTIAL AMENDMENTS—SCOTLAND

- <sup>1</sup> At the end of subsection (2) of section 31 of the <sup>M83</sup>Town and Country Planning (Scotland) Act 1972 (registers) insert “and also containing such information as may be so prescribed with respect to simplified planning zone schemes relating to zones in the authority’s area”.

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**Marginal Citations**

**M83** 1972 c. 52.

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- 2 In section 38 of the Town and Country Planning (Scotland) Act 1972 (limit of duration of planning permission), in subsection (3) (exceptions) after paragraph (aa) insert—
- “(ab) to any planning permission granted by a simplified planning zone scheme ;”.
- 3 In section 51(1) of the Town and Country Planning (Scotland) Act 1972 (applications to determine whether planning permission required) after the word “scheme” insert “ or simplified planning zone scheme ”.
- 4 After subsection (1)(a) of section 231 of the Town and Country Planning (Scotland) Act 1972 (validity of plans, &c.) insert—
- “(aa) a simplified planning zone scheme or any alteration of any such scheme whether before or after the adoption or approval of the scheme or alteration ; or”.
- 5 In section 232 of the Town and Country Planning (Scotland) Act 1972 (proceedings for questioning plans, &c.), after subsection (3) insert—
- “(4) Subsections (1) and (2) of this section apply to a simplified planning zone scheme or an alteration of such a scheme as they apply to a structure plan and an alteration of such a plan, with the following modifications—
- (a) for the references to Part II of this Act substitute references to Part III of this Act, and
- (b) for the reference to regulations under section 16(1) of this Act substitute a reference to regulations under paragraph 12 of Schedule 6A to this Act,
- and with any other necessary modifications.”.
- 6 In section 273 of the <sup>M84</sup>Town and Country Planning (Scotland) Act 1972 (orders)—
- (a) in subsection (4), after “21,” insert “ 21E, ”, and
- (b) in subsection (5), after “1(3),” insert “ 21E, ”.

**Marginal Citations**

**M84** 1972 c. 52.

- 7 In section 275(1) of the Town and Country Planning (Scotland) Act 1972 after the definition of “road” insert—
- ““simplified planning zone” and “simplified planning zone scheme” shall be construed in accordance with section 21A of this Act ;”.

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## SCHEDULE 7

Sections 33 and 37.

### HAZARDOUS SUBSTANCES: CONSEQUENTIAL AMENDMENTS

#### PART I

. . . F38

##### Textual Amendments

**F38** Sch. 7 Pt. I repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

#### PART II

##### SCOTLAND

##### *Radioactive Substances Act 1960 (c. 34)*

.....  
 F39 1

##### Textual Amendments

**F39** Sch. 7 Pt. II para. 1 repealed (27.8.1993) by 1993 c. 12, ss. 50, 51(2), Sch. 6 Pt. I

##### *Town and Country Planning (Scotland) Act 1972 (c.52)*

- 2 In subsection (3) (action on the part of the Secretary of State that may be questioned in legal proceedings) of section 231 of the Town and Country Planning (Scotland) Act 1972, the following paragraph shall be inserted after paragraph (d)—
- “(dd) any decision by the Secretary of State relating to an application for hazardous substances consent ;”.
- 3 In subsection (2)(a) of section 253 of that Act (orders, which, in relation to Crown land, may only be made with consent of appropriate authority)—
- (a) after “49B” there shall be inserted “ 56J ” ; and
- (b) for “or 92” there shall be substituted “ 92 or 97B ”.
- 4 The following section shall be inserted after section 257 of that Act—

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**“257A Application to planning authorities of provisions as to hazardous substances control.**

- (1) The provisions of this Act relating to hazardous substances shall have effect subject to such exceptions and modifications as may be prescribed in relation to hazardous substances consent for planning authorities.
- (2) Subject to the provisions of section 56G of this Act, any such regulations may in particular provide for securing—
  - (a) that any application by such an authority for hazardous substances consent in respect of the presence of a hazardous substance on, over or under such land shall be made to the Secretary of State and not to the planning authority ;
  - (b) that any order or notice authorised to be made, issued or served under those provisions shall be made, issued or served by the Secretary of State and not by the planning authority.”.

5 In section 265 of that Act (rights of entry)—

- (a) the following subsection shall be inserted after subsection (1)—

“(1A) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter any land for the purpose of surveying it in connection with—

  - (a) any application for hazardous substances consent ;
  - (b) any proposal to issue a hazardous substances contravention notice.”;
- (b) the following subsection shall be inserted after subsection (4)—

“(4A) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 56L of this Act.” ; and
- (c) the following subsection shall be inserted after subsection (7)—

“(7A) Any person duly authorised in writing by the Secretary of State or a planning authority may at any reasonable time enter any land in respect of which a hazardous substances contravention notice has been served for the purpose of ascertaining whether the notice has been complied with.”.

6 In section 275(1) of that Act (interpretation)—

- (a) the following shall be inserted after the definition of “conservation area”—

““contravention of hazardous substances control” has the meaning assigned to it by section 56L(2) of this Act ;” ;
- (b) the following shall be inserted after the definition of “government department”—

““hazardous substances consent” means consent required by section 56C of this Act ;

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“hazardous substances contravention notice” has the meaning assigned to it by section 97B(3) of this Act ;” ; and

(c) the following shall be inserted after the definition of “tree preservation order”—

““urban development area” and “urban development corporation” have the same meaning as in Part XVI of the Local Government, Planning and Land Act 1980 ;”.

*Town and Country Planning Act 1984 (c.10)*

7 In section 1 of the Town and Country Planning Act 1984 (applications in anticipation of disposal of Crown interests)—

(a) in subsection (1)(a), after the words “listed building consent” there shall be inserted the words “ , hazardous substances consent ” ; and

(b) the following subsection shall be inserted after subsection (3)—

“(3A) Any hazardous substances consent granted by virtue of this section shall apply only—

(a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land; and

(b) so long as that land continues to be Crown land to the presence of the substance by virtue of a private interest in the land.”.

*Gas Act 1986 (c. 44)*

8 In sub-paragraph (1)(xxv) of paragraph 2 of Schedule 7 to the Gas Act 1986 after “46”, there shall be inserted “<sup>F40</sup> . . . , 56G,”.

**Textual Amendments**  
**F40** Words in Sch. 7 Pt. II para. 8 repealed (1.5.1993) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), Sch. 16 Pt. VII; S.I. 1993/274, art. 3

SCHEDULE 8

Section 39(3).

OPENCAST COAL — MISCELLANEOUS AMENDMENTS

**PART I**

THE 1958 ACT

F41 1 .....



*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

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**Textual Amendments**

**F41** Sch. 8 para. 1 repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2), Sch. 11 Pt. II (with s. 40(7)); S.I. 1994/2553, art. 2

2 (1) In section 4(1), for the words “the land comprised in an authorisation under section 1 of this Act” there shall be substituted the words “any land on which they desire to work coal by such operations or to carry out operations incidental to such working”.

(2) The following subsections shall be substituted for section 4(6)—

“(6) A compulsory rights order may only be made if opencast planning permission has been applied for or granted in respect of the land comprised in the order or is deemed to have been granted in respect of it.

(6A) Where a compulsory rights order is made before opencast planning permission has been granted in respect of the land comprised in the order, the Secretary of State shall not confirm it unless such permission in respect of that land has first been granted.

(6B) Where a compulsory rights order is made in a case where opencast planning permission has been granted or is deemed to have been granted, the order, as from the time when it is made, shall include a reference to the permission.

(6C) If opencast planning permission is granted in respect of land comprised in a compulsory rights order and the Secretary of State subsequently confirms the order, the order as confirmed shall include a reference to the permission.

(6D) No compulsory rights order, as confirmed, shall extend to any land which is not comprised in the permission or deemed permission referred to in the order.”.

3 In section 5(5)—

(a) for the word “authorisation” there shall be substituted the words “opencast planning permission”; and

(b) for the words “fulfilment of the authorised purposes” there shall be substituted the words “permitted activities.”

F42<sub>4</sub> .....

**Textual Amendments**

**F42** Sch. 8 para. 4 repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2), Sch. 11 Pt. II (with s. 40(7)); S.I. 1994/2553, art. 2

5 The following sections shall be substituted for section 14—

**“14 Provisions as to agricultural tenancies in England and Wales.**

(1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—

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- (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture or use for forestry, and
  - (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,
- whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of the Agricultural Holdings Act 1986 (in this Act referred to as “the Act of 1986”)—
- (a) the holding shall not be taken to have ceased to be an agricultural holding; and
  - (b) where only part of the holding is comprised in opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,
- by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.
- (3) For the purposes of the Act of 1986, the tenant of the holding shall not be taken to have failed to fulfill his responsibilities to farm in accordance with the rules of good husbandry—
- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
  - (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (4) For the purposes of the Act of 1986 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (5) For the purposes of subsections (1) to (3) of section 27 of the Act of 1986 (Agricultural Land Tribunal’s consent to operation of notice to quit) the condition specified in paragraph (f) of subsection (3) of that section shall not be treated as satisfied if the use for the purpose for which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (6) On a reference to arbitration under section 12 of the Act of 1986 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to

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the occupation of the holding, or of that part of the holding, by the Board for the purpose of carrying on any of the permitted activities.

(7) For the purpose of the operation of section 13 of the Act of 1986 (increases of rent for landlord's improvements) in relation to improvements carried out on the holding, in a case where the improvements have been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvements shall be assessed as if it had not been done.

(8) This section does not extend to Scotland.

#### **14A Provisions as to agricultural tenancies in Scotland.**

(1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect in Scotland where—

- (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture, and
- (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,

whether any of that land is comprised in a compulsory rights order or not.

(2) In this section—

“aftercare condition” means a condition requiring that such steps shall be taken as may be necessary to bring land to the standard required for use for agriculture; and

“restoration condition” has the meaning given to it in section 27A(2) of the Town and Country Planning (Scotland) Act 1972.

(3) For the purposes of the Agricultural Holdings (Scotland) Act 1949 (in this Act referred to as “the Scottish Act of 1949”)—

- (a) the holding shall not be taken to have ceased to be an agricultural holding; and
- (b) where only part of the holding is comprised in the opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,

by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.

(4) For the purposes of the Scottish Act of 1949, the tenant of the holding shall not be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry—

- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
- (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise

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of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.

- (5) For the purposes of the Scottish Act of 1949 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (6) For the purposes of section 25(2) of the Scottish Act of 1949, no account is to be taken of permission granted as mentioned in paragraph (c) of that subsection if the permission—
  - (a) is granted on an application by the National Coal Board; and
  - (b) relates to the working of coal by opencast operations; and
  - (c) is granted subject to a restoration condition and an aftercare condition.
- (7) For the purposes of section 26 of the Scottish Act of 1949 (in which subsection (1) specifies conditions for the giving of consent under section 25 of that Act to the operation of a notice to quit) the condition specified in paragraph (e) of subsection (1) shall not be treated as satisfied if the use for the purpose of which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (8) On a reference to arbitration under section 7 of the Scottish Act of 1949 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbiter shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the Board for the purpose of carrying on any of the permitted activities.
- (9) For the purpose of the operation of section 8 of the Scottish Act of 1949 (which relates to increases of rent for improvements carried out by the landlord) in relation to an improvement carried out on the holding, in a case where the improvement has been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvement shall be assessed as if the improvement had not been so affected.
- (10) The use of land for the working of coal by opencast operations shall not be a use for the purposes of which a landlord shall be entitled to resume the land.”.

6 The following sections shall be substituted for section 15—

**“15 Suspension of certain public rights of ways.**

- (1) Where—
  - (a) the Board apply for opencast planning permission; and

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- (b) over any part of the land to which the application relates there subsists a public right of way, not being a right enjoyed by vehicular traffic,  
the Board may also apply to the Secretary of State for an order suspending the public right of way.
- (2) The Secretary of State shall not make such an order unless—
  - (a) opencast planning permission is granted; and
  - (b) he is satisfied—
    - (i) that a suitable alternative way will be made available by the Board (whether on land comprised in the opencast planning permission or on other land) for use by the public during the period for which the order remains in force; or
    - (ii) that the provision of such an alternative way is not required.
- (3) An order under this section shall specify the date, which shall not be earlier than the making of the order, with effect from which the right of way is suspended.
- (4) Where an order has been made under this section the Secretary of State shall revoke it—
  - (a) if—
    - (i) no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted; and
    - (ii) he is satisfied that there is no early prospect of such activities being so carried on; or
  - (b) as soon after such permitted activities have been so carried on as he is satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended.
- (5) An order under this section shall include such provisions as may appear to the Secretary of State to be appropriate for securing the reconstruction of the way on the restoration of the land over which the right of way subsisted immediately before the order was made.
- (6) Where an order is made under this section then, in connection with the provision of such a suitable alternative way as is referred to in subsection (2) above,—
  - (a) the order under this section may provide that, in so far as the carrying out of any operations, or any change in the use of land, involved in making the alternative way available or in permitting it to be used by the public, constitutes development within the meaning of the Act of 1971, permission for that development shall be deemed to be granted under Part III of that Act subject to such conditions (if any) as may be specified in the order;
  - (b) where the order under this section includes provisions in accordance with paragraph (a) above, the Act of 1971 shall have effect as if they were conditions subject to which the opencast planning permission was granted;

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- (c) if a compulsory rights order referring to the opencast planning permission is made, then, in the application to that order of section 5(5) above, the permitted activities shall be taken to include making an alternative way available for use by the public, and the right exercisable in accordance with that subsection, as against all persons directly concerned, shall include the right to permit the public to use any way so made available; and
  - (d) if the land on which the alternative way is to be made available is specified in the order under this section and is land which does not form part of, but it contiguous with, the land to which the opencast planning permission relates, a compulsory rights order referring to the opencast planning permission may include that land as if it were part of the land comprised in the permission.
- (7) In the application of this section to Scotland, it shall be read as if for “the Act of 1971” there were substituted “the Town and Country Planning (Scotland) Act 1972”.

#### **15A Suspension of public rights of way—supplementary.**

- (1) Before submitting to the Secretary of State an application for an order under section 15 of this Act, the Board shall publish a notice in the prescribed form identifying the right of way and stating—
  - (a) that the Board are proposing to apply for an order suspending it in connection with the working of coal by opencast operations;
  - (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; and
  - (c) that objections to the application for the order may be made in writing to the Secretary of State within such time, not being less than 28 days from the publication of the notice, as may be specified.
- (2) The duty to publish a notice imposed by subsection (1) above is a duty to publish it—
  - (a) in two successive weeks in one or more local newspapers circulating in the locality in which the land over which the right of way subsists is situated; and
  - (b) in the same or any other two successive weeks, in the appropriate Gazette.
- (3) The period within which objections may be made expires when the period specified in the last publication of the notice expires; and any period specified in earlier publications is to be treated as extended accordingly.
- (4) A notice under subsection (1) above shall name a place in the locality where a copy of the application and of a map showing the right of way can be inspected.
- (5) The Board shall also, before submitting such an application to the Secretary of State,—
  - (a) inform—
    - (i) in England and Wales, the district council and, except in the case of a metropolitan district, the county council, and any parish or community council or parish meeting; and

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**Status:** Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.

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- (ii) in Scotland, every local authority in whose area any part of the land over which the right of way subsists is situated of the right to object conferred by subsection (1) above;
  - (b) send them a map showing the right of way and a copy of their notice under subsection (1) above; and
  - (c) affix to some conspicuous object at either end of the right of way a notice giving in the prescribed form the prescribed particulars of their proposed application concerning it and of the right to object.
- (6) If no objection is made by any such authority, other than a parish or community council or parish meeting, as is mentioned in subsection (5) (a) above, or if all objections which are made by any such authority are withdrawn, the Secretary of State, upon being satisfied that the Board have complied with subsections (1) to (5) above, may if he thinks fit make the order.
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to make an order, and shall cause such an inquiry to be held if an objection is made by any such authority and is not withdrawn.
- (8) If the Secretary of State causes such an inquiry to be held, he shall consider all objections to the application which are duly made by any person and not withdrawn and the report of the person who held the inquiry before determining whether to make the order.
- (9) An order under section 15 of this Act may be made either in accordance with the Board's application or subject to such modifications as the Secretary of State may determine.
- (10) If the Secretary of State makes an order, the Board, as soon as may be after the order is made, shall publish a notice in the prescribed form that the order has been made, describing the right of way which is suspended, stating the date on which the order comes into operation and naming a place in the locality where a copy of the order and of any map to which it refers can be inspected at all reasonable hours, and shall serve a like notice and a copy of the order on any body required under this section to be informed of the application for the order.
- (11) The duty to publish a notice imposed by subsection (10) above is a duty to publish it—
  - (a) in one or more local newspapers such as are mentioned in subsection (1) above; and
  - (b) in the appropriate Gazette.
- (12) In this section “the appropriate Gazette” means—
  - (a) the London Gazette in a case where the land over which the right of way subsists is situated in England or Wales; and
  - (b) the Edinburgh Gazette in a case where it is situated in Scotland.”.

7

In section 16—

- (a) in subsections (1) and (2), for the words from “which” to “Act” there shall be substituted the words “in respect of which opencast planning permission has been granted”;

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- (b) in subsection (3), for the words from “comprised” to “Act” there shall be substituted the words “in respect of which the permission was granted”.

F43g .....

**Textual Amendments**  
F43 Sch. 8 para. 8 repealed (24.12.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/3063, art. 1(2)

- 9 In section 38—
  - (a) in paragraph (a)—
    - (i) for the words from “which” to “Act” there shall be substituted the words “in respect of which opencast planning permission has been granted”; and
    - (ii) for the words “authorised purposes” there shall be substituted the words “purpose of carrying on the permitted activities”;
  - (b) in paragraph (b), for the words “comprised in the authorisation” there shall be substituted the words “in respect of which the permission was granted and”;
  - (c) for the words from “fulfilment” to the end of the subsection there shall be substituted the words “permitted activities”

- 10 In section 39(3)—
  - (a) in paragraph (a), for the words “an authorisation under section one of this Act” there shall be substituted the words “opencast planning permission”;
  - (b) in paragraph (b)—
    - (i) for the words from “an” to “Act”, in the first place where it occurs, there shall be substituted the words “opencast planning permission”; and
    - (ii) for the words “out of any authorised operations” there shall be substituted the words “on of any of the permitted activities”; and
  - (c) in paragraph (d), for the words “any of the provisions of the First” there shall be substituted the words “section 15A(4)(c) or any of the provisions of the”.

- 11 In the proviso to section 39(5), for the words “any of the provisions of the First” there shall be substituted the words “section 15A(4)(c) or any of the provisions of the”.

- 12 In section 45(2)—
  - (a) for the words from “an” to “Act” there shall be substituted the words “opencast planning permission has been granted”; F44 . . .
  - (b) .....

**Textual Amendments**  
F44 Sch. 8 para. 12(b) and the preceding “and” repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2), Sch. 11 Pt. II (with s. 40(7)); S.I. 1994/2553, art. 2

- 13 In section 51(1)—



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- (a) the following definition shall be inserted after the definition of “National Trust”—
- ““opencast planning permission” means planning permission which permits the Board to work coal by opencast operations or to carry out operations incidental to such working;”;
- (b) the following definition shall be inserted after the definition of “period of occupation”—
- ““permitted activities” means—
- (a) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and
- (b) the carrying out of any conditions subject to which opencast planning permission has been granted;”;
- (c) the following definition shall be inserted after the definition of “persons directly concerned”—
- ““planning permission” means planning permission under Part III of the Act of 1971;”.
- 14 In section 52(2), the following definition shall be inserted after the definition of “owner”—
- ““planning permission” means planning permission under Part III of the Act of 1972 ;”.
- 15 In paragraph 5(1) of Part I of Schedule 2 (compulsory rights orders)—
- (a) for the words “an authorisation under section one of this Act” there shall be substituted the words “ opencast planning permission ” ; and
- (b) for the words from “an authorisation”, in the second place where those words occur, to “operations” there shall be substituted the words “ opencast planning permission should be granted or should have been granted. ”.
- 16 In Schedule 6, in paragraph 18(2)(c), for the words from “purposes”, in the first place where it occurs, to the end there shall be substituted the words “ activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities ”.
- 17 In Schedule 7, in paragraph 24(3)(a)—
- (a) for the word “authorisation”, in the first place where it occurs, there shall be substituted the words “ opencast planning permission ” ; and
- (b) for the words “had been made for such an authorisation” there shall be substituted the words “ for opencast planning permission had been made ”.

## PART II

### ACQUISITION OF LAND ACT 1981 (C. 67)

- 18 In section 29—
- (a) in subsection (6)—
- (i) for the words “an authorisation under section 1 of the Opencast Coal Act 1958” there shall be substituted the words “opencast planning permission”; and

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- (ii) for the words from “an authorisation”, in the second place where they occur, to “operations” there shall be substituted the words “opencast planning permission should be granted or should have been granted”; and
- (b) the following subsection shall be substituted for subsection (11)—
  - “(11) In this section “opencast planning permission” and “persons directly concerned” have the same meaning as in the Opencast Coal Act 1958.”.

SCHEDULE 9

Sections 40 and 50.

LISTED BUILDINGS AND CONSERVATION AREAS

PART I

ENGLAND AND WALES

1—5. . . . . F45

**Textual Amendments**

**F45** Sch. 9 paras. 1–5, 6(1), 7–12 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

*Dangerous structure orders in respect of listed buildings*

6 (1) . . . . . F46

- (2) In sections 77 and 79 of the <sup>M85</sup>Building Act 1984 and in sections 62, 65 and 69 of the <sup>M86</sup>London Building Acts (Amendment) Act 1939 insert as the final subsection—

“( ) This section has effect subject to the provisions of the Town and Country Planning Act 1971 relating to listed buildings, buildings subject to building preservation orders and buildings in conservation areas.”.

**Textual Amendments**

**F46** Sch. 9 paras. 1–5, 6(1), 7–12 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

**Marginal Citations**

**M85** 1984 c. 55.

**M86** 1939 c. xcvi ii.

7–12 . . . . . F47

*Status:* Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Housing and Planning Act 1986 is up to date with all changes known to be in force on or before 08 May 2024. 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)

### Textual Amendments

- F47** Sch. 9 paras. 1–5, 6(1), 7–12 repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, Sch. 1 Pt. 1, Sch. 3 paras. 1, 2, 4, 6

## PART II

### SCOTLAND

#### *Free-standing objects and structures within curtilage of listed building*

- 13 (1) In section 52(7) of the <sup>M87</sup>Town and Country Planning (Scotland) Act 1972 (definition of “listed building”), for the words from “and for the purposes” to the end substitute—
- “and, for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, the following shall be treated as part of the building—
- (a) any object or structure fixed to the building ;
  - (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so much before 1st July 1948.”.
- (2) Where by virtue of this paragraph an object or structure ceases to be treated as part of a listed building—
- (a) liabilities incurred before the commencement of this paragraph by reason of the object or structure being so treated cease to have effect, and
  - (b) a condition attached to listed building consent ceases to have effect if, or to the extent that, it could not have been attached if this paragraph had been in force ;
- except for the purposes of criminal proceedings begun before the commencement of this paragraph.

### Marginal Citations

- M87** 1972 c. 52.

#### *Late application for listed building consent*

- 14 (1) In subsection (1) of section 53 (control of works for demolition, alteration or extension of listed buildings) of the Town and Country Planning (Scotland) Act 1972, for the words “this Part of this Act” where they appear for the second time, substitute “ subsection (2) of this section ”.
- (2) After subsection (2) of the said section 53 insert—
- “(2A) If written consent is granted by the planning authority or the Secretary of State for the retention of works for the demolition, alteration or extension of

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a listed building which have been executed without consent under subsection (2) of this section, the works are authorised under this Part of this Act from the grant of the consent under this subsection.”

(3) After subsection (3) of the said section insert—

“(3A) Consent under subsection (2) or (2A) of this section is referred to in this Part of this Act as “listed building consent”.”.

(4) At the end of section 54A (limit on duration of listed building consent) of the <sup>M88</sup>Town and Country Planning (Scotland) Act 1972 there shall be added—

“(5) Nothing in this section applies to any consent to the retention of works granted under section 53(2A) of this Act.”.

**Marginal Citations**

**M88** 1972 c. 52.

*Defence to proceedings under section 53*

15 (1) In section 53 of the Town and Country Planning (Scotland) Act 1972 (control of works for demolition, alteration or extension of listed buildings), for subsection (6) (exception for certain urgent works) substitute—

“(6) In proceedings for an offence under this section it shall be a defence to prove the following matters—

- (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building ;
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter ;
- (c) that the works carried out were limited to the minimum measures immediately necessary, and
- (d) that notice in writing justifying in detail the carrying out of the works was given to the planning authority as soon as reasonably practicable.”.

(2) In section 93 of the Town and Country Planning (Scotland) Act 1972 (appeal against listed building enforcement notice), in subsection (1) (grounds of appeal), for paragraph (c) substitute—

“(c) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary ;”.

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*Grant of listed building consent subject to subsequent approval of detail*

- 16 (1) In section 54 of the Town and Country Planning (Scotland Act 1972 (supplementary provisions with respect to listed building consent), after subsection (4) insert—

“(4A) Listed building consent may be granted subject to a condition reserving specified details of the works (whether or not set out in the application) for subsequent approval by the planning authority or, in the case of consent granted by the Secretary of State, specifying whether the reserved details are to be approved by the planning authority or by him.”.

- (2) In paragraph 7(1) of the said Schedule 10 to the 1972 Act (listed building consent : appeal against decision), for the words from the beginning to “and the consent is refused” substitute—

“Where an application is made to the planning authority—

(a) for listed building consent, or

(b) for approval of the authority required by a condition imposed on the granting of listed building consent with respect to details of the works,

and the consent or approval is refused”.

- (3) Renumber paragraph 8 of that Schedule (appeal in default of decision) as sub-paragraph (1) of that paragraph and after it insert—

“(2) Sub-paragraph (1) of this paragraph applies to an application to the planning authority for approval by the authority required by a condition imposed on the granting of listed building consent with respect to details of the works as it applies to an application for listed building consent, with the following modifications—

(a) for references to the prescribed period substitute references to the period of two months from the date of the receipt of the application, and

(b) omit paragraph (b) and the word “or” preceding it.”.

*Application to modify or discharge conditions attached to listed building consent*

- 17 After section 54C of the <sup>M89</sup>Town and Country Planning (Scotland) Act 1972 insert—

**“54D Application, for variation or discharge of conditions.**

(1) Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the planning authority for the variation or discharge of the conditions.

(2) The application shall indicate what variation or discharge of conditions is applied for and the provisions of Part I of Schedule 10 to this Act apply to such an application as they apply to an application for listed building consent.

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- (3) On such an application the planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he think fit.”.

**Marginal Citations**

**M89** 1972 c. 52.

*Extent of exemption accorded to ecclesiastical buildings*

- 18 (1) After section 56 of the <sup>M90</sup>Town and Country Planning (Scotland) Act 1972 insert—

**“56AA Power to restrict exemption of certain ecclesiastical buildings.**

- (1) The Secretary of State may by order provide for restricting or excluding in such cases as may be specified in the order the operation in relation to ecclesiastical buildings of sections 54(1) and 56(2) of this Act (buildings excepted from provisions relating to listed buildings and building preservation notices).

- (2) An order under this section may—

- (a) make provision for buildings generally, for descriptions of building or for particular buildings ;
- (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building ;
- (c) make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 52(7) of this Act) as may be made in relation to a building and make different provision for different parts of the same building ;
- (d) make different provision with respect to works of different descriptions or according to the extent of the works ;
- (e) make such consequential adaptations or modifications of the operation of any other provision of this Act, or of any instrument made under this Act, as appear to the Secretary of State to be appropriate.

- (3) This section is without prejudice to the Church of Scotland Act 1921.”.

- (2) In section 273 (regulations and orders) of the Town and Country Planning (Scotland) Act 1972—

- (a) in subsection (4) (orders to be made by statutory instrument), after “53(3)” insert “ 56AA ”
- (b) in subsection (5) (orders subject to negative resolution), after “1(3)” insert “ 56AA ” ;
- (c) in subsection (9) (power to include supplementary and incidental provision), after “section” insert “ 56AA ”.

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#### Marginal Citations

M90 1972 c. 52

#### *Effect of listed building enforcement notice*

19 After section 95 of the Town and Country Planning (Scotland) Act 1972 insert—

#### **“95A Effect of listed building consent on listed building enforcement notice.**

- (1) If, after the issue of a listed building enforcement notice, consent is granted under section 53(2A) of this Act for the retention of any work to which the listed building enforcement notice relates, the notice shall cease to have effect in so far as it requires steps to be taken which would involve the works not being retained in accordance with the consent.
- (2) If the consent is granted so as to permit the retention of works without complying with some condition subject to which a previous listed building consent was granted, the listed building enforcement notice shall cease to have effect in so far as it requires steps to be taken for complying with that condition.
- (3) The preceding provisions of this section shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the listed building enforcement notice before the relevant provisions of that notice ceased to have effect.”.

#### *Works for preservation of buildings*

20 For section 97 of the <sup>M91</sup>Town and Country Planning (Scotland) Act 1972 (urgent works for preservation of unoccupied buildings) substitute—

#### **“97 Urgent works to preserve building.**

- (1) Where it appears to the planning authority or the Secretary of State that works are urgently necessary for the preservation of—
  - (a) a listed building, or
  - (b) a building in respect of which a direction has been given by the Secretary of State that this section shall apply,they or he may, subject to the following provisions of this section, execute the works, which may consist of or include works for affording temporary support or shelter for the building.
- (2) The ground on which the Secretary of State may give a direction that this section shall apply to a building is that the building is in a conservation area and it appears to him that its preservation is important for maintaining the character or appearance of the conservation area.

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- (3) If the building is occupied works may be carried out only to those parts which are not in use ; and no action may be taken in respect of an excepted building within the meaning of section 56(2) of this Act.
- (4) The owner of the building shall be given not less than 7 days' notice in writing of the intention to carry out the works and the notice shall describe the works proposed to be carried out.

#### **97A Recovery of expenses of works under s. 97.**

- (1) This section has effect for enabling the expenses of works executed under section 97 of this Act to be recovered.
- (2) The planning authority or, as the case may be, the Secretary of State may give notice to the owner of the building requiring him to pay the expenses of the works.
- (3) Where the works consist of or include works for affording temporary support or shelter for the building—
  - (a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used, and
  - (b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.
- (4) The owner may within 28 days of the service of the notice represent to the Secretary of State—
  - (a) that some or all of the works were unnecessary for the preservation of the building,
  - (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time, or
  - (c) that the amount specified in the notice is unreasonable or that the recovery of it would cause him hardship,
 and the Secretary of State shall determine to what extent the representations are justified.
- (5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—
  - (a) to the owner of the building, and
  - (b) to the planning authority, if they carried out the works.”.

#### **Marginal Citations**

**M91** 1972 c. 52.



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### *Control of demolition in conservation areas*

- 21 Section 262A(8) of the <sup>M92</sup>Town and Country Planning (Scotland) Act 1972 (application to buildings in conservation areas of provisions relating to listed buildings) is amended as follows—
- (a) for the words from “section 53” to “section 54C” substitute “ sections 53 to 54D and 56AA ” ;
  - (b) for “sections 92 to 95” substitute “ sections 92 to 96 ” ;
  - (c) after “section 179” insert “ sections 231 and 233, section 242 ” ;
  - (d) after “section 253(1)(b)” insert “ ,(4) and (5), section 257 ” ;
  - (e) after “Schedule 17” insert “ Part IV of Schedule 19 ”.

#### **Marginal Citations**

**M92** 1972 c. 52.

### *Form of application for listed building consent*

- 22 For paragraph 1(1) of Schedule 10 of the Town and Country Planning (Scotland) Act 1972 (regulations as to form and manner of application for listed building consent) substitute—
- “(1) An application for listed building consent shall be made in such form as the planning authority may require and shall contain—
- (a) sufficient particulars to identify the building to which it relates, including a plan, and
  - (b) such other plans and drawings as are necessary to describe the works which are the subject of the application.
- and such other particulars as may be required by the planning authority.
- (1A) Provision may be made by regulations under this Act with respect to the 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 planning authorities or, as the case may be, by the Secretary of State.”.

### *Calling in of application for listed building consent*

- 23 In paragraph 5(2) of Schedule 10 to the <sup>M93</sup>Town and Country Planning (Scotland) Act 1972 (notice, to planning authority that Secretary of State requires further time to consider whether to call in application for listed building consent), for the words from “and sub-paragraph (1)” to the end substitute “ ; and if he gives such a notice the authority shall not grant the listed building consent until he has notified them that he does not intend to require the reference of the application. ”.

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**Marginal Citations**

**M93** 1972 c. 52.

*Application to planning authorities of provisions relating to listed buildings*

24 In Part IV of Schedule 19 to the Town and Country Planning (Scotland) Act 1972 (provisions of Act applying to applications by planning authorities with respect to listed buildings), at the appropriate place insert “ Sections 231 and 233 ”.

SCHEDULE 10

. . . **F48**

**Textual Amendments**

**F48** Sch. 10 and Sch. 11 paras. 1–24, 26, 27 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

SCHEDULE 11

Sections 49 and 53.

PLANNING: MINOR AND CONSEQUENTIAL AMENDMENTS

**PART I**

ENGLAND AND WALES

1—21. . . . . **F49**

**Textual Amendments**

**F49** Sch. 10 and Sch. 11 paras. 1–24, 26, 27 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

*Consequential amendments of other enactments*

22—24. . . . . **F50**

**Textual Amendments**

**F50** Sch. 10 and Sch. 11 paras. 1–24, 26, 27 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

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- 25 (1) The <sup>M94</sup>Industrial Development Act 1982 is amended as follows.
- (2) In section 14 (power of Secretary of State to provide premises and sites), in subsection (2) (restriction on acquisition of buildings) for “section 66 of the Town and Country Planning Act 1971” substitute “section 14A of this Act”.
- (3) After that section insert—

**“14A Meaning of “industrial buildings”.**

- (1) In section 14(2) of this Act “industrial building” means a building which is used or designed for use for carrying on, in the course of a trade or business, a process for or incidental to any of the following purposes—
- (a) the making of any article or part of any article,
  - (b) the altering, repairing, ornamenting, finishing, cleaning, washing, freezing, packing or canning, or adapting for sale, or breaking up or demolition, of any article, or
  - (c) the getting, dressing or preparation for sale of minerals or the extraction or preparation for sale of oil or brine,
- or which is used or designed for use for carrying on, in the course of a trade or business, scientific research.
- (2) For the purposes of subsection (1) 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 part of a building;
  - “minerals” includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale;
  - “scientific research” means any activity in the fields of natural or applied science for the extension of knowledge.”.

**Marginal Citations**

**M94** 1982 c. 52.

*Status: Point in time view as at 20/01/1997. This version of this Act contains provisions that are prospective.*

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### Textual Amendments

- F51** Sch. 10 and Sch. 11 paras. 1–24, 26, 27 repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, Sch. 1 Pt. I, Sch. 3 paras. 1, 2, 4, 6

## PART II

### SCOTLAND

#### *Directions as to modifications of local plans*

- 28 (1) After subsection (2) of section 12 of the <sup>M95</sup>Town and Country Planning (Scotland) Act 1972 (adoption and approval of local plans) insert—
- “(2A) After copies of a local plan have been sent to the Secretary of State and before it has been adopted by the planning authority, the Secretary of State may, if it appears to him that any part G\*f it is unsatisfactory, and without prejudice to his power to make a direction under subsection (3) below, direct the authority to consider modifying the plan in such respects as are indicated in the direction.
- (2B) An authority to whom a direction is given shall not adopt the plan unless they satisfy the Secretary of State that they have made the modifications necessary to confirm with the direction or the direction is withdrawn.”.
- (2) In subsection (1) of that section for the words “(2) and (3)” substitute “ (2), (2A), (2B) and (3) ”.

### Marginal Citations

- M95** 1972 c. 52.

#### *Operation of Use Classes Order on subdivision of planning unit*

- 29 In section 19(2) of the Town and Country Planning (Scotland) Act 1972 (operations and changes of use not amounting to development), in paragraph (f) (use of same prescribed class as existing use) for “the use thereof” substitute “ the use of the buildings or other land or, subject to the provisions of the order, of any part thereof”.

#### *Development orders*

- 30 In section 21 of the Town and Country Planning (Scotland) Act 1972 (development orders), for subsection (3) (general and special orders) substitute—
- “(3) A development order may be made either—

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- (a) as a general order applicable, except so far as the order otherwise provides, to all land, but which may make different provision with respect to different descriptions of land, or
- (b) as a special order applicable only to such land or descriptions of land as may be specified in the order.”.

*Applications to vary or revoke conditions attached to planning permission*

31 After section 28 of the <sup>M96</sup>Town and Country Planning (Scotland) Act 1972 insert—

**“28A Permission to develop land without compliance with conditions previously attached.**

- (1) This section applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (2) Special provisions may be made with respect to such applications—
  - (a) by regulations under section 22 of this Act as regards the form and content of the application, and
  - (b) by a development order as regards the procedure to be followed in connection with the application.
- (3) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
  - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
  - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (4) This section does not apply where the application is made after the previous planning permission has become time-expired, that is to say, the previous permission having been granted subject to a condition as to the time within which the development to which it related was to have begun, that time has expired without the development having been begun.”.

**Marginal Citations**

M96 1972 c. 52.

*Land adversely affecting amenity of neighbourhood*

32 (1) For subsection (1) of section 63 of the Town and Country Planning (Scotland) Act 1972 (proper maintenance of waste land) substitute—

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- “(1) If it appears to a planning authority that the amenity of any part of their district, or an adjoining district, is adversely affected by the condition of any land in their district, they may serve on the owner, lessee and occupier of the land a notice under this section requiring such steps for abating the adverse effect as may be specified in the notice to be taken within such period as may be so specified.”.
- (2) In subsections (1B) and (1C) of the said section, for the words “waste land notice” substitute “ notice under this section ”.
- 33 (1) In subsections (1) and (5) of section 63A (appeals against waste land notices) of the <sup>M97</sup>Town and Country Planning (Scotland) Act 1972, for the words “waste land notice” substitute “ notice under section 63 of this Act ”.
- (2) For paragraph (a) of the said subsection (1) substitute—
- “(a) that neither the amenity of any part of the planning authority’s district nor that of any adjoining district has been adversely affected ;”.
- (3) In paragraph (b) of the said subsection (1), for the word “injury” substitute “ adverse effect ”.

**Marginal Citations**

**M97** 1972 c. 52.

*Appeals against notices under section 63A*

- 34 (1) After subsection (6) of section 63A insert—
- “(7) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section.”.
- (2) After sub-paragraph (1)(a) of paragraph 2 of Schedule 7 (determination of appeals by person appointed by Secretary of State) to the Town and Country Planning (Scotland) Act 1972, insert—
- “(aa) in relation to appeals under section 63A, subsections (4) and (6) ;”.

*Purchase notices : transmission of documents to the Secretary of State*

- 35 (1) In section 170 of the Town and Country Planning (Scotland) Act 1972 (action by planning authority on whom purchase notice is served)—
- (a) in subsection (1)(c) (notice of unwillingness to comply with purchase notice : contents of notice) for the words from “and that they have transmitted” to the end substitute “ and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this subsection ” ;
- (b) in subsection (3) (duty of planning authority to transmit documents to Secretary of State) for the words from “they shall transmit” to the end

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substitute “ then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve ”.

- (2) In paragraph 1 of Schedule 17 to the Town and Country Planning (Scotland) Act 1972 (action by planning authority on whom listed building purchase notice is served)—
- (a) in sub-paragraph (1)(c) (notice of unwillingness to comply with purchase notice : contents of notice) for the words from “and that they have transmitted” to the end substitute “ and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this sub-paragraph. ”;
  - (b) in sub-paragraph (3) (duty of planning authority to transmit documents to Secretary of State) for the words from “they shall transmit” to “reasons” substitute “ then, before they take steps to serve that notice, they shall transmit to the Secretary of State a copy of the purchase notice together with a copy of the notice which they propose to serve under sub-paragraph (1)(c) ”

*Purchase notice relating to land where use  
restricted by virtue of previous planning permission*

- 36 In section 173 of the <sup>M98</sup>Town and Country Planning (Scotland) Act 1972 (power to refuse to confirm purchase notice where land has restricted use by virtue of previous planning permission)—
- (a) in subsection (1) (cases to which the section applies) for “land which has a restricted use” substitute “ land which consists in whole or in part of land which has a restricted use ” ; and
  - (b) in subsection (3) (power of Secretary of State to refuse to confirm purchase notice), for the words “the land ought, in accordance with the previous planning permission,” substitute “ the land having a restricted use by virtue of a previous planning permission ought, in accordance with that permission. ”.

**Marginal Citations**

M98 1972 c. 52.

*Consideration of purchase notice concurrently with related planning appeal*

- 37 (1) In section 175(3) of the Town and Country Planning (Scotland) Act 1972 (relevant period at end of which purchase notice is deemed to have been confirmed) after “relevant period is” insert “ , subject to subsection (3A) of this section, ”, and after that subsection insert—
- “(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the purchase notice transmitted to him under section 170(3) of this Act and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—



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section 33 (appeal against refusal of planning permission, &c.),  
 section 85 (appeal against enforcement notice),  
 section 91 (appeal against refusal of established use certificate),  
 section 93 (appeal against listed building enforcement notice), or  
 paragraph 7 or 8 of Schedule 10 (appeal against refusal of listed building consent, &c.).”

- (2) In paragraph 3(3)(b) of Schedule 17 to the <sup>M99</sup>Town and Country Planning (Scotland) Act 1972 (relevant period at end of which listed building purchase notice is deemed to have been confirmed) after “the relevant period” is” insert “ , subject to sub-paragraph (3A) of this paragraph, ”, and after that sub-paragraph insert—

“(3A) The relevant period does not run if the Secretary of State has before him at the same time both a copy of the listed building purchase notice transmitted to him under paragraph 1(3) of this Schedule and an appeal notice under any of the following provisions of this Act relating to any of the land to which the purchase notice relates—

section 93 (appeal against listed building enforcement notice), or  
 paragraph 7 or 8 of Schedule 10 (appeal against refusal of listed building consent, &c.).”

**Marginal Citations**

**M99** 1972 c. 52

*National Scenic Areas*

38 After section 262B of the Town and Country Planning (Scotland) Act 1972 insert—

**“262C National Scenic Areas.**

- (1) Where it appears to the Secretary of State, after such consultation with the Countryside Commission for Scotland and such other persons or bodies as he thinks fit, that an area is of outstanding scenic value and beauty in a national context, and that special protection measures are appropriate for it, he may designate the area by a direction under this section as a National Scenic Area ; and any such designation may be varied or cancelled by a subsequent direction.
- (2) Notice of any such designation, variation, or cancellation as is mentioned in subsection (1) above shall be published in the Edinburgh Gazette and in at least one newspaper circulating in the vicinity of the Area by the Secretary of State.
- (3) Every planning authority shall compile and make available for inspection free of charge at reasonable hours and at a convenient place a list containing



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such particulars as the Secretary of State may determine of any area in their district which has been designated as a National Scenic Area.

- (4) Where any area is for the time being designated as a National Scenic Area, special attention shall be paid to the desirability of preserving or enhancing its character or appearance in the exercise, with respect to any land in that area, of any powers under this Act.”

*Recovery of expenses of local inquiry*

- 39 (1) For subsection (7) of section 267 (local inquiries) of the <sup>M100</sup>Town and Country Planning (Scotland) Act 1972 and subsections (7) and (8) of section 210 (power to direct inquiries) of the <sup>M101</sup>Local Government (Scotland) Act 1973 substitute—

“(7) The Minister may make orders as to the expenses incurred—

(a) by the Minister in relation to—

(i) the inquiry;

(ii) arrangements made for an inquiry which does not take place; and

(b) by the parties to the inquiry,

and as to the parties by whom any of the expenses mentioned in paragraphs (a) and (b) above shall be paid.

(7A) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—

(a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and

(b) there shall be treated as expenses incurred by the Minister holding the inquiry and expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.

(7B) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—

(a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry.

(b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry, and

(c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and

(d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.”

- (2) After subsection (7B) of the said section 210 of the <sup>M102</sup>Local Government (Scotland) Act 1973 insert—

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“(8) Where the Minister has made an order under subsection (7) of this section requiring any party to pay expenses to him he shall certify the amount of the expenses, and any amount so certified shall be a debt due by that party to the Crown and shall be recoverable accordingly.”.

(3) In subsection (1) of section 233 of the <sup>M103</sup>Local Government (Scotland) Act 1973 (orders, rules and regulations), after “104(1)” insert “210(7)”.

(4) After section 210 of the Local Government (Scotland) Act 1973 insert—

**“210A Recovery of expenses of local inquiry.**

(1) The following provisions of this section apply where a Minister is authorised under or by virtue of any of the following statutory provisions to recover expenses incurred by him in relation to an inquiry—

section 129(1)(d) of the Road Traffic Regulation Act 1984 (expenses of inquiry under that Act),

any other statutory provision to which this section is applied by order of the Minister.

(2) What may be recovered by the Minister is the entire administrative expense of the inquiry, so that, in particular—

(a) there shall be treated as expenses incurred in relation to the inquiry such reasonable sum as the Minister may determine in respect of the general staff expenses and overheads of his department, and

(b) there shall be treated as expenses incurred by the Minister holding the inquiry any expenses incurred in relation to the inquiry by any other Minister or Government department and, where appropriate, such reasonable sum as that Minister or department may determine in respect of general staff expenses and overheads.

(3) The expense of an inquiry which does not take place may be recovered by the Minister from any person who would have been a party to the inquiry to the same extent, and in the same way, as the expense of an inquiry which does take place.

(4) The Minister may by regulations prescribe for any description of inquiry a standard daily amount and where an inquiry of that description does take place what may be recovered is—

(a) the prescribed standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with the inquiry.

(b) expenses actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation or other facilities for the inquiry,

(c) any expenses attributable to the appointment of an assessor to assist the person appointed to hold the inquiry, and

(d) any legal expenses or disbursements incurred or made by or on behalf of the Minister in connection with the inquiry.

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- (5) An order or regulation under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order applying this section to a statutory provision may provide for the consequential repeal of so much of that provision, or any other provision, as restricts the sum recoverable by the Minister in respect of the services of any officer engaged in the inquiry or is otherwise inconsistent with the application of the provisions of this section.”.

#### Marginal Citations

M100 1972 c. 52.

M101 1973 c. 65

M102 1973 c. 65.

M103 1973 c. 65.

#### *Orders as to expenses of parties where no local inquiry held*

- 40 (1) After the said section 267 of the <sup>M104</sup>Town and Country Planning (Scotland) Act 1972 insert—

#### “267A Orders as to expenses of parties where no local inquiry held.

- (1) The Secretary of State has the same power to make orders under section 267(7) above in relation to proceedings to which this section applies which do not give rise to a local inquiry as he has in relation to a local inquiry.
- (2) This section applies to proceedings under this Act where the Secretary of State is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him.”.
- (2) In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by person appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings)—
  - (a) in sub-paragraph (3) after the word “shall” insert “ subject to sub-paragraph (4) below”.
  - (b) after sub-paragraph (3) insert—
    - “(4) The person appointed to determine the appeal has the same power to make orders under section 267(7) of this Act in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
    - (5) For the purposes of this paragraph, references to the Minister in subsections (7) and (8) of section 267 shall be read as references to the person appointed by the Secretary of State to determine the appeal.”.

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**Marginal Citations**

M104 1972 c. 52.

*Procedure on applications and appeals disposed of without inquiry or hearing*

41 After section 267A of the <sup>M105</sup>Town and Country Planning (Scotland) Act 1972 insert—

**“267B Procedure on certain appeals and applications.**

- (1) The Secretary of State may by regulations prescribe the procedure to be followed in connection with proceedings under this Act where he is required, before reaching a decision, to afford any person an opportunity of appearing before and being heard by a person appointed by him and which are to be disposed of without an inquiry or hearing to which rules under section 11 of the Tribunals and Inquiries Act 1971 apply.
- (2) The regulations may in particular make provision as to the procedure to be followed—
  - (a) where steps have been taken with a view to the holding of such an inquiry or hearing which does not take place, or
  - (b) where steps have been taken with a view to the determination of any matter by a person appointed by the Secretary of State and the proceedings are the subject of a direction that the matter shall instead be determined by the Secretary of State, or
  - (c) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,
 and may provide that such steps shall be treated as compliance, in whole or in part, with the requirements of the regulations.
- (3) The regulations may also—
  - (a) provide for a time limit within which any party to the proceedings must lodge written submissions and any supporting documents ;
  - (b) prescribe the time limit (which may be different for different classes of proceedings) or enable the Secretary of State to give directions setting the time limit in a particular case or class of case ;
  - (c) empower the Secretary of State to proceed to a decision taking into account only such written submissions and supporting documents as were lodged within the time limit ; and
  - (d) empower the Secretary of State, after giving the parties written notice of his intention to do so, to proceed to a decision notwithstanding that no written submissions were lodged within the time limit, if it appears to him that he has sufficient material before him to enable him to reach a decision on the merits of the case.”.

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**Marginal Citations**

M105 1972 c. 52.

*Power to return appeal for determination by appointed person*

42 In Schedule 7 to the <sup>M106</sup>Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by persons appointed by the Secretary of State), after paragraph 3 (power of Secretary of State to direct that appeal should be determined by him) insert—

- “3A (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 of this Schedule at any time before the deter\*mination of the appeal.
- (2) A direction under this paragraph shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the applicant or appellant, the 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 a direction under this paragraph has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
- (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the person appointed to determine the appeal (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.”

**Marginal Citations**

M106 1972 c. 52.

*Appointment of assessors*

43 In Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (determination of certain appeals by persons appointed by the Secretary of State), in paragraph 5 (local inquiries and hearings), after sub-paragraph (1) insert—

- “(1A) Where a person appointed under this Schedule to determine an appeal—
- (a) holds a hearing by virtue of paragraph 2(2)(b) of this Schedule, or
- (b) holds an inquiry by virtue of this paragraph.”

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*Increase of daily penalties for offences*

- 44 (1) In the provisions of the <sup>M107</sup>Town and Country Planning (Scotland) Act 1972 listed in column 1 of the following Table, which imposes daily penalties for certain offences whose general nature is indicated in column 2, for the amount shown in column 3 substitute the amount shown in column 4.

Table

- (2) The increased amounts applicable by virtue of sub-paragraph (1) apply to every day after the commencement of this paragraph, notwithstanding that the offence began before.

<b>Provision of 1972 Act</b>	<b>Nature of offence</b>	<b>Present maximum daily fine</b>	<b>New maximum daily fine</b>
Section 55(3)	Damage to listed building.	£20	£40
Section 86.	Non-compliance with enforcement notice.	£100	£200
Section 87(8)(b).	Non-compliance with stop notice.	£100	£200
Section 94(2)(a).	Failure to secure compliance with listed building enforcement notice.	£100	£200
Section 98(3).	Failure to secure compliance with tree preservation order.	£50	£100
Section 100(1)(a).	Non-compliance with discontinuance order.	£100	£200
Section 101(2).	Contravention of advertisement control regulations.	£20	£40

**Marginal Citations**

M107 1972 c. 52.

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*Other minor amendments of the Town and Country Planning (Scotland) Act 1972*

- 45 In section 84(7) of the Town and Country Planning (Scotland) Act 1972 (power to serve enforcement notice) after “place” insert “ or, (according to the particular circumstances of the breach) to secure compliance with the conditions or limitations subject to which plan\*ning permission was granted ”.
- 46 In section 99 (enforcement of duties as to replacement of trees) of the Town and Country Planning (Scotland) Act 1972, in subsection (3), after “85(2)” insert “ to(2D) ”.
- 47 In section 158(6)(b) of the Town and Country Planning (Scotland) Act 1972 (compensation for planning decisions restricting development other than new development) for the word “7” there shall be substituted the word “ 8 ”.
- 48 In section 205(3)(a) and 205A(3)(a) of the Town and Country Planning (Scotland) Act 1972 (procedure in anticipation of planning permission, &c.) after “authority” insert “ or ”.
- 49 In section 205(5) of the Town and Country Planning (Scotland) Act 1972 for “204(5)” substitute “ 204(4) ”.
- 50 In section 231 of the Town and Country Planning (Scotland) Act 1972 (validity of development plans and certain orders, decision and directions)—
- (a) at the end of subsection (2)(a) insert “ or as applied under section 181 of the Local Government (Scotland) Act 1973 ”, and
  - (b) at the end of subsection (2)(b) insert “ or under the provisions of that section as applied by or under any other provision of this Act or as applied under section 181 of the Local Government (Scotland) Act 1973. ”.
- 51 In section 260 of the <sup>M108</sup>Town and Country Planning (Scotland) Act 1972 (default powers of the Secretary of State), at the end of subsection (1) insert “ or, in the case of a tree preservation order under section 58 of this Act, as if it had been made and confirmed by the planning authority ”.

**Marginal Citations**  
[M108 1972 c. 52.](#)

- 52 In section 270 of the Town and Country Planning (Scotland) Act 1972 (power to require information as to interest in land) insert—
- “(d) the time when that use began; ,

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(e) the name and address of any person known to the person on whom the notice is served as having used the premises for those purposes ;

(f) the time when any activities being carried out on the premises began.”.

- 53 In sub-paragraph 2(2) of Schedule 7 (determination of certain appeals by person appointed by Secretary of State) of the Town and Country Planning (Scotland) Act 1972, for “85(2)” substitute “ 85(2D) ”.

*Consequential amendments of the Town and Country Planning (Scotland) Act 1972*

- 54 In section 26(1)(a) of the Town and Country Planning (Scotland) Act 1972, for the words “sections 38, 39, 68 and 75 to 78” there shall be substituted the words “ sections 38 and 39 ”.

- 55 In sections 32(4) and 33(5) of the Town and Country Planning (Scotland) Act 1972 for the words “and 27A” substitute “ 27A and 28A ”.

- 56 In section 33(7) of the Town and Country Planning (Scotland) Act 1972 for the words “, 27(1) and 65” there shall be substituted the words “ and 27(1) ”.

- 57 In section 53(4) of the Town and Country Planning (Scotland) Act 1972 omit “ under section 54 of this Act ”.

- 58 In section 267 (local inquiries) of the Town and Country Planning (Scotland) Act 1972, in subsection (9), after “section” insert “ , except where the context otherwise requires, ”.

- 59 In section 275(1) of the Town and Country Planning (Scotland) Act 1972 (interpretation) the following shall be inserted after the definition of “Minister”—  
 ““National Scenic Area” has the meaning assigned to it by section 262C of this Act.”.

- 60 In Parts I and III of Schedule 19 to the Town and Country Planning (Scotland) Act 1972 for “Sections 61 to 66” substitute “ Sections 61 to 63A ”.

*Consequential amendments of other enactments*

- 61 In subsection (5) of section 179 (reference of applications to regional planning authority) of the <sup>M109</sup>Local Government (Scotland) Act 1973, after “27A” insert “28A, ”.



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#### Marginal Citations

M109 1973 c. 65.

- 62 In subsection 8(4) of the Refuse Disposal (Amenity) Act 1978 (application of general provisions of the <sup>M110</sup>Town and Country Planning (Scotland) Act <sup>M111</sup>1972 relating to local inquiries and services of notices) for “to 270” substitute “and 268 to 270”.

#### Marginal Citations

M110 1972 c. 52.

M111 1972 c. 52.

## SCHEDULE 12

Sections 24(3), 39(4), 49(2) and 53(2).

### REPEALS

#### PART I

#### HOUSING

*Repeals coming into force on passing of Act*

Chapter	Short title	Extent of Repeal
1985 c. 71.	Housing (Consequential Provisions) Act 1985.	In Schedule 2, in paragraph 24(8)—  (a) in sub-paragraph (d), the words from “for ‘section 60’ to “1985’ and”;  (b) in sub-paragraph (e), the words from “for the” to “Schedule’ and”;  (c) sub-paragraph (f).

*Repeals coming into force on appointed day*

Chapter	Short title	Extent of repeal
1975 c. 28.	Housing Rents and Subsidies (Scotland) Act 1975.	Section 5(6).

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1977 c. 42.	Rent Act 1977.	<p>In section 69(1), the words “(to be known as a certificate of fair rent)”.</p> <p>In section 70(1), the word “and” before paragraph (b).</p> <p>In Schedule 12, in paragraph 3, the words “unless the dwelling-house is subject to a regulated tenancy”.</p>
1980 c. 51.	Housing Act 1980.	<p>Section 56(3).</p> <p>Section 140.</p>
1980 c. 65.	Local Government, Planning and Land Act 1980.	Section 156(3).
1981 c. 64.	New Towns Act 1981.	<p>Section 43(3) and (4).</p> <p>Section 49(b) and (c).</p>
1985 c. 51.	Local Government Act 1985.	<p>In Schedule 13, in paragraph 14, sub-paragraph (d) and the word “and” preceding it.</p> <p>In Schedule 14, paragraph 58(e).</p>
1985 c. 68.	Housing Act 1985.	<p>Section 30(2).</p> <p>Section 46.</p> <p>In section 127, the word “and” at the end of paragraph (a).</p> <p>In section 452(2), the definition of “housing authority”.</p> <p>Section 453(2).</p> <p>In Schedule 4, in paragraph 7(1), the words from “a housing co-operative” to “management functions”.</p> <p>In Schedule 6, in paragraph 14(2), the words following paragraph (c).</p>
1985 c. 71.	Housing (Consequential Provisions) Act 1985.	In Schedule 2, paragraphs 27, 35(3), 44(3), and 45(2).

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## PART II

### OPENCAST COAL

Chapter	Short title	Extent of repeal
6 & 7 Eliz. 2 c. 69.	Opencast Coal Act 1958.	Sections 1 and 2. Section 9(2). In section 18(2), the words “(apart from this Act)”. In section 39(10), the words “First or”. Section 46(2). Section 48. In section 51, in subsection (1), the definitions of “the authorised purposes” and “authorised operations”. Section 53(2). Schedule 1. In Schedule 9, in paragraph 3(2), the words “under the First Schedule to this Act, or”. Schedule 10.
1971 c. 78.	Town and Country Planning Act 1971.	Section 60(10)(a). In section 216(3), in paragraph (a), the words “or the National Coal Board” and in paragraph (b), the words from “or” to “1958”.
1972 c. 52.	Town and Country Planning (Scotland) Act 1972.	Section 58(10)(a). In section 205(3) and 205A(3), in paragraph (a) the words “or the National Coal Board” and in paragraph (b) the words from “or” to “1958”.
1975 c. 56.	Coal Industry Act 1975.	Section 5. In Schedule 3, paragraphs 3 and 11. Schedule 4.

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1981 c. 67.	Acquisition of Land Act 1981.	In Schedule 4, paragraph 11(5).
1986 c. 5.	Agricultural Holdings Act 1986.	In Schedule 14, paragraph 25.

### PART III

#### MISCELLANEOUS (ENGLAND AND WALES)

Chapter	Short title	Extent of repeal
62 & 63 Vict. c. 19.	Electric Lighting (Clauses) Act 1899.	In the Schedule, in section 10(b), the words “and the express consent of the local authority also”.
16 & 17 Geo. 5 c. 51.	Electricity (Supply) Act 1926.	In Schedule 6, the entry relating to section 21 of the Electricity (Supply) Act 1919.
8 & 9 Geo. 6 c. 43.	Requisitioned Land and War Works Act 1945.	Section 52.
10 & 11 Geo. 6 c. 51.	Town and Country Planning Act 1947.	In Schedule 8, the entry relating to section 21 of the Electricity (Supply) Act 1919.
10 & 11 Geo. 6 c. 54.	Electricity Act 1947.	In Part I of Schedule 4, the entry relating to section 21 of the Electricity (Supply) Act 1919.
11 & 12 Geo. 6 c. 17.	Requisitioned Land and War Works Act 1948.	In the Schedule, paragraph 10.
5 & 6 Eliz. 2 c. 48.	Electricity Act 1957.	In section 33(3), the words “and the next following”.
1968 c. 14.	Public Expenditure and Receipts Act 1968.	In Schedule 3, in paragraph 6, the entry relating to section 290(4) of the Local Government Act 1933.
1971 c. 78.	Town and Country Planning Act 1971.	In section 29A—  (a) in subsection (2), the definition of “the Code of Practice for Access of the Disabled to Buildings”;  (b) subsection (3).  Section 29B(2) and (3).

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In section 32(2), in the proviso, the words “of sections 66 to 86”.

In section 55(4), the words “under section 56 of this Act”.

Sections 66 to 86.

Section 88B(4).

Section 105(1)(c).

Section 110(1).

In section 147(3), the words from “or in respect of” to the end.

Section 151.

Section 165(4).

In section 169—

(a) subsection (5);

(b) in subsection (7), the words from “and no compensation” to the end.

In section 180(4), the words from “and no account” to the end.

Section 185.

Section 191(2).

In section 237(5), the words from “and no compensation” to the end.

Sections 250 to 252.

In section 260(1)(d), the words “grants in accordance with regulations made under section 250 of this Act or”.

In section 287—

(a) in subsection (4), the words “69, 73(6), 74(4), 75(8)”;

(b) in subsection (5)(b), the words “69, 73(6), 75(8) or” and the words from “or an order under section 74(4)” to the end;

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		(c) subsection (7);
		(d) subsection (9).
		In section 290(1)—
		(a) in the definition of “building”, the words in parenthesis;
		(b) the definition of “industrial development certificate”.
		Schedules 12 and 13.
		In Schedule 21—
		(a) in Part I, the references to sections 250, 251(1) and 252;
		(b) in Part II, the references to sections 79 to 81;
		(c) in Part III, the references to sections 72 and 251(2) to (5);
		(d) in Part V, the references to sections 72 and 73 to 86.
		In Schedule 24, paragraphs 20A, 26 to 30 and 70.
1972 c. 42.	Town and Country Planning (Amendment) Act 1972.	Sections 5 and 6.
1972 c. 70.	Local Government Act 1972.	In section 182(1), the words from “(2A)” to the end. Section 183(2). In section 250(4), the words from “(including)” to “in the inquiry”.
		In Schedule 16, paragraphs 1 to 3.
1974 c. 7.	Local Government Act 1974.	In Schedule 6, paragraph 25(4).
1974 c. 32.	Town and Country Amenities Act 1974.	Section 3(1). Section 5.
1976 c. 70.	Land Drainage Act 1976.	In section 96(5), the words from “including” to “in the inquiry”.
1977 c. 40.	Control of Office Development Act 1977.	The whole Act.

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1980 c. 65.	Local Government, Planning and Land Act 1980.	Section 88.  In section 134— (a) in subsection (1), the words “Subject to subsection (2) below,”; (b) subsection (2).  In Schedule 14, paragraphs 6 to 8.  In Schedule 15, paragraphs 1 and 16.  In Part I of Schedule 29, in the entry relating to section 65, the word “waste”.
1981 c. 67.	Acquisition of Land Act 1981.	In Schedule 4, in paragraph 1, in the entry relating to the Local Government Act 1972, the words “section 125(4) and (7)”.
1982 c. 30.	Local Government (Miscellaneous Provisions) Act 1982.	In Schedule 6, in the Table in paragraph 7(b) the entries relating to ss. 15 and 15A of the Town and Country Planning Act 1971.
1982 c. 52.	Industrial Development Act 1982.	Section 15(1)(b).  In Part II of Schedule 2, paragraph 7(1).
1983 c. 47.	National Heritage Act 1983.	In Schedule 4, paragraph 18. Schedule 5, paragraph 6.
1984 c. 27.	Road Traffic Regulation Act 1984.	In section 129(1)(d), the words from “(including” to “in the inquiry”.
1985 c. 51.	Local Government Act 1985.	Section 3(2).  In Schedule 2, paragraph 1(8).

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## PART IV

### MISCELLANEOUS (SCOTLAND)

#### Commencement Information

**I19** Sch. 12 Pt. IV partly in force; Sch. 12 Pt. IV not in force at Royal Assent see s. 57(1)-(3); Sch. 12 Pt. IV in force for specified purposes at 1.6.1996 by S.I. 1996/1276, art. 2(b), Sch.

Chapter	Short title	Extent of repeal
1968 c. 14.	Public Expenditure and Receipts Act 1968.	In Schedule 3, in paragraph 6, the entry relating to section 355(8) of the Local Government (Scotland) Act 1947.
1972 c. 52.	Town and Country Planning (Scotland) Act 1972.	<p>In section 29(2), in the proviso, the words “of sections 64 to 83”.</p> <p>In section 53(2), the word “only” and the words “(in this Act referred to as listed building consent)”.</p> <p>In section 53(4) the words “under section 54 of this Act,”.</p> <p>In section 63(1A), the words from “ ; and references” to “construed”.</p> <p>Sections 64 to 83.</p> <p>Section 85(8).</p> <p>In section 136(3) the words from “or in respect of” to the end.</p> <p>Section 140.</p> <p>Section 154(4).</p> <p>In section 158—</p> <p>(a) Subsection (5).</p> <p>(b) In subsection (7) the words from “and no compensation” to the end.</p> <p>In section 169(4) the words from “and no account” to the end.</p> <p>Section 174.</p>



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Section 180(2).

In section 226(5) the words from “and no compensation” to the end.

Section 231(2)(e).

In section 233(3), the words “(other than an order under section 203(1)(a) of this Act)”.

Sections 237 to 239.

In section 247(1)(d), the words from “in accordance” to “grants”.

In section 273—

(a) In subsection (4), the words “67, 71(6), 72(4), 73(8)”.

(b) In subsection (5) the words “67, 71(6), 73(8)”.

(c) Subsections (7) to (9).

In section 275(1)—

(a) In the definition of “building”, the words “, except in sections 71 to 83 of this Act,”.

(b) the definition of “industrial development certificate”.

In Schedule 19—

(a) in Part I, the reference to sections 237, 238(1) and 239;

(b) in Part II, the references to sections 77 to 79 and 83;

(c) in Part III, the reference to section 70.

In Schedule 22, paragraphs 22 to 25 and 60.

1974 c. 32.

Town and Country  
Amendment Act 1974.

Section 5.

1980 c. 65.

Local Government Planning  
and Land Act 1980.

In section 134(1) the words “Subject to subsection (2) below,”.

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		In Part I of Schedule 30, in the entry relating to section 63, the word “waste”.
1982 c. 52.	Industrial Development Act 1982.	Section 15(1)(b).
		Paragraph 10 of Part II of Schedule 2.
1984 c. 27.	Road Traffic Regulation Act 1984.	In section 129(1)(d) the words from “(including” to “in the inquiry”.

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