



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART V

#### RIGHTS OF OWNERS ETC. TO REQUIRE PURCHASE OF INTERESTS

#### CHAPTER I

#### INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS

#### *Service of purchase notices*

#### **88 Circumstances in which purchase notices may be served.**

- (1) This section applies where—
- (a) on an application for planning permission to develop any land, permission is refused or is granted subject to conditions,
  - (b) by an order under section 65 planning permission in respect of any land is revoked, or is modified by the imposition of conditions, or
  - (c) an order is made under section 71 or paragraph 1 of Schedule 8 in respect of any land.
- (2) If—
- (a) in the case mentioned in subsection (1)(a) or (b), any owner or lessee of the land claims that the conditions mentioned in subsection (3) are satisfied with respect to it, or
  - (b) in the case mentioned in subsection (1)(c), any person entitled to an interest in land in respect of which the order is made claims that the conditions mentioned in subsection (4) are satisfied with respect to it,

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he may, within the prescribed time and in the prescribed manner, serve on the planning authority in whose district the land is situated a notice (in this Act referred to as “a purchase notice”) requiring that authority to purchase his interest in the land in accordance with this Chapter.

- (3) The conditions mentioned in subsection (2)(a) are—
  - (a) that the land has become incapable of reasonably beneficial use in its existing state,
  - (b) in a case where planning permission was granted subject to conditions or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions, and
  - (c) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the planning authority or the Secretary of State has undertaken to grant planning permission.
- (4) The conditions mentioned in subsection (2)(b) are—
  - (a) that by reason of the order the land is incapable of reasonably beneficial use in its existing state, and
  - (b) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise.
- (5) For the purposes of subsection (1)(a) and any claim arising in the circumstances mentioned in that subsection, the [F1conditions referred to in] sections 58 and 59 shall be disregarded.
- (6) A person on whom a repairs notice has been served under section 43 of the M1Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 shall not be entitled to serve a purchase notice in the circumstances mentioned in subsection (1)(a) in respect of the building in question—
  - (a) until the expiration of 3 months beginning with the date of the service of the repairs notice, and
  - (b) if during that period the compulsory acquisition of the building is begun in the exercise of powers under section 42 of that Act, unless and until the compulsory acquisition is discontinued.
- (7) For the purposes of subsection (6) a compulsory acquisition—
  - (a) is started when the notice required by paragraph 3(b) of Schedule 1 to the M2Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 is served, and
  - (b) is discontinued—
    - (i) in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order, and
    - (ii) in any other case, when the order is withdrawn or the Secretary of State decides not to confirm it.
- (8) No purchase notice shall be served in respect of an interest in land while the land is incapable of reasonably beneficial use by reason only of such an order as is mentioned in subsection (1)(c), except by virtue of a claim under subsection (2)(b).

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#### Textual Amendments

- F1** Words in s. 88(5) substituted (1.10.2022) by [Planning \(Scotland\) Act 2019 \(asp 13\)](#), s. 63(2), [sch. 2 para. 6\(5\)](#); [S.S.I. 2022/275](#), reg. 2(2)(f) (with reg. 3)

#### Marginal Citations

- M1** 1997 c. 9.  
**M2** 1947 c. 42.

### [<sup>F2</sup>88A Purchase notices: Crown land

- (1) A purchase notice may be served in respect of Crown land only as mentioned in this section.
- (2) The owner of a private interest in Crown land must not serve a purchase notice unless—
  - (a) he first offers to dispose of his interest to the appropriate authority on equivalent terms, and
  - (b) the offer is refused by the appropriate authority.
- (3) The appropriate authority may serve a purchase notice in relation to the following land—
  - (a) land belonging to Her Majesty in right of her private estates,  
[ land which forms part of the property, rights and interests to which  
<sup>F3</sup>(aa) section 90B(5) of the Scotland Act 1998 applies,]
  - (b) land which forms part of the Crown Estate.
- (4) An offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice.
- (5) Expressions used in this section and in Part 12 (Crown Land) must be construed in accordance with that Part.]

#### Textual Amendments

- F2** S. 88A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 1](#) (with s. 111); [S.S.I. 2006/268](#), art. 3(f)
- F3** S. 88A(3)(aa) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 29\(3\)](#)

### 89 Circumstances in which land incapable of reasonably beneficial use.

Where, for the purpose of determining whether the conditions specified in section 88(3) or (4) are satisfied in relation to any land, any question arises as to what is or would in any particular circumstances be a reasonably beneficial use of that land, then, in determining that question for that purpose, no account shall be taken of any prospective development other than any development specified in paragraph 1 or 2 of Schedule 11.

**Changes to legislation:**

Town and Country Planning (Scotland) Act 1997, Cross Heading: Service of purchase notices is up to date with all changes known to be in force on or before 16 April 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)