



# Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

## 1997 CHAPTER 9

### PART I

#### LISTED BUILDINGS

#### CHAPTER V

##### PREVENTION OF DETERIORATION AND DAMAGE

##### *Compulsory acquisition of listed building in need of repair*

#### **42 Compulsory acquisition of listed building in need of repair.**

- (1) If it appears to the Secretary of State that reasonable steps are not being taken for properly preserving a listed building, he—
  - (a) may authorise the planning authority for the district in which the building is situated to acquire compulsorily under this section the building and any relevant land, or
  - (b) may himself compulsorily acquire them under this section.
- (2) The Secretary of State shall not make or confirm a compulsory purchase order for the acquisition of any building by virtue of this section unless he is satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose.
- (3) The <sup>M1</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory acquisition of land under this section and accordingly shall have effect—
  - (a) as if this section had been in force immediately before the commencement of that Act, and

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- (b) as if references in it to the Minister of Transport and to the enactments specified in section 1(1)(b) of that Act included respectively references to the Secretary of State and to this section.
- (4) Any person having an interest in a building which it is proposed to acquire compulsorily under this section may, within 28 days after the service of the notice required to be served under paragraph 3(b) of Schedule 1 to that Act of 1947, apply to the sheriff for an order prohibiting further proceedings on the compulsory purchase order.
- (5) If on an application under subsection (4) the sheriff is satisfied that reasonable steps have been taken for properly preserving the building, he shall make an order accordingly.
- (6) Any person aggrieved by the decision of the sheriff on an application under subsection (4) may appeal against the decision to the Court of Session, but only on a question of law.
- [<sup>F1</sup>(6A) This section does not permit the acquisition of any interest in Crown land unless—
- (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
  - (b) the appropriate authority consents to the acquisition.]
- (7) In this section “relevant land”, in relation to any building, means the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

#### Textual Amendments

**F1** S. 42(6A) inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 121(4), [Sch. 5 para. 5](#) (with s. 111); [S.S.I. 2006/268](#), art. 3(f)

#### Marginal Citations

**M1** 1947 c. 42.

### 43 Repairs notice as preliminary to acquisition under section 42.

- (1) The compulsory purchase of a building under section 42 shall not be started by the planning authority or by the Secretary of State unless at least 2 months previously the authority or, as the case may be, the Secretary of State has served on the owner of the building a notice under this section (in this section referred to as a “repairs notice”)—
- (a) specifying the works which the authority or, as the case may be, the Secretary of State considers reasonably necessary for the proper preservation of the building, and
  - (b) explaining the effect of sections 42 to 45,
- and the repairs notice has not been withdrawn.
- (2) Where—
- (a) a building is demolished after a repairs notice has been served in respect of it by a planning authority or the Secretary of State, but

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- (b) the Secretary of State is satisfied that he would have confirmed or, as the case may be, would have made a compulsory purchase order in respect of the building had it not been demolished,
- the demolition of the building shall not prevent the authority or the Secretary of State from being authorised under section 42 to acquire compulsorily the site of the building.
- (3) A planning authority or the Secretary of State may at any time withdraw a repairs notice served by them or him on any person and shall, in that event, immediately give him notice of the withdrawal.
- (4) Where a repairs notice has been served on a person in respect of a building, he shall not be entitled to serve a listed building purchase notice in respect of it until the expiration of 3 months beginning with the date of the service of the repairs notice or, if during that period the compulsory acquisition of the building is begun under section 42, unless and until the compulsory acquisition is discontinued.
- (5) For the purposes of this section a compulsory acquisition—
- (a) is started when the planning authority or the Secretary of State, as the case may be, serves the notice required by paragraph 3(b) of Schedule 1 to the <sup>M2</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, 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, where the order is withdrawn or the Secretary of State decides not to confirm it.

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#### Marginal Citations

M2 1947 c. 42.

#### 44 Compensation on compulsory acquisition of listed building.

Subject to section 45, for the purpose of assessing compensation in respect of any compulsory acquisition of land including a building which immediately before the date of the compulsory purchase order was listed, it shall be assumed that listed building consent would be granted—

- (a) for any works for the alteration or extension of the building, or
- (b) for the demolition of the building for the purpose of development of any class specified in Schedule 11 to the principal Act (development not constituting new development).

#### 45 Minimum compensation in case of listed building deliberately left derelict.

- (1) If a planning authority—
- (a) propose to acquire a building compulsorily under section 42, and
  - (b) are satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or redevelopment of the site or any adjoining site,
- they may make a direction for minimum compensation.

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- (2) Subject to the provisions of this section, if the Secretary of State acquires a building compulsorily under section 42 he may, if he is satisfied as mentioned in subsection (1) (b), include a direction for minimum compensation in the compulsory purchase order.
- (3) Without prejudice to so much of paragraph 3(b) of Schedule 1 to the <sup>M3</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (notices stating effect of compulsory purchase order or, as the case may be, draft order) as requires the notice to state the effect of the order, the notice required to be served in accordance with that provision shall—
- (a) include a statement that the authority have made a direction for minimum compensation or, as the case may be, that the Secretary of State has included such a direction in the draft order prepared by him in accordance with paragraph 7 of that Schedule, and
  - (b) explain the meaning of the expression “direction for minimum compensation”.
- (4) A direction for minimum compensation in relation to a building compulsorily acquired is a direction that for the purpose of assessing compensation it is to be assumed, notwithstanding anything to the contrary in the <sup>M4</sup>Land Compensation (Scotland) Act 1963, the principal Act or this Act—
- (a) that planning permission would not be granted for any development or redevelopment of the site of the building, and
  - (b) that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair.
- (5) If—
- (a) a planning authority have made a direction for minimum compensation and the Secretary of State confirms the compulsory purchase order relating to the acquisition of the building in question, or
  - (b) the Secretary of State, under subsection (2) above, includes such a direction in a compulsory purchase order made by him,
- the compensation in respect of the compulsory acquisition shall be assessed in accordance with the direction.
- (6) Where a planning authority make a direction for minimum compensation, or the Secretary of State includes such a direction in a draft compulsory purchase order prepared by him, any person having an interest in the building may, within 28 days after the service of the notice mentioned in subsection (3), apply to the sheriff for an order that the planning authority’s direction for minimum compensation be reversed or, as the case may be, that such a direction be not included in the compulsory purchase order as made by the Secretary of State.
- (7) If the sheriff is satisfied that the building has not been deliberately allowed to fall into disrepair for the purpose mentioned in subsection (1), he shall make the order applied for.
- (8) A person aggrieved by the decision of the sheriff on an application under subsection (6) may appeal against the decision to the Court of Session, but only on a question of law.
- (9) The rights conferred by subsections (6) and (8) shall not prejudice those conferred by section 42(4) and (6).

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### Marginal Citations

**M3** 1947 c. 42.

**M4** 1963 c. 51.

## 46 Ending of rights over land compulsorily acquired.

- (1) Subject to the provisions of this section, upon the completion by the acquiring authority of a compulsory acquisition of land under section 42—
  - (a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land and all other rights or servitudes in or relating to that land shall be extinguished, and
  - (b) any such apparatus shall vest in the acquiring authority.
- (2) Subsection (1) shall not apply to—
  - (a) any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking,
  - (b) any right conferred by or in accordance with [<sup>F2</sup>the electronic communications code] on the operator of [<sup>F3</sup>an electronic communications code network] , or
  - (c) any [<sup>F4</sup>electronic communications apparatus] kept installed for the purposes of any [<sup>F5</sup>such network] .
- (3) In respect of any right or apparatus not falling within subsection (2), subsection (1) shall have effect subject to—
  - (a) any direction given by the acquiring authority before the completion of the acquisition that subsection (1) shall not apply to any right or apparatus specified in the direction, and
  - (b) any agreement which may be made (whether before or after the completion of the acquisition) between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs.
- (4) Any person who suffers loss by the extinguishment of a right or servitude or the vesting of any apparatus under this section shall be entitled to compensation from the acquiring authority.
- (5) Any compensation payable under this section shall be determined in accordance with the <sup>M5</sup>Land Compensation (Scotland) Act 1963.

### Textual Amendments

- F2** Words in s. 46 substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 14(2)(a)**
- F3** Words in s. 46 substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 14(2)(b)**
- F4** Words in s. 46 substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 14(2)(c)**
- F5** Words in s. 46 substituted (17.9.2003) by [The Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 14(2)(d)**

### Marginal Citations

**M5** 1963 c. 51.

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

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

- s. 82(1)(aa)-(ad) inserted by [2006 asp 17 s. 55\(5\)](#)