



THE SCOTTISH LAW COMMISSION -

(SCOT. LAW COM. No. 24)

**TOWN AND COUNTRY PLANNING
(SCOTLAND) BILL**

**Report on the Consolidation of
Certain Enactments relating to
Town and Country Planning
in Scotland**

*Presented to Parliament
by the Secretary of State for Scotland and the Lord Advocate
by Command of Her Majesty
April 1972*

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The Scottish Law Commission

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO TOWN AND COUNTRY PLANNING IN SCOTLAND

TO: THE RIGHT HONOURABLE GORDON CAMPBELL, M.C., M.P.,
One of Her Majesty's Principal Secretaries of State, and

THE RIGHT HONOURABLE NORMAN RUSSELL WYLIE, Q.C., M.P.,
Her Majesty's Advocate.

The Town and Country Planning (Scotland) Bill which is the subject of this Report consolidates various enactments relating to town and country planning in Scotland. In order to facilitate a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report.

All our recommendations are intended to remove anomalies. Some of them are certainly not of "substantial importance" and could therefore have been dealt with as "corrections and minor improvements" under the Consolidation of Enactments (Procedure) Act 1949. But others, though not of great importance, cannot unhesitatingly be placed in this class.

The Scottish Development Department have been consulted and agree with our recommendations.

J. O. M. HUNTER

Chairman of the Scottish Law Commission

7th April 1972.

APPENDIX

Duration of Conditions relating to Office Development

1. Section 18(2) and (3) of the Control of Office and Industrial Development Act 1965 provide that conditions subject to which planning permission has been, or is deemed to have been, granted under the provisions of Part I of that Act are to cease to have effect on the date on which that Part expires. Sections 86 to 88 of the Town and Country Planning (Scotland) Act 1969 provide for further cases in which conditions relating to office development are required to be, or are deemed to have been, attached to planning permissions. We recommend that s. 18(2) and (3) of the Act of 1965 should also bring these conditions to an end on the date referred to above.

Effect is given to this recommendation in clause 83(2) and (3) where the reference to "these provisions" covers clauses 77 to 79 in which ss. 86 to 88 of the Act of 1969 are consolidated.

Compensation for Planning Decisions restricting New Development: Withdrawal of Claims

2. Section 22(5) of the Town and Country Planning (Scotland) Act 1954 provides that where a claim for compensation under Part II of that Act is received by the Secretary of State he shall give notice of the claim to every person appearing to him to have an interest in the land to which the planning decision related. The Secretary of State is not obliged to give this notice if the claim is withdrawn and, if it appears to the Secretary of State, inter alia, that compensation is excluded by s. 20 or s. 21 of the Act, he shall notify the claimant accordingly. Since 1954 there have been further enactments excluding compensation under Part II of the Act of 1954, viz. s. 8(5) of the Control of Office and Industrial Development Act 1965, s. 24(4) of the Industrial Development Act 1966 and s. 68(6) of the Town and Country Planning (Scotland) Act 1969. We recommend that s. 22(5) of the Act of 1954 be amended so that the Secretary of State is also able to give the claimant notification as mentioned above in any case which the Secretary of State thinks is within these later provisions.

Effect is given to this recommendation in clause 143(4)(a) of the Bill where the reference to clause 136 covers clause 136(3) in which the later enactments are consolidated.

Notice to be Served on Owner or Lessee following on Purchase Notice served on Local Planning Authority by Owner or Lessee

3. Section 17 of the Town and Country Planning (Scotland) Act 1947 as originally enacted (Obligation to purchase land on refusal of planning permission in certain cases) provided for service by an owner or lessee of a purchase notice on the local planning authority and the compulsory acquisition in certain circumstances of the interest of the owner or lessee. Section 17 was amended by section 34(1) of, and Schedule 7 to, the Town and Country Planning (Scotland) Act 1959 to provide for the local planning authority serving a notice on the owner stating their intentions regarding purchase of the interest of the owner.

Section 34(3) of the Act of 1959 provided for an owner serving a further purchase notice where a decision of the Secretary of State to confirm a purchase notice has been quashed. Section 17 was further amended by paragraph 12(a) of Schedule 9 to the Town and Country Planning (Scotland) Act 1969 to provide for the compulsory acquisition of the interest of the owner where the local planning authority had not served the appropriate notice on the owner. Clearly the amendments made by section 34 of, and Schedule 7 to, the Act of 1959 and by paragraph 12(a) of Schedule 9 to the Act of 1969 should have referred to "owner or lessee", not "owner". The effect of the error is to be seen in section 17(1A), (1B) and (2) of the Act of 1947, as set out in Schedule 9 to the Act of 1959, when compared with the remainder of that section, and in section 17 (1AA) of the Act of 1947 as set out in the said paragraph 12(a). We recommend that the words "or lessee" should be inserted in section 34(1) and (3) of, and Schedule 7 to, the Act of 1959 and in paragraph 12(a) of Schedule 9 to the Act of 1969 after the word "owner" wherever that word occurs.

Effect is given to this recommendation in clauses 170(1) to (4) and 175(4).

No Withdrawal of Constructive Notice to Treat

4. Subsection (4) of section 17 of the Town and Country Planning (Scotland) Act 1947 provides that the power conferred by section 5(2) of the Acquisition of Land (Assessment of Compensation) Act 1919 to withdraw a notice to treat is not to be exercisable in the case of a notice to treat which is deemed to have been served by virtue of the said section 17. The said section 5(2) of the Act of 1919 has now been superseded by s. 39 of the Land Compensation (Scotland) Act 1963. Paragraph 14 of Schedule 5 to the Town and Country Planning (Scotland) Act 1959 makes similar provision in relation to the withdrawal of a notice to treat deemed to have been served by virtue of Part IV of that Act. Section 42 of the Town and Country Planning (Scotland) Act 1969 enables a person to serve a "listed building purchase notice" if his application for listed building consent is refused and certain other requirements are fulfilled. The proceedings on, and effect of, such a notice are set out in Part III of Schedule 4 to that Act which closely corresponds to the provision of section 17 of the Act of 1947 relating to purchase notices. There is, however, no provision in the said section 42 corresponding to the said s. 17(4) or paragraph 14 of the said Schedule 5. We recommend that those provisions should cover listed building purchase notices also. If a notice to treat which is deemed to have been served under Part III of Schedule 4 to the Act of 1969 could be withdrawn the whole object of those provisions would, of course, be defeated.

Effect is given to this recommendation in clause 197 where the reference to the provisions of Part IX of the Bill covers clause 179 in which s. 42 of the Act of 1969 is consolidated.

Assessment of Statutory Undertakers' Compensation

5. Schedule 4 to the Town and Country Planning (Scotland) Act 1945 provides that where the amount of any such compensation as is mentioned in paragraph 1 of that Schedule falls to be ascertained in accordance with the provisions of

that Schedule, the compensation shall, in default of agreement, be assessed by the tribunal constituted in accordance with the provisions of Part II of that Schedule. The said paragraph 1 covers compensation to statutory undertakers for loss consequent on certain planning decisions or the compulsory acquisition of their land or the extinguishment of their rights. Section 74(7) of the Town and Country Planning (Scotland) Act 1969 creates a new type of compensation analogous to that covered by the said paragraph 1. We recommend that that compensation should also be assessed by that tribunal.

Effect is given to this recommendation by clause 229(1) where the reference to clause 227 covers compensation under clause 226(3) (see clause 227(1)) in which s. 74(7) of the Act of 1969 is consolidated.

Exercise of Powers in relation to Crown Land

6. Section 83(2)(b) of the Town and Country Planning (Scotland) Act 1947 provides that, in general, the restrictions or powers imposed or conferred by Part II of that Act shall apply and be exercisable in relation to Crown land to the extent of any interest therein for the time being held otherwise than by or on behalf of the Crown. By virtue of s. 25(5) of the Control of Office and Industrial Development Act 1965 and s. 60(2) of the Town and Country Planning (Scotland) Act 1969 this provision now applies also to the restrictions and powers contained in the Act of 1965 and Part V of the Act of 1969. In the result, s. 83(2)(b) can be consolidated so as to apply to all the restrictions and powers contained in Parts III, IV and V of the Bill except those in three clauses which are derived from ss. 6, 13 and 14 of the Civic Amenities Act 1967. The first of these (clause 97) enables a local authority to execute, after notice to the owner, works which are urgently necessary for the preservation of an unoccupied listed building. The second two (clauses 60 and 99) impose a duty on the owner of the land to replace a tree in respect of which a tree preservation order is in force if it is removed or destroyed illegally or in certain other cases. The local planning authority can serve a notice to enforce the duty and, if necessary, do what is required at the expense of the person in default. We understand that Her Majesty and the Crown Estate Commissioners are agreeable to the application of s. 83(2)(b) of the Act of 1947 to these provisions of the Act of 1967 and we recommend that the section should so apply.

Effect is given to this recommendation in clause 253(1)(b) where the reference to Parts IV and V of the Bill covers the clauses mentioned above.