SCHEDULE 2

Regulation 6

COMPENSATION FOR RIGHTS OF ENTRY ETC.

Interpretation

1. In this Schedule—

"the 1961 Act" ("*Deddf 1961*") means the Land Compensation Act 1961(**1**);

"grantor" ("*grantwr*") means a person who has granted, or joined in the granting of, any rights pursuant to section 78G(2);

"relevant interest" ("*buddiant perthnasol*") means an interest in land out of which rights have been granted pursuant to section 78G(2).

Period for making an application

2. An application for compensation shall be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates—

(a) twelve months after the date of the grant of those rights;

(b) where an appeal is made against a remediation notice in respect of which the rights in question have been granted, and the notice is of no effect by virtue of regulation 14, twelve months after the date of the final determination or abandonment of the appeal; or

(c) six months after the date on which the rights were first exercised.

Manner of making an application

3.—(1) An application shall be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of the appropriate person to whom the rights were granted.

(2) The application shall contain, or be accompanied by—

(a) a copy of the grant of rights in respect of which the grantor is applying for compensation, and of any plans attached to that grant;

(b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and

(c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4 below, and showing how the amount applied for under each sub-paragraph has been calculated.

Loss and damage for which compensation payable

4. Subject to paragraph 5(3) and (5)(b) below, compensation is payable under section 78G for loss and damage of the following descriptions—

(a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;

(b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;

(c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—

(i) is attributable to the grant of the rights or the exercise of them;

(**1**) 1961 c. 33.

(ii) does not consist of depreciation in the value of that interest; and

(iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981(**2**) in pursuance of a notice to treat served on the date on which the rights were granted;

(d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them; and

(e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

Basis on which compensation assessed

5.—(1) The following provisions shall have effect for the purpose of assessing the amount to be paid by way of compensation under section 78G.

(2) The rules set out in section 5 of the 1961 Act (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purpose of assessing any such compensation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account shall be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 4(e) above, expenditure incurred in the preparation of plans or on other similar preparatory matters shall be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

(a) the compensation shall be assessed as if the interest were not subject to the mortgage; and

(b) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation under section 78G shall include an amount equal to the grantor's reasonable valuation and legal expenses.

Payment of compensation and determination of disputes

6.—(1) Compensation payable under section 78G in respect of an interest which is subject to a mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under this Schedule shall be payable—

(a) where the appropriate person and the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;

(b) where the appropriate person and the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; and

(**2**) 1981 c. 67.

(c) in any other case, subject to any direction of the Lands Tribunal or the court, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(3) Any question of the application of paragraph 5(3) above or of disputed compensation shall be referred to and determined by the Lands Tribunal.

(4) In relation to the determination of any such question, sections 2 and 4 of the 1961 Act (procedure on reference to the Lands Tribunal and costs) shall apply as if—

(a) the reference in section 2(1) of that Act to section 1 of that Act were a reference to sub-paragraph (3) of this paragraph; and

(b) references in section 4 of that Act to the acquiring authority were references to the appropriate person.