

SCHEDULE 6

Regulation 9(17)

COMPENSATION IN RELATION TO OFF-SITE CONDITIONS

- 1.—(1) This Schedule applies in any case where—
- (a) an operator is required by an off-site condition in that person’s permit to carry out works or do other things in relation to land not forming part of the site of the installation or mobile plant notwithstanding that such person is not entitled to carry out the works or do the things;
 - (b) a person whose consent is required has, pursuant to the requirements of regulation 9(13), granted, or joined in granting, to the operator any rights in relation to the land; and
 - (c) those rights, or those rights together with other rights, are such as will enable the operator to comply with any requirements imposed on the operator by the off-site condition.
- (2) In this Schedule –
- “grantor” means a person mentioned in sub-paragraph (1)(b);
- “relevant interest” means an interest in land in respect of which rights have been granted pursuant to the requirements of regulation 9(13).
2. In a case where this Schedule applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this Schedule by the operator.
3. Subject to paragraph 6(3) and (5)(b), compensation shall be payable under this Schedule 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;
 - (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 (Authorisation Procedure) (Scotland) Act 1947(1) 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;
 - (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
 - (f) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the right and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal for Scotland under paragraph 8(2)).
- 4.—(1) Subject to sub-paragraph (2), an entitlement to compensation under this Schedule arises on the date of the grant of the rights.

(1) 1947 c. 42.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) Where, after a grant of rights pursuant to regulation 9(13), the conditions of the permit which rendered the grant of rights necessary are upheld on the final determination of an appeal against those conditions, the entitlement to compensation arises on the date of the final determination of the appeal.

5.—(2) An application for compensation under this Schedule shall be made by the grantor—

- (a) within 12 months from the date on which the entitlement to compensation arises in the case of that grantor; or, as the grantor may decide,
- (b) within six months from the date on which the rights are first exercised.

(2) An application shall be made in writing (or in electronic form) to the operator to whom the rights were granted and delivered at or sent by pre-paid post to the last known address for correspondence of that person.

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

- (a) a copy of the grant of rights in respect of which the grantor's entitlement arises, 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;
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (f) of paragraph 3, and showing how the amount applied for under each sub-paragraph has been calculated; and
- (d) where the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 4(2), a copy of the notice of the final determination of the appeal.

6.—(1) The amount to be paid by way of compensation under this Schedule shall be assessed in accordance with the following sub-paragraphs.

(2) The rules set out in section 12 of the Land Compensation (Scotland) Act 1963(2) (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of this paragraph 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 for Scotland 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 3(e), 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 standard security, within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(3)—

- (a) the compensation shall be assessed as if the interest were not subject to that security;
- (b) no compensation shall be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security); and

(2) 1963 c. 51. Section 12 was repealed in part by the Planning and Compensation Act 1991 (c. 34), Schedules 17 and 19.

(3) 1970 c. 35. Section 9 was amended by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (2000 asp 5), section 31, Schedule 10, paragraph 32(6) and Schedule 11.

- (c) any compensation which is payable in respect of the interest which is subject to the security shall be paid (subject to the maximum due thereunder) to the creditor in that security or, if there is more than one creditor, to the first ranking of such creditors and shall, in either case, be applied by such creditor as if it were proceeds of sale.

7.—(1) Compensation payable under this shall carry interest at the rate for the time being prescribed under section 40 of the Land Compensation (Scotland) Act 1963 from the date specified in sub-paragraph (2) until payment.

(2) The date specified in this sub-paragraph is—

- (a) in the case of compensation payable by virtue of paragraph 3(a) or (b), the date of depreciation;
- (b) in the case of compensation payable by virtue of paragraph 3(c), (d) or (e), the date on which the loss is sustained or the damage done or, where injurious affection is sustained, the date of the injurious affection;
- (c) in the case of compensation payable by virtue of paragraph 3(f), the date on which the expenses become payable.

(3) If it appears to any person (“the first person”) that the first person may become liable to pay to another person (“the second person”) compensation under this Schedule or interest under this paragraph the first person may, if the second person requests in writing for the first person to do so, make one or more payments on account of such compensation or interest.

(4) If, after a payment has been made by any person under sub-paragraph (3)—

- (a) it is agreed or determined that compensation or interest is not liable to be paid; or
- (b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,

the payment or, as the case may be, excess shall be recoverable by that person.

8.—(1) Amounts of compensation determined under this Schedule shall be payable—

- (a) where the operator and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) where the operator and the grantor or such a creditor agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Lands Tribunal for Scotland, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(2) Any question of the application of paragraph 6(3) or of disputed compensation shall be referred to and determined by the Lands Tribunal for Scotland.

(3) In relation to the determination of any such question, sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure on reference to the Lands Tribunal and expenses)(4) shall apply as if—

- (a) the reference in section 9(1) of that Act to section 8 of that Act were a reference to sub-paragraph (2), and
- (b) references in section 11 of that Act to the acquiring authority were references to the operator.

(4) Section 9 was amended by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 33, paragraph 7(2).