



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

### PART VIII

#### COMPENSATION FOR OTHER PLANNING RESTRICTIONS

##### *Revocation or modification of planning permission*

#### **153 Compensation where planning permission revoked or modified**

- (1) Where planning permission is revoked or modified by an order under section 42 of this Act, (other than an order which takes effect by virtue of section 43 of this Act and without being confirmed by the Secretary of State), then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person interested in the land—
  - (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification ; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,the local planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any work carried out before the grant of the permission which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that permission.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted for development of the land of any class specified in Schedule 6 to this Act.
- (5) In this Part of this Act any reference to an order under section 42 of this Act includes a reference to an order under the provisions of that section as applied by section 49(2) of this Act.

#### **154 Application of s. 153 to special cases of refusal or conditional grant of planning permission**

- (1) The provisions of this section shall have effect where—
  - (a) planning permission for the development of land has been granted by a development order; and
  - (b) that permission is withdrawn, whether by the revocation or amendment of the order or by the issue of directions under powers in that behalf conferred by the order; and
  - (c) on an application made in that behalf under Part III of this Act, planning permission for that development is refused, or is granted subject to conditions other than those previously imposed by the development order.
- (2) In any case falling within subsection (1) of this section, the provisions of section 153 of this Act shall apply as if the planning permission granted by the development order—
  - (a) had been granted by the local planning authority under Part III of this Act; and
  - (b) had been revoked or modified by an order under section 42 of this Act,and the provisions of section 155 (except subsection (5)(b) thereof) and of sections 156 and 157 of this Act shall apply as if references therein to an order under section 42 of this Act were references to (the planning decision whereby the planning permission in question is refused, or is granted subject to conditions other than those previously imposed by the development order.
- (3) This section shall not apply in relation to planning permission for the development of operational land of statutory undertakers.
- (4) No compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.

#### **155 Recording and apportionment of compensation for depreciation**

- (1) Where compensation becomes payable under the preceding provisions of this Part of this Act, and includes compensation for depreciation of an amount exceeding £20, the local planning authority shall (if it appears to them to be practicable to do so) apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates, and give particulars of any such apportionment to the claimant and to every other person (if any) entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.
- (2) In carrying out an apportionment under subsection (1) of this section, the local planning authority shall divide the land into parts, and shall distribute the compensation for depreciation between those parts, according to the way in which

---

*Status: This is the original version (as it was originally enacted).*

---

different parts of the land appear to the authority to be differently affected by the order in consequence of which the compensation is payable.

- (3) Section 145(2) of this Act, and any regulations made by virtue thereof, shall have effect with respect to any such apportionment (subject to any necessary modifications) as they have effect with respect to an apportionment under section 147(1) of this Act.
- (4) On a reference to the Lands Tribunal by virtue of subsection (3) of this section, subsections (1) and (2) of this section, so far as they relate to the making of an apportionment, shall apply with the substitution, for references to the local planning authority, of references to the Lands Tribunal.
- (5) Where compensation becomes payable under the preceding provisions of this Part of this Act, and includes compensation for depreciation exceeding £20, the local planning authority shall cause notice of that fact in the prescribed form, specifying the land to which the compensation relates and the amount of the compensation for depreciation and any apportionment thereof under this section, to be recorded in the appropriate Register of Sasines, and shall send a copy of the notice to the Secretary of State; and subsection (5) of section 147 of this Act shall have effect with respect to such compensation for depreciation as it has effect with respect to compensation under Part VII of this Act, subject, however, to any necessary modifications, and, in particular, with the substitution for references to the compensation mentioned in that section, of references to the compensation for depreciation specified in the notice.
- (6) In this section and in section 156 of this Act " compensation for depreciation " means so much of any compensation payable under the preceding provisions of this Part of this Act as is payable in respect of loss or damage consisting of depreciation of the value of an interest in land.

## **156 Contribution by Secretary of State towards compensation in certain cases**

- (1) Where a copy of the notice under section 155 of this Act is given to the Secretary of State in consequence of the making of an order under section 42 of this Act, and the circumstances are such that, if the permission revoked or modified by the order had been refused, or, as the case may be, had been granted as so modified, at the time when it was granted, compensation under Part VII of this Act could have been claimed and would have been payable by the Secretary of State, the Secretary of State may, subject to the provisions of this section, pay to the local planning authority a contribution of the amount appearing to him to be the amount of compensation which would have been so payable by him under Part VII of this Act.
- (2) The amount of any such contribution shall not exceed—
  - (a) the amount of the compensation for depreciation paid by the local planning authority; or
  - (b) the unexpended balance of established development value, at the date of the making of the order, of the land in respect of which that compensation was paid.
- (3) Regulations made under this section shall make provision, in relation to cases where the Secretary of State proposes to pay a contribution under this section—
  - (a) for requiring the Secretary of State to give notice of his proposal to persons entitled to such interests as may be prescribed in the land to which the proposal relates, and to such other persons (if any) as may be determined in accordance with the regulations to be affected by the proposal;

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) for enabling persons to whom notice of the proposal is given to object to the proposal, on the grounds that compensation would not have been payable as mentioned in subsection (1) of this section, or that the amount of the compensation so payable would have been less than the amount of the proposed contribution ;
- (c) for enabling any person making such an objection to require the matter in dispute to be referred to the Lands Tribunal for determination; and
- (d) where a contribution under this section is paid, for applying (with any necessary modifications) the provisions of Part VII of this Act as to the reduction or extinguishment of the unexpended balance of established development value of land, as if the contribution had been a payment of compensation under that Part of 'this Act.

### **157 Recovery, on subsequent development, of compensation under s. 153**

- (1) In relation to notices recorded under the provisions of section 147 of this Act, as applied by the preceding provisions of this Part of this Act, sections 148 and 149 of this Act shall have effect as they have effect in relation to compensation notices recorded as therein mentioned:

Provided that, in a case where the compensation under section 153 of this Act specified in such a notice became payable in respect of an order modifying planning permission, the said sections shall not apply to development in accordance with that permission as modified by the order.

- (2) Subject to subsection (3) of this section, any sum recovered by the Secretary of State under section 148 of this Act, as applied by subsection (1) of this section, shall be paid to the local planning authority who paid the compensation to which that sum relates.
- (3) In paying any such sum to the local planning authority, the Secretary of State shall deduct therefrom—
- (a) the amount of any contribution paid by him under section 156 of this Act in respect of the compensation to which the sum relates;
  - (b) the amount of any grant paid by him under Part XIII of this Act in respect of that compensation ;

Provided that, if the sum recovered by the Secretary of State is an instalment of the total sum recoverable, or is recovered by reference to development of part of the land in respect of which the compensation was payable, any deduction to be made under paragraph (d) or paragraph (b) of this subsection shall be a deduction of such amount as the Secretary of State may determine to be the proper proportion of the amount referred to in that paragraph.

- (4) For the purposes of sections 148 and 149 of this Act, in their application by virtue of this section to compensation calculated under section 153 of this Act, the expression "new development" shall include—
- (a) any development of a class specified in paragraph 1 or 3 of Schedule 6 to this Act which is carried out otherwise than subject to the Condition set out in Schedule 16 to this Act; and
  - (b) any development excluded by subsection (2) of section 263 of this Act from that Schedule in its application to any determination to which subsection (1) of the said section 263 applies.

*Other restrictions*

**158 Compensation for planning decisions restricting development other than new development**

- (1) The provisions of this section shall have effect where, on an application for planning permission to carry out development of any class specified in Part II of Schedule 6 to this Act, the Secretary of State, either on appeal or on the reference of the application to him for determination, refuses the permission or grants it subject to conditions.
- (2) If, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that the value of the interest of any person in the land is less than it would have been if the permission had been granted, or had been granted unconditionally, as the case may be, the local planning authority shall pay to that person compensation of an amount equal to the difference.
- (3) In determining, for the purposes of subsection (2) of this section, whether or to what extent the value of an interest in land is less than it would have been if the permission had been granted, or had been granted unconditionally—
  - (a) it shall be assumed that any subsequent application for the like planning permission would be determined in the same way ; but
  - (b) if, in the case of a refusal of planning permission, the Secretary of State, on refusing that permission, undertook to grant planning permission for some other development of the land in the event of an application being made in that behalf, regard shall be had to that undertaking; and
  - (c) no account shall be taken of any prospective use which would contravene the condition set out in Schedule 16 to this Act.
- (4) Where, on such an application as is mentioned in subsection (1) of this section, planning permission is granted by the Secretary of State subject to conditions for regulating the design or external appearance of buildings, or the size or height of buildings, the Secretary of State, if it appears to him to be reasonable to do so having regard to the local circumstances, may direct that those conditions shall be disregarded, either altogether or to such extent as may be specified in the direction, in assessing the compensation (if any) payable under this section.
- (5) Where, in the case of an application for planning permission to carry out any such development as is mentioned in subsection (1) of this section, a notice under section 70(1) of this Act is served in respect of the whole or part of the land to which the application relates, the preceding provisions of this section shall have effect as if the application had been an effective application for planning permission, and as if that permission had been refused, as mentioned in subsection (1) of this section, in respect of that land or that part thereof, as the case may be.
- (6) For the purposes of subsection (1) of this section—
  - (a) paragraph 3 of Schedule 6 to this Act shall be construed as not extending to works involving any increase in the cubic content of a building erected after the appointed day (including any building resulting from the carrying out of such works as are described in paragraph 1 of that Schedule); and
  - (b) paragraph 7 of that Schedule shall not apply to any such building.
- (7) For the purposes of this section the conditions referred to in sections 38 and 39 of this Act shall be disregarded and no compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.

- (8) No compensation shall be payable under this section in respect of an interest in land in respect of which a purchase notice is served.

**159 Compensation in respect of orders under s. 49**

- (1) The provisions of this section shall have effect where an order is made under section 49 of this Act, requiring a use of land to be discontinued, or imposing conditions on the continuance thereof, or requiring any buildings or works on land to be altered or removed.
- (2) If, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that any person has suffered damage in consequence of the order by depreciation of the value of an interest in the land to which he is entitled, or by being disturbed in his enjoyment of the land, that authority shall pay to that person compensation in respect of that damage.
- (3) Without prejudice to subsection (2) of this section, any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.
- (4) Any compensation payable to a person under this section by virtue of such an order as is mentioned in subsection (1) of this section shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

**160 Compensation for refusal of consent to alteration, etc. of listed building**

- (1) The provisions of this section shall have effect where an application is made for listed building consent for the alteration or extension of a listed building and—
- (a) either the works do not constitute development or they do so but the development is such that planning permission therefor is granted by a development order; and
  - (b) the Secretary of State, either on appeal or on the reference of the application to him, refuses such consent or grants it subject to conditions.
- (2) If, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that the value of the interest of any person in the land is less than it would have been if listed building consent had been granted, or had been granted unconditionally, as the case may be, the local planning authority shall pay to that person compensation of an amount equal to the difference.
- (3) In determining, for the purposes of subsection (2) of this section, whether or to what extent the value of an interest in land is less than it would have been if the permission had been granted, or had been granted unconditionally—
- (a) it shall be assumed that any subsequent application for the like consent would be determined in the same way; but
  - (b) if, in the case of a refusal of listed building consent, the Secretary of State, on refusing that consent, undertook to grant such consent for some other works to the building in the event of an application being made in that behalf, regard shall be had to that undertaking.

- (4) No compensation shall be payable under this section in respect of an interest in land in respect of which a purchase notice is served, whether under section 169, 177 or 179 of this Act, being a purchase notice which takes effect.

#### **161 Compensation where listed building consent revoked or modified**

- (1) Where listed building consent is revoked or modified by an order under paragraph 9 of Schedule 10 to this Act (other than an order which takes effect by virtue of paragraph 11 of that Schedule and without being confirmed by the Secretary of State), then if on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person interested in the building—
- (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification ; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,
- the authority shall pay to that person compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out those works.
- (3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any works carried out before the grant of the listed building consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

#### **162 Compensation for loss or damage caused by service of building preservation notice**

- (1) The provisions of this section shall have effect as respects compensation where a building preservation notice is served.
- (2) The local planning authority shall not be under any obligation to pay compensation under section 160 of this Act, in respect of any refusal of listed building consent or its grant subject to conditions, unless and until the building is included in a list compiled or approved by the Secretary of State under section 52 of this Act; but this subsection shall not prevent a claim for such compensation being made before the building is so included.
- (3) If the building preservation notice ceases to have effect without the building having been included in a list so compiled or approved, then, subject to a claim in that behalf being made to the local planning authority within the time and in the manner prescribed by regulations under this Act, any person who at the time when the notice was served had an interest in the building shall be entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.
- (4) The loss or damage in respect of which compensation is payable under subsection (3) of this section shall include a sum payable in respect of a breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect thereto.

### **163 Compensation in respect of tree preservation orders**

The matters for which provision may under section 58 of this Act be made by a tree preservation order include the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the order, or of the grant of any such consent subject to conditions.

### **164 Compensation in respect of requirement as to replanting of trees**

- (1) The provisions of this section shall have effect where a requirement is imposed by the local planning authority or the Secretary of State by or under a tree preservation order for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order.
- (2) If the Forestry Commissioners decide not to make any advance under section 4 of the Forestry Act 1967 in respect of the replanting and come to that decision on the ground that the requirement frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry, the local planning authority exercising functions under the tree preservation order shall be liable, on the making of a claim in accordance with this section, to pay compensation in respect of such loss or damage, if any, as is caused or incurred in consequence of compliance with the requirement.
- (3) The Forestry Commissioners shall, at the request of the person under a duty to comply with the requirement, give a certificate stating whether they have decided not to make any such advance and, if so, the grounds of their decision.
- (4) A claim for compensation under this section must be served on the local planning authority within twelve months from the date on which the requirement was imposed, or where an application has been made to the Secretary of State for the determination of any question relating to the reasonableness of a requirement, from the date of the decision of the Secretary of State on the application, but subject in either case to such extension of that period as the local planning authority may allow.
- (5) Any question of disputed compensation under this section shall be determined in accordance with section 70 of the Countryside (Scotland) Act 1967.
- (6) Section 67 of the Countryside (Scotland) Act 1967 (grants to local authorities) shall have effect in relation to the expenditure of a local planning authority in or in connection with paying compensation under this section as it has effect in relation to the expenditure mentioned in that section.

### **165 Compensation for restrictions on advertising**

Where, for the purpose of complying with any regulations made under section 61 of this Act, works are carried out by any person—

- (a) for removing an advertisement which was being displayed on 16th August 1948; or
- (b) for discontinuing the use for the display of advertisements of a site used for that purpose on that date,

that person shall, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, be entitled to recover from



that authority compensation in respect of any expenses reasonably incurred by him in that behalf.

## **166 Compensation for loss due to stop notice**

- (1) Where a stop notice under section 87 of this Act ceases to have effect, a person who, at the time when it was first served, had an interest in the land to which it relates shall, in any of the circumstances mentioned in subsection (2) of this section, be entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice.
- (2) A person shall be entitled to compensation under subsection (1) of this section in respect of a prohibition contained in a stop notice in any of the following circumstances:—
  - (a) the enforcement notice is quashed on any of the grounds mentioned in section 85(1)(b), (c), (d) or (e) of this Act;
  - (b) the allegation in the enforcement notice on which the prohibition in the stop notice is dependent is not upheld by reason that the enforcement notice is varied on one of those grounds;
  - (c) the enforcement notice is withdrawn by the local planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates or for its retention or continuance without compliance with a condition or limitation subject to which a previous planning permission was granted;
  - (d) the stop notice is withdrawn.
- (3) A prohibition in a stop notice shall be treated for the purposes of subsection (2) of this section as dependent on an allegation in an enforcement notice if and to the extent that the operations to which the prohibition in the stop notice relates are the same as those alleged in the enforcement notice to constitute a breach of planning control or are so closely associated therewith as to constitute substantially the same operations.
- (4) A claim for compensation under this section shall be made to the local planning authority within the time and in the manner prescribed by regulations under this Act.
- (5) The loss or damage in respect of which compensation is payable under this section in respect of a prohibition shall include a sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition or of any liability arising by virtue of section 87(8) of this Act.

### *Supplementary provisions*

## **167 General provisions as to compensation for depreciation under Part VIII**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation which, under the preceding provisions of this Part of this Act, other than section 163, 164 or 166, is payable in respect of depreciation of the value of an interest in land.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) In relation to the assessment of compensation payable under section 153 of this Act, the value of any interest may be a minus quantity.
- (4) Where an interest in land is subject to a heritable security—
- (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security ;
  - (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security); and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security, or, if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.

## **168 Determination of claims for compensation**

- (1) Except in so far as may be otherwise provided by section 164(5) of this Act, by any tree preservation order or by any regulations made under this Act, any question of disputed compensation under this Part of this Act shall be referred to and determined by the Lands Tribunal.
- (2) In relation to the determination of any such question, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications and to the provisions of any regulations made under this Act.