



Land Compensation (Scotland) Act 1973

1973 CHAPTER 56

PART IV

COMPULSORY PURCHASE

Severance of land

49 Notice to treat in respect of part of agricultural land

- (1) Where an acquiring authority serve notice to treat in respect of any agricultural land on a person (whether in occupation or not) having a greater interest in the land than as tenant for a year or from year to year, and that person has such an interest in other agricultural land comprised in the same agricultural unit as that to which die notice relates, the person on whom the notice is served (hereafter referred to as " the claimant") may, within the period of two months beginning with the date of service of the notice to treat, serve on the acquiring authority a counter-notice—
 - (a) claiming that the other land is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
 - (b) requiring the acquiring authority to purchase his interest in the whole of the other land.
- (2) Where a counter-notice is served under subsection (1) above die claimant shall also, within the period mentioned in that subsection, serve a copy thereof on any other person who has an interest in the land to which the requirement in the counter-notice relates, but failure to comply with this subsection shall not invalidate the counter-notice.
- (3) Subject to subsection (4) below, " other relevant land " in subsection (1) above means—
 - (a) land comprised in the same agricultural unit as the land to which the notice to treat relates, being land in which the claimant does not have such an interest as is mentioned in that subsection ; and

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- (b) land comprised in any other agricultural unit occupied by him on the date of service of the notice to treat, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where an acquiring authority have served a notice to treat in respect of any of the other agricultural land mentioned in subsection (1) above or in respect of other relevant land as defined in subsection (3) above, then, unless and until that notice to treat is withdrawn, this section and section 50 below shall have effect as if that land did not form part of that other agricultural land or did not constitute other relevant land, as the case may be.
- (5) This section shall have effect in relation to a case where a notice to treat is deemed to have been served by virtue of any of the provisions of sections 169 to 177 of the Town and Country Planning (Scotland) Act 1972 (purchase notices) or Schedule 24 to the said Act of 1972 (general vesting declarations) as it has effect in relation to a case where a notice to treat is actually served, and section 50 below shall have effect accordingly.
- (6) This section is without prejudice to the rights conferred by sections 91 and 92 of the Lands Clauses Consolidation (Scotland) Act 1845 (provisions as to divided land).

50 Effect of counter-notice under section 49

- (1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 49 above agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal; and on any such reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid in accordance with its determination of that question.
- (2) Where a counter-notice is accepted as, or declared to be, valid under subsection (1) above the acquiring authority shall be deemed—
 - (a) to be authorised to acquire compulsorily, under the enactment by virtue of which they are empowered to acquire the land in respect of which the notice to treat was served, the claimant's interest in the land to which the requirement in the counter-notice relates; and
 - (b) to have served a notice to treat in respect of that land on the date on which the first-mentioned notice to treat was served.
- (3) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which the compensation is so determined; and where a counter-notice is withdrawn by virtue of this subsection any notice to treat deemed to have been served in consequence thereof shall be deemed to have been withdrawn.
- (4) Without prejudice to subsection (3) above, the power conferred by section 39 of the Land Compensation (Scotland) Act 1963 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section.
- (5) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) above.

- (6) Where by virtue of this section the acquiring authority become, or will become, entitled to a lease of any land but not to the interest of the lessor—
- (a) the authority shall offer to renounce the lease to the lessor on such terms as the authority consider reasonable ;
 - (b) the question of what terms are reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of three months after the date of the offer mentioned in paragraph (a) above, the authority and the lessor have not agreed on that question and that question has not been referred to the Tribunal by the lessor, it shall be so referred by the authority;
 - (c) if that question is referred to the Tribunal the lessor shall be deemed to have accepted the renunciation of the lease at the expiration of one month after the date of the determination of the Tribunal or on such other date as the Tribunal may direct and to have agreed with the authority on the terms of renunciation which the Tribunal has held to be reasonable.

For the purposes of this subsection any terms as to renunciation contained in the lease shall be disregarded.

- (7) Where the lessor refuses to accept any sum payable to him by virtue of subsection (6) above, or refuses or fails to make out his title to the satisfaction of the acquiring authority, they may pay into the Bank within the meaning of section 3 of the Lands Clauses Consolidation (Scotland) Act 1845 any sum payable to the lessor by virtue of that subsection; and the following provisions of the said Act of 1845 shall apply to that sum with the necessary modifications—
- (a) section 75 so far as it relates to the opening of an account,
 - (b) section 76 so far as it relates to the giving of a receipt,
 - (c) section 77,
 - (d) section 79.
- (8) Where an acquiring authority who become entitled to the lease of any land as mentioned in subsection (6) above are a body incorporated by or under any enactment the corporate powers of the authority shall, if they would not otherwise do so, include power to farm that land.

51 Notice of entry in respect of part of agricultural holding

- (1) Where an acquiring authority serve notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or paragraph 8 of Schedule 24 to the Town and Country Planning (Scotland) Act 1972 on the person in occupation of an agricultural holding, being a person having no greater interest therein than as tenant for a year or from year to year, and the notice relates to part only of that holding, the person on whom the notice is served (hereafter referred to as " the claimant ") may, within the period of two months beginning with the date of service of the notice of entry, serve on the acquiring authority a counter-notice—
- (a) claiming that the remainder of the holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
 - (b) electing to treat the notice of entry as a notice relating to the entire holding.
- (2) Where a counter-notice is served under subsection (1) above the claimant shall also, within the period mentioned in that subsection, serve a copy thereof on the landlord of

the holding, but failure to comply with this subsection shall not invalidate the counter-notice.

- (3) Subject to subsection (4) below, "other relevant land" in subsection (1) above means—
- (a) land comprised in the same agricultural unit as the agricultural holding; and
 - (b) land comprised in any other agricultural unit occupied by the claimant on the date of service of the notice of entry, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where an acquiring authority have served a notice to treat in respect of land in the agricultural holding other than that to which the notice of entry relates or in respect of other relevant land as defined in subsection (3) above, then, unless and until that notice to treat is withdrawn, this section and section 52 below shall have effect as if that land did not form part of the holding or did not constitute other relevant land, as the case may be.

52 Effect of counter-notice under section 51

- (1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 51 above agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal; and on any such reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid in accordance with its determination of that question.
- (2) Where a counter-notice is accepted as, or declared to be, valid under subsection (1) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up possession of every part of the agricultural holding to the acquiring authority—
- (a) the notice of entry shall be deemed to have extended to the part of the holding to which it did not relate; and
 - (b) the acquiring authority shall be deemed to have taken possession of that part in pursuance of that notice on the day before the expiration of the year of the tenancy which is current when the counter-notice is so accepted or declared.
- (3) Where the claimant gives up possession of an agricultural holding to the acquiring authority as aforesaid but the authority have not been authorised to acquire the landlord's interest in, or in any of, the part of the holding to which the notice of entry did not relate ("the land not- subject to compulsory purchase")—
- (a) neither the claimant nor the authority shall be under any liability to the landlord by reason of the claimant giving up possession of the land not subject to compulsory purchase or the authority taking or being in possession of it;
 - (b) immediately after the date on which the authority take possession of the land not subject to compulsory purchase they shall give up to the landlord, and he shall take, possession of that land ;
 - (c) the tenancy shall be treated as terminated on the date on which the claimant gives up possession of the holding to the acquiring authority or (if he gives up possession of different parts at different times) gives up possession as aforesaid of the last part, but without prejudice to any rights or liabilities of the landlord or the claimant which have accrued before that date;
 - (d) any rights of the claimant against, or liabilities of the claimant to, the landlord which arise on or out of the termination of the tenancy by virtue of paragraph (c) above (whether under the lease, the Agricultural Holdings

(Scotland) Act 1949, the Crofters (Scotland) Acts 1955 and 1961, the Small Landholders (Scotland) Acts 1886 to 1931 or otherwise) shall be rights and liabilities of the authority, and any question as to the payment to be made in respect of any such right or liability shall be referred to and determined by the Lands Tribunal;

- (e) any increase in the value of the land not subject to compulsory purchase which is attributable to the landlord's taking possession of it under paragraph (b) above shall be deducted from the compensation payable in respect of the acquisition of his interest in the remainder of the holding.
- (4) Where a tenancy is terminated by virtue of subsection (3)(c) above, section 59(1) of the Agricultural Holdings (Scotland) Act 1949 (landlord's right to compensation for deterioration of holding) shall have effect as if the said section 59(1) required the landlord's notice of intention to claim compensation to be served on the acquiring authority and to be so served within three months after the termination of the tenancy.

53 Other procedures for taking possession of part of agricultural holding

- (1) Before taking possession of part only of an agricultural holding under section 84 or 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (alternative procedures for taking possession of land) the acquiring authority shall serve notice of their intention to do so on the person in occupation of the holding, and sections 51 and 52 above shall have effect, subject to any necessary modifications, as if possession were being obtained pursuant to a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (2) Sections 51 and 52 above shall have effect, subject to any necessary modifications, in relation to a notice of entry under paragraph 4 of Schedule 6 to the New Towns (Scotland) Act 1968 (provisions applicable to compulsory acquisitions under that Act) as they have effect in relation to a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (3) Sections 51 and 52(1) and (2) above shall have effect, subject to any necessary modifications, in relation to a notice under section 114 of the Housing (Scotland) Act 1966 (dispossession of tenant where local authority have agreed to purchase or have appropriated land for purposes of Part VII of that Act) as they have effect in relation to a notice of entry under paragraph 3 of Schedule 2 to the said Act of 1947.

54 Determination of material detriment where part of house etc. proposed for compulsory acquisition

- (1) In determining under paragraph 4 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or section 191(2) of, or paragraph 26 of Schedule 24 to, the Town and Country Planning (Scotland) Act 1972 whether—
 - (a) part of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory ; or
 - (b) part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Lands Tribunal shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.

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- (2) Subsection (1) above shall apply with the necessary modifications to any determination—
- (a) under the said paragraph 4 as substituted by paragraph 24 of Schedule 2 to the Gas Act 1972 (compulsory acquisition of rights over land); or
 - (b) under any provision corresponding to or substituted for the said paragraph 4 which is contained in, or in an instrument made under, any other enactment including (except where otherwise provided) an enactment passed after 23rd May 1973.