



# Planning and Compensation Act 1991

## 1991 CHAPTER 34

### PART IV

#### LAND COMPENSATION - SCOTLAND

#### 71 Home loss payments.

(1) For section 27(2) of the <sup>M1</sup>Land Compensation (Scotland) Act 1973 (home loss payment where person displaced from dwelling) there is substituted—

“(2) A person shall not be entitled to a home loss payment unless the following conditions have been satisfied throughout the period of one year ending with the date of displacement—

- (a) he has been in occupation of the dwelling, or a substantial part of it, as his only or main residence; and
- (b) he has been in such occupation by virtue of an interest or right to which this section applies,

but, if those conditions are satisfied on the date of displacement, a payment (referred to in this section and sections 29 and 30 below as a “discretionary payment”) may be made to him of an amount not exceeding the amount to which he would have been entitled if he had satisfied those conditions throughout that period.”

(2) Subsection (5) of that section (no payments where acquisition is in pursuance of blight notice) is omitted.

(3) For section 28 of that Act (amount of home loss payment) there is substituted—

#### “28 Amount of home loss payment.

(1) In the case of a person who on the date of displacement is occupying, or is treated for the purposes of section 27 above as occupying, the dwelling by virtue of an interest in it which is an owner’s interest, the amount of the home loss payment shall be 10 per cent. of the market value of his interest in the

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*Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, Part IV. (See end of Document for details)*

dwelling or, as the case may be, the interest in the dwelling vested in trustees, subject to a maximum of £15,000 and a minimum of £1,500.

- (2) In any other case, the amount of the home loss payment shall be £1,500.
- (3) For the purposes of this section and section 29 below the market value of an interest in a dwelling—
- (a) in a case where the interest is compulsorily acquired, is the amount assessed for the purposes of the acquisition as the value of the interest; and
  - (b) in any other case, is the amount which, if the interest were being compulsorily acquired in pursuance of a notice to treat served on the date of displacement, would be assessed for the purposes of the acquisition as the value of the interest,
- and any dispute as to the amount referred to in paragraph (b) above shall be determined by the Lands Tribunal.
- (4) In determining for the purposes of this section and section 29 below the market value of an interest in a dwelling, the dwelling shall be taken to include any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that dwelling.
- (5) The Secretary of State may from time to time by regulations prescribe a different maximum or minimum for the purposes of subsection (1) above and a different amount for the purposes of subsection (2) above.
- (6) The power to make regulations under subsection (5) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “owner’s interest” means the interest of a person who is an owner as defined in section 45(1) of the <sup>M2</sup>Land Compensation (Scotland) Act 1963.”
- (4) For section 29(1) to (3) of that Act (supplementary provisions about home loss payments) there is substituted—
- “(1) No home loss payment or discretionary payment shall be made except on a claim in writing made by the person entitled thereto (“the claimant”) giving such particulars as the authority responsible for making the payment may reasonably require for the purpose of determining whether the payment should be made and, if so, its amount.
- (2) Where a person is entitled to a home loss payment, the payment shall be made on or before the latest of the following dates—
- (a) the date of displacement;
  - (b) the last day of the period of three months beginning with the making of the claim; and
  - (c) where the amount of the payment is to be determined in accordance with section 28(1) above, the day on which the market value of the interest in question is agreed or finally determined.
- (2A) Where the amount of the payment is to be determined in accordance with section 28(1) above—

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- (a) the acquiring authority may at any time make a payment in advance; and
  - (b) if, on the later of the dates referred to in subsection (2)(a) and (b) above, the market value of the interest in question has not been agreed or finally determined, the acquiring authority shall make a payment in advance (where they have not already done so).
- (2B) The amount of the payment in advance shall be the lesser of—
  - (a) the maximum amount for the purposes of section 28(1) above,
  - (b) 10 per cent. of the amount agreed to be the market value of the interest in question or, if there is no such agreement, 10 per cent. of the acquiring authority's estimate of that amount.
- (2C) Where the amount of a payment in advance differs from the amount of the home loss payment, the shortfall or excess shall be paid by or, as the case may be, repaid to the acquiring authority when the market value of the interest in question is agreed or finally determined.
- (3) Where the claimant has satisfied, throughout any period, the conditions mentioned in section 27(2) above, that period shall be treated for the purposes of that subsection as including any immediately preceding period throughout which—
  - (a) he has resided in the dwelling as his only or main residence but without satisfying those conditions, and
  - (b) another person or other persons have satisfied those conditions,and references in this subsection and subsection (3A) below to a dwelling include a reference to a substantial part of it.
- (3A) Where the claimant has satisfied, throughout any period, the conditions mentioned in section 27(2) above, that period (or that period as extended under subsection (3) above) shall be treated for the purposes of section 27(2) above as including any immediately preceding period, or successive periods, throughout which he satisfied the conditions mentioned in section 27(2) above in relation to another dwelling or, as the case may be, other dwellings (applying subsection (3) above to determine the length of any period or periods).”
- (5) In section 29(4) of that Act, for “five years” there is substituted “ one year ”.
- (6) In section 29(5) of that Act, for “(3) and (4)” there is substituted “ (3) to (4) ”.
- (7) In section 29(7) and (7AA), after “home loss payment” (in both places) there is inserted “ or discretionary payment ” and after “required” (in both places) there is inserted “ or authorised ”.
- (8) In section 30 of that Act (caravan dwellers)—
  - (a) in subsection (2) after “home loss payment” there is inserted “ or discretionary payment ”,
  - (b) in subsection (3), for the words following “substituted” (in the second place) there is substituted—
    - “(a) he has been in occupation of the caravan site by using a caravan stationed on it as his only or main residence; and
    - (b) he has been in such occupation of the site by virtue of an interest or right to which this section applies”,

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(c) for subsection (4) there is substituted—

“(4) Section 28 above shall have effect as if the references to a person occupying a dwelling by virtue of an interest in it and to his interest in the dwelling were to a person occupying a caravan site by virtue of an interest in it and to that interest.”

(d) in subsection (5), for paragraph (a) there is substituted—

“(a) as if in subsections (3) and (3A) the references to a dwelling were to a caravan site;”, and in paragraph (c) for “(3) and (4)” there is substituted “(3) to (4)”.

(9) This section shall have effect in relation to displacements occurring on or after 16th November 1990 but, in the case of claims made before the date on which this section comes into force, no amount is required or authorised to be paid by virtue only of this section before the expiry of the period of one month beginning with the date on which this section comes into force.

#### Marginal Citations

M1 1973 c. 56.

M2 1963 c. 51.

## 72 Home loss payments: spouses having statutory occupancy rights.

After section 27 of the <sup>M3</sup>Land Compensation (Scotland) Act 1973 there is inserted—

### “27A Spouses having statutory occupancy rights.

(1) This section applies where, by reason of the entitlement of one spouse (“A”) to occupy a dwelling by virtue of an interest or right to which section 27 above applies, the other spouse (“B”) acquires occupancy rights (within the meaning of the <sup>M4</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981).

(2) So long as—

- (a) those occupancy rights continue;
- (b) B is in occupation of the dwelling and A is not; and
- (c) B is not, apart from this section, treated as occupying the dwelling by virtue of an interest or right to which that section applies,

B shall be treated for the purposes of that section as occupying the dwelling by virtue of such an interest (but not an owner’s interest within the meaning of section 28 below).

(3) References in this section to a dwelling include a reference to a substantial part of it.”

#### Modifications etc. (not altering text)

C1 S. 72 restricted (18.9.1991) by S.I. 1991/2092, art. 4, Sch. 2 Pt.II para. 4

#### Marginal Citations

M3 1973 c. 56.

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**M4** 1981 c. 59.

### **73 Advance payments of compensation and interest.**

- (1) In section 48 of the <sup>M5</sup>Land Compensation (Scotland) Act 1973 (right to advance payment of compensation) for subsection (5) there is substituted—

“(4A) Where, at any time after an advance payment has been made on the basis of the acquiring authority’s estimate of the compensation, it appears to the acquiring authority that their estimate was too low, they shall, if a request in that behalf is made in accordance with subsection (2) above, pay to the claimant the balance of the amount of the advance payment calculated as at that time.

- (5) Where the amount, or aggregate amount, of any payment under this section made on the basis of the acquiring authority’s estimate of the compensation exceeds the compensation as finally determined or agreed, the excess shall be repaid; and if after any payment under this section has been made to any person it is discovered that he was not entitled to it, the amount of the payment shall be recoverable by the acquiring authority”.

- (2) After that section there is inserted—

#### **“48A Right to interest where advance payment made.**

- (1) This section applies where the compensation to be paid by the acquiring authority for the compulsory acquisition of any interest in land would (apart from this section) carry interest under paragraph 3(1) of the second Schedule to the <sup>M6</sup>Acquisition of Land (Authorisation Procedures) (Scotland) Act 1947 or any bond under section 84 (promoters to be allowed to enter on lands before purchase on giving bond etc.) of the <sup>M7</sup>Lands Clauses Consolidation (Scotland) Act 1845.
- (2) If the authority make a payment under section 48(1) above to any person on account of the compensation—
- (a) they shall at the same time make a payment to that person of accrued interest, for the period beginning with the date of entry, on the amount by reference to which the payment under section 48(1) above was calculated; and
  - (b) the difference between the amount of the payment under section 48(1) above and the amount by reference to which it was calculated is an unpaid balance for the purposes of this section.
- (3) If the authority make a payment under section 48(4A) above to any person on account of the compensation, they shall at the same time make a payment to him of accrued interest, for the period beginning with the date of entry, on—
- (a) the amount by reference to which the payment under section 48(4A) above was calculated; less
  - (b) the amount by reference to which the preceding payment under section 48(1) or (4A) above was calculated.
- (4) Where the authority make a payment under section 48(4A) above on account of the compensation, the difference between—
- (a) the amount of the payment; and

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- (b) the amount by reference to which it was calculated less the amount by reference to which the preceding payment under section 48(1) or (4A) above was calculated,  
 is an unpaid balance for the purposes of this section.
- (5) If, on an anniversary of the date on which the authority made a payment to any person under section 48(1) above on account of the compensation—
- (a) the amount of accrued interest on the unpaid balance under subsection (2) above or, as the case may be,
  - (b) the aggregate amount of the accrued interest on any unpaid balances, exceeds £1,000, the authority shall make a payment to the claimant of the amount or aggregate amount.
- (6) The acquiring authority shall, on paying the compensation, pay the amount of the accrued interest on the unpaid balance under subsection (2) above or, as the case may be, the aggregate amount of the accrued interest on any unpaid balances.
- (7) For the purposes of subsections (5) and (6) above, interest accrues on any unpaid balance for the period beginning with—
- (a) the making of the payment under section 48(1) or, as the case may be, 48(4A) above; or
  - (b) if any payment has already been made in respect of that balance under subsection (5) above, the date of the preceding payment under that subsection.
- (8) For the purposes of this section—
- (a) interest accrues at the rate prescribed under section 40 of the <sup>M8</sup>Land Compensation (Scotland) Act 1963 or, in the case of a bond under section 84 of the <sup>M9</sup>Lands Clauses Consolidation (Scotland) Act 1845, at the rate specified in that section; and
  - (b) the amount by reference to which a payment under section 48(1) or (4A) was calculated is the amount referred to in section 48(3)(a) or (b) for the purposes of that calculation.
- (9) Where any payment has been made under section 48(1) above on account of any compensation, the acquiring authority is not required to pay interest under paragraph 3(1) of the second Schedule to the <sup>M10</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or any bond under section 84 (promoters to be allowed to enter on lands before purchase on giving bond etc.) of the <sup>M11</sup>Lands Clauses Consolidation (Scotland) Act 1845.
- (10) Where the amount, or aggregate amount, of any payment under section 48 above made on the basis of the acquiring authority's estimate of the compensation is greater than the compensation as finally determined or agreed and, accordingly, the interest paid under this section is excessive, the excess shall be repaid.
- (11) If after any interest has been paid to any person under this section on any amount it is discovered that he was not entitled to the amount, the interest shall be recoverable by the acquiring authority.
- (12) The Secretary of State may by order increase the sum specified in subsection (5) above; and the power to make orders under this subsection shall

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be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Modifications etc. (not altering text)**

**C2** S. 73 restricted (18.9.1991) by S.I. 1991/2092, art. 4, Sch. 2 Pt. I para. 1

**Marginal Citations**

**M5** 1973 c.56.

**M6** 1947 c. 42.

**M7** 1845 c. 19.

**M8** 1963 c. 51.

**M9** 1845 c. 19

**M10** 1947 c. 42.

**M11** 1845 c. 19.

**74 Planning assumptions in connection with acquisition of land by roads authorities.**

At the end of section 22 (assumptions as to planning permission) of the <sup>M12</sup>Land Compensation (Scotland) Act 1963 there is added—

“(5) If, in a case where—

- (a) the relevant land is to be acquired for use for, or in connection with, providing, altering or improving a public road; or
- (b) that use, or its use in that connection, is being considered by the roads authority,

a determination mentioned in subsection (7) of this section falls to be made, that determination shall be made on the following assumption.

(6) The assumption is that, if the relevant land were not so used, no public road would be provided, altered or improved to meet the same or substantially the same need as would have been met by the provision, alteration or improvement of the public road referred to in paragraph (a) or (b) of subsection (5) of this section.

(7) The determinations referred to in subsection (5) of this section are—

- (a) a determination, for the purpose of assessing compensation in respect of any compulsory acquisition, whether planning permission might reasonably have been expected to be granted for any development if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers, and
- (b) a determination under section 25 of this Act as to the development for which, in the opinion of the planning authority, planning permission would or would not have been granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers .”

**Modifications etc. (not altering text)**

**C3** S. 74 restricted (18.9.1991) by S.I. 1991/2092, art. 4, Sch. 2 Pt. I para. 2

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#### Marginal Citations

M12 1963 c. 51.

### 75 Certification of appropriate alternative development.

- (1) For section 25(1) of the <sup>M13</sup>Land Compensation (Scotland) Act 1963 (certificate of appropriate alternative development may be issued only if land is not in an area defined in development plan as an area of comprehensive development or shown in the plan as allocated for residential, commercial or industrial use) there is substituted—

“(1) Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, either of the parties directly concerned may, subject to subsection (2) of this section, apply to the planning authority for a certificate under this section”.

- (2) In subsection (4) of that section (certificate stating that permission for development would or would not be granted) for paragraphs (a) and (b) there is substituted—

“(a) planning permission would have been granted for development of one or more classes specified in the certificate (whether specified in the application or not) and for any development for which the land is to be acquired, but would not have been granted for any other development; or

(b) planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development,

and for the purposes of this subsection development is development for which the land is to be acquired if the land is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for that development.”

- (3) After subsection (9) of that section there is inserted—

“(9A) In assessing the compensation payable to any person in respect of any compulsory acquisition, there shall be taken into account any expenses reasonably incurred by him in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 26 of this Act where any of the issues on the appeal are determined in his favour)”.

#### Modifications etc. (not altering text)

C4 S. 75 restricted (18.9.1991) by S.I. 1991/2092, art. 4, Sch. 2 Pt. II para. 5

#### Marginal Citations

M13 1963 c. 51.

### 76 Powers to acquire land whose enjoyment will be affected by public works.

- (1) After section 24(2) of the <sup>M14</sup>Land Compensation (Scotland) Act 1973 (acquisition of land in connection with public works) there is inserted—

“(2A) Where the responsible authority—



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- (a) propose to carry out works on land to which this subsection applies for the construction or alteration of any public works, and
- (b) are, in relation to the land, the appropriate authority,
- they may, subject to the provisions of this section, acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the public works if the interest of the seller is an interest such as is mentioned in subsection (3) to (5) of section 181 (interests qualifying for protection under blight provisions) of the <sup>M15</sup>Town and Country Planning (Scotland) Act 1972.
- (2B) Subsection (2A) above applies to any land such as is mentioned in subsection (1) of the said section 181.
- (2C) In this section—
- “appropriate authority” has the meaning given in section 194(1) of the said Act.”.
- (2) After section 106(2) of the <sup>M16</sup>Roads (Scotland) Act 1984 (acquisition of land for mitigating adverse effects of construction of road) there is inserted—
- “(2A) Where the roads authority propose to carry out works on land to which this subsection applies for the construction or improvement of a road, they may acquire by agreement land the enjoyment of which will in their opinion be seriously affected by the carrying out of the works or the use of the road if the interest of the seller is an interest such as is mentioned in subsections (3) to (5) of section 181 (interests qualifying for protection under blight provisions) of the <sup>M17</sup>Town and Country Planning (Scotland) Act 1972.
- (2B) Subsection (2A) above applies to any land such as is mentioned in subsection (1) of the said section 181.”

**Marginal Citations**

- M14** 1973 c. 56.  
**M15** 1972 c. 52.  
**M16** 1984 c. 54.  
**M17** 1972 c. 52.

**77 Compensation where permission for additional development granted after acquisition.**

- (1) Schedule 16 to this Act (which revives Part V of the <sup>M18</sup>Land Compensation (Scotland) Act 1963) shall have effect.
- (2) This section applies to an acquisition or sale of an interest in land if the date of completion (within the meaning of that Part) falls on or after the day on which this section comes into force.

**Marginal Citations**

- M18** 1963 c. 51.

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*Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, Part IV. (See end of Document for details)*

## 78 Time limit on validity of notice to treat.

- (1) A notice to treat under section 17 of the <sup>M19</sup>Lands Clauses Consolidation (Scotland) Act 1845 shall, for the purposes of any compulsory purchase to which the provisions of the first Schedule to the <sup>M20</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 apply, cease to have effect at the end of the period of three years beginning with the date on which it is served unless—
- (a) the compensation has been agreed or awarded or has been paid or paid into a bank;
  - (b) a general vesting declaration has been executed under paragraph 1 of Schedule 24 to the Town and Country Planning (Scotland) Act 1972;
  - (c) the acquiring authority have entered on and taken possession of the land specified in the notice; or
  - (d) the question of compensation has been referred to the Lands Tribunal for Scotland.
- (2) If the person interested in the land, or having power to sell and convey it, and the acquiring authority agree to extend the period referred to in subsection (1) of this section, the notice to treat shall cease to have effect at the end of the period as extended unless—
- (a) any of the events referred to in that subsection have then taken place; or
  - (b) the parties have agreed to a further extension of the period (in which case this subsection shall apply again at the end of the period as further extended, and so on).
- (3) Where a notice to treat ceases to have effect by virtue of subsection (1) or (2) of this section, the acquiring authority—
- (a) shall immediately give notice of that fact to the person on whom the notice was served and any other person who, since it was served, could have made an agreement under subsection (2) of this section, and
  - (b) shall be liable to pay compensation to any person entitled to such a notice for any loss or expenses occasioned to him by the giving of the notice and its ceasing to have effect.
- (4) The amount of any compensation payable under subsection (3) of this section shall, in default of agreement, be determined by the Lands Tribunal for Scotland.
- (5) Compensation payable to any person under subsection (3) of this section shall carry interest at the rate prescribed under section 40 (rate of interest after entry on land) of the <sup>M21</sup>Land Compensation (Scotland) Act 1963 from the date on which he was entitled to be given notice under that subsection until payment.

### Modifications etc. (not altering text)

C5 S. 78 restricted (18.9.1991) by S.I. 1991/2092, art. 4, Sch. 2 Pt.I para. 3

### Marginal Citations

M19 1845 c. 19.

M20 1947 c. 42.

M21 1963 c. 51.

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**79 Further amendments relating to land compensation in Scotland.**

Schedule 17 to this Act—

- (a) Part I of which contains miscellaneous amendments; and
  - (b) Part II of which contains minor and consequential amendments,
- relating to land compensation in Scotland shall have effect.

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**Modifications etc. (not altering text)**

C6 S. 79 restricted (18.9.1991) by S.I. 1991/2092, art. 4, **Sch. 2 Pt. I para. 4**, Pt. II para. 6

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