

## SCHEDULES

### SCHEDULE 12

#### PLANNING COMPENSATION REPEALS: MINOR AND CONSEQUENTIAL AMENDMENTS - SCOTLAND

##### *The 1972 Act*

- 6 The 1972 Act is amended as follows.
- 7 In section 19 (meaning of “development” and “new development”) subsection (5) (meaning of new development) is omitted.
- 8 Sections 35 and 36 (review of planning decisions where compensation claimed) are omitted.
- 9 In section 37(2) (development with Government authorisation) for “Parts VII and” there is substituted “Part”.
- 10 In section 40(3) (date when development is begun), for paragraph (b) there is substituted—
- “(b) development of a class specified in paragraph 1 or 2 of Schedule 6 to this Act;”.
- 11 In section 56G (deemed hazardous substances consent by virtue of authorisation of government department), in subsection (3) for “Parts VII and XII” there is substituted “Part XII”.
- 12 In section 58(2)(a) (tree preservation orders) “35, 36” is omitted.
- 13 In section 106 (compensation on compulsory acquisition of listed building) the words from “other than” to the end are omitted.
- 14 (1) In section 153(4) (compensation where planning permission modified or revoked) for “for development of the land of any class specified in Schedule 6 to this Act” there is substituted “—
- (a) subject to the condition set out in Schedule 16, for any development of a class specified in paragraph 1 of Schedule 6;
- (b) for any development of a class specified in paragraph 2 of Schedule 6.”
- (2) This paragraph shall have effect, or be treated as having had effect, in relation to claims made on or after 16th November 1990.
- 15 In section 155 (recording and apportionment of compensation for depreciation)—
- (a) for subsection (3) there is substituted—
- “(3) Regulations under this Act shall make provision—
- (a) for enabling the claimant or any other person to whom notice of the planning authority’s apportionment has been given in accordance with subsection (1) of this section, or

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who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal;

- (b) for enabling the claimant and any other person mentioned in paragraph (a) of this subsection to be heard by the Tribunal on any reference under this section of that apportionment; and
  - (c) for requiring the Tribunal, on any such reference, either to confirm or vary the apportionment and to notify the parties of the decision.”;
- (b) in subsection (5), the words from “and subsection (5)” to the end are omitted;
- (c) after subsection (5) there is inserted—

“(5A) In relation to compensation for depreciation specified in a notice recorded or, as the case may be, registered under the preceding provisions of this section, references in this Part of this Act to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed in accordance with the following provisions, that is to say—

- (a) if the notice does not include an apportionment under the preceding provisions of this section, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;
- (b) if the notice includes such an apportionment, the compensation shall be treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part of the land.”; and

- (d) in subsection (6), “and in section 156 of this Act” is omitted.

16 Section 156 (contribution by Secretary of State towards compensation in certain cases) is omitted.

17 Before section 157 there is inserted—

**“156A Recovery of compensation on subsequent development**

- (1) No person shall carry out any development to which this section applies, on land in respect of which a notice (hereafter in this Part of this Act referred to as a “compensation notice”) is recorded or, as the case may be, registered under section 155(5) of this Act, until such amount, if any, as is recoverable under this section in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State.
- (2) Subject to the following provisions of this section, this section applies to any development—
  - (a) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of

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- houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof; or
- (b) which consists in the winning and working of minerals; or
  - (c) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State reasonable that this section should apply.
- (3) This section shall not apply to any development by virtue of subsection (2) (c) of this section if, on an application made to him for the purpose, the Secretary of State has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply thereto.
- (4) Where the compensation specified in the compensation notice became payable in respect of the imposition of conditions on the granting of permission to develop land, this section shall not apply to the development for which that permission was granted.
- (5) This section does not apply to any development—
- (a) of a class specified in paragraph 1 of Schedule 6 which is carried out in accordance with the condition set out in Schedule 16; or
  - (b) of a class specified in paragraph 2 of Schedule 6.
- (6) This section does not apply in a case where the compensation under section 153 of this Act specified in a compensation notice became payable in respect of an order modifying planning permission, and the development is in accordance with that permission as modified by that order.

### **156B Amount recoverable, and provisions for payment or remission thereof**

- (1) Subject to the following provisions of this section, the amount recoverable under section 156A of this Act in respect of the compensation specified in a compensation notice—
- (a) if the land on which the development is to be carried out (in this subsection referred to as “the development area”) is identical with, or includes (with other land) the whole of, the land comprised in the compensation notice, shall be the amount of compensation specified in that notice;
  - (b) if the development area forms part of the land comprised in the compensation notice, or includes part of that land together with other land not comprised in that notice, shall be so much of the amount of the compensation specified in that notice as is attributable to land comprised in that notice and falling within the development area.
- (2) Where, in the case of any land in respect of which a compensation notice has been recorded, the Secretary of State is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or any part of any amount otherwise recoverable under section 156A of this Act.
- (3) Where, in connection with the development of any land, an amount becomes recoverable under section 156A of this Act in respect of the compensation

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specified in a compensation notice, then, except where, and to the extent that, payment of that amount has been remitted under subsection (2) of this section, no amount shall be recoverable under section 156A of this Act in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.

- (4) No amount shall be recoverable under section 156A of this Act in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 244 of this Act.
- (5) An amount recoverable under section 156A of this Act in respect of any compensation shall be payable to the Secretary of State, and
  - (a) shall be so payable either as a single capital payment or as a series of instalments of capital and interest combined, or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Secretary of State may direct, after taking into account any representations made by the person by whom the development is to be carried out; and
  - (b) except where the amount is payable as a single capital payment, shall be secured by that person to the satisfaction of the Secretary of State (whether by heritable or other security, personal bond or otherwise).
- (6) If any person initiates any development to which section 156A applies in contravention of subsection (1) of that section, the Secretary of State may serve a notice on him specifying the amount appearing to the Secretary of State to be the amount recoverable under that section in respect of the compensation in question, and requiring him to pay that amount to the Secretary of State within such period, not being less than three months after the service of the notice, as may be specified in the notice.
- (7) Where, after a compensation notice in respect of any land has been recorded or, as the case may be, registered, any amount recoverable under this section in respect of the compensation specified in the notice, or any part of such amount, has been paid to the Secretary of State, or circumstances arise under which by virtue of any provision of this Act no amount is so recoverable in respect of the land specified in the notice or any part of that land, the Secretary of State shall cause to be recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, a notice of that fact, specifying the land to which such fact relates, and, in the case of any notice of the fact that part only of such amount has been so paid, stating whether the balance has been secured to the satisfaction of the Secretary of State or has been remitted by him under subsection (2) of this section, and shall send a copy thereof to the planning authority.”

18 In section 157 (recovery, on subsequent development, of compensation under section 153)—

- (a) subsection (1) is omitted;
- (b) in subsection (2), for “section 148 of this Act, as applied by subsection (1) of this section” there is substituted “section 156A of this Act”;
- (c) in subsection (3)—
  - (i) paragraph (a) is omitted; and
  - (ii) in the proviso, “paragraph (a) or” is omitted; and
- (d) subsection (4) is omitted.

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- 19 In section 169 (purchase notice on refusal or conditional grant of planning permission)—
- (a) in subsection (2), for the words from “no account shall be taken” to the end there is substituted “no account shall be taken of any prospective development other than any development specified in paragraph 1 or 2 of Schedule 6 to this Act.”; and
  - (b) subsection (3) is omitted.
- 20 In section 176 (special provisions as to compensation where purchase notice served)—
- (a) in subsection (2), for “existing use value” there is substituted “Schedule 6 value”; and
  - (b) in subsection (5), for the definition of “existing use value” there is substituted—
    - ““Schedule 6 value”, in relation to such an interest, means the value of that interest calculated on the assumption that planning permission would be granted—
    - (a) subject to the conditions set out in Schedule 16, for any development of a class specified in paragraph 1 of Schedule 6; and
    - (b) for any development of a class specified in paragraph 2 of Schedule 6.”
- 21 In section 179(2) (purchase notice on refusal or conditional grant of listed building consent) for “new development” there is substituted “development (other than any development specified in paragraph 1 or 2 of Schedule 6 to this Act)”.
- 22 In section 231(3) (validity of orders etc.), paragraph (c) is omitted.
- 23 In section 244 (recovery from acquiring authorities of sums paid by way of compensation)—
- (a) in subsection (1), for “147(5)” there is substituted “155(5A)”;
  - (b) in subsection (2), the words from “subsection (4)” to “applied by” are omitted.
- 24 Section 245 (recovery from acquiring authorities of sums paid in respect of war-damaged land) is omitted.
- 25 In section 246 (sums recoverable from acquiring authorities reckonable for purposes of grant), “or 245” is omitted.
- 26 In section 247 (expenses of government departments), in subsection (1)(b) “Part VII or” is omitted.
- 27 Section 248 (payments under section 56 of Act of 1947 and Parts I and V of Act of 1954) is omitted.
- 28 In section 249 (general provision as to receipts of Secretary of State), “Without prejudice to section 248 of this Act, and” is omitted.
- 29 For subsection (1) of section 255 (supplementary provisions as to Crown interest), there is substituted—
- “(1) Subject to subsection (2) of this section, where there is a Crown interest in any land, the provisions of sections 155 to 157 of this Act, and the provisions of Schedule 22 to this Act in so far as they relate to those sections, shall

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have effect in relation to any private interest as if the Crown interest were a private interest.”

30 Sections 263 (assumptions as to planning permission in determining value of interests in land) and 264 (recovery, on subsequent development, of payments in respect of war-damaged land) are omitted.

31 In section 275 (interpretation), in subsection (1), the definitions of “new development” and “previous apportionment” are omitted.

32 In Schedule 6 (development not constituting new development)—

(a) paragraphs 3 to 9 and 12 are omitted; and

(b) in paragraph 14, for sub-paragraph (2) there is substituted—

“(2) This paragraph does not apply for the purposes of sections 157 and 169 of this Act.”

33 In Schedule 19 (provisions referred to in sections 250, 251 etc.), in Part I, the entry relating to section 158 is omitted.