



2011 CHAPTER 25

PART 6

COMPENSATION

Compensation where planning permission is revoked or modified

179.—(1) The functions which immediately before the day on which this section comes into operation (in this section referred to as “the transfer date”) are exercisable by the Department under or for the purposes of the provisions of the Act of 1965 listed in subsection (2) are hereby transferred as from that day to councils.

(2) The provisions are—

- (a) section 26(1) to (6) (except in so far as section 26(6) applies section 20(2)); and
- (b) section 27 (except in so far as section 27(3) applies section 23 and section 27(5) applies section 24); and
- (c) section 40, in so far as that section relates to claims for compensation under the provisions mentioned in paragraph (a).

(3) In the construction of and for the purposes of any statutory provision or instrument passed, made or issued before the transfer date, any reference to, or which is to be construed as a reference to, the Department shall, so far as may be necessary for the purpose of the transfer of functions by subsection (1), be construed as a reference to a council.

(4) The Act of 1965 has effect subject to the amendments set out in Schedule 4.

Modification of the Act of 1965 in relation to minerals

180.—(1) Where any planning permission for development consisting of the winning and working of minerals is revoked or modified, a claim for expenditure or loss shall not be entertained under section 26(1) of the Act of 1965 in respect of buildings, plant or machinery unless the claimant proves that he or she is unable to use the buildings, plant or machinery or (as the case may be) to use them except at the loss claimed.

(2) For the purposes of a claim for expenditure or loss to which subsection (1) applies the Lands Tribunal may give a direction that the claim be severed from the remainder of the claim and be dealt with at such later date as may be fixed by the Tribunal either in such direction or subsequently on application by either party.

Compensation where listed building consent revoked or modified

181.—(1) Where listed building consent is revoked or modified by an order under section 98 or 101, then if on a claim made to the council within the time and in the manner prescribed it is shown that a person interested in the building—

- (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 council must 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 to that work, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), compensation shall not be paid under this section in respect of—

- (a) any work carried out before the grant of the listed building consent which is revoked or modified; or
- (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of a compensatable estate in any land) arising out of anything done or omitted to be done before the grant of that consent.

(4) Sections 22, 27, 30, 31, 33 and 37 of the Act of 1965 shall, subject to any necessary modifications, have effect for the purposes of a claim for compensation or compensation payable under this section as they have effect for the purposes of a claim for compensation or compensation payable under section 26 of that Act.

(5) Claims under this section shall be made to and paid by the council which made the order in question or, where the order was made by the Department under section 101, the council which is treated as having made it under that section, and references in this section to the council shall be construed accordingly.

Compensation in respect of orders under section 73, 75 or 112

182.—(1) This section shall have effect where—

- (a) an order is made under section 73 or 75 requiring a use of land to be discontinued, or imposing conditions on the continuance thereof, or requiring any building or works on land to be altered or removed; or
- (b) an order is made under section 112(3) revoking or modifying a hazardous substances consent for the presence of a hazardous substance on, over or under land.

(2) If, on a claim made to the council in accordance with subsection (6), 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 that person is entitled or by being disturbed in his or her enjoying of the land, the council must pay to that person compensation in respect of that damage.

(3) Without prejudice to subsection (2), any person who carries out any works in compliance with an order under section 73 or section 112(3) shall be entitled, on a claim made to the council in accordance with subsection (6), to recover from the council compensation in respect of any expenses reasonably incurred by that person in that behalf.

(4) Any compensation payable to a person under this section in respect of such an order as is mentioned in subsection (1)(a) or (b) shall be reduced by the value to that person of any timber, apparatus or other materials removed for the purpose of complying with the order.

(5) No compensation shall be payable under this section in respect of an order under section 73 or 75 if—

- (a) a purchase notice in respect of an estate in land is served in consequence of such an order; and
- (b) that estate is purchased by the council in accordance with Part 7.

(6) A claim under subsection (2) or (3) must be made in writing to the council within 6 months from the date of the order in respect of which the claim is made or within such extended period as the council may allow.

(7) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

(8) Claims made under this section shall be made to and paid by the council which made the order in question or, where the order was made by the

Department under section 75, the council which is treated as having made it under that section, and references in this section to the council shall be construed accordingly.

Compensation in respect of tree preservation orders

183.—(1) A tree preservation order may make provision for the payment by the council, 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—

- (a) of the refusal of any consent required under the order; or
- (b) of the grant of any such consent subject to conditions.

(2) In assessing compensation payable under subsection (1) account shall be taken of—

- (a) any compensation under subsection (1) which has been paid whether to the claimant or to any other person, in respect of the same tree; and
- (b) any injurious affect on any land of the claimant which would result from the felling of the tree which is the subject of the claim.

(3) Except in so far as may be otherwise provided by any tree preservation order, any question of disputed compensation under subsection (1) shall be referred to and determined by the Lands Tribunal.

(4) Claims made under this section shall be made to and paid by the council which made the order in question or, where the order was made by the Department under section 124, the council which is treated as having made it and references in this section to the council shall be construed accordingly.

Compensation where hazardous substances consent modified or revoked under section 116

184.—(1) Where—

- (a) there is a change of the person in control of part of the land to which a hazardous substances consent relates; and
- (b) on an application made under section 116(2), the council modifies or revokes the consent,

it must pay to the person in control of the whole of the land before the change compensation in respect of any loss or damage sustained by that person and directly attributable to the modification or revocation.

(2) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

Compensation for loss due to stop notice

185.—(1) A person who, when a stop notice under section 150 or 151 is first served, has an estate in or occupies the land to which the stop notice relates shall, in any of the circumstances mentioned in subsection (2), be entitled to be compensated by the council in respect of any loss or damage directly attributable to the prohibition contained in the notice (or, in a case within paragraph (b) of that subsection, the prohibition of such of the activities prohibited by the stop notice as cease to be relevant activities).

(2) A person shall be entitled to compensation under subsection (1) in respect of a prohibition contained in a stop notice in any of the following circumstances—

- (a) the enforcement notice is quashed on grounds other than those mentioned in section 143(3)(a);
- (b) the enforcement notice is varied, otherwise than on the grounds mentioned in section 143(3)(a), so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity;
- (c) the enforcement notice is withdrawn by the council or the Department otherwise than in consequence of the grant of planning permission for the development to which the notice relates;
- (d) the stop notice is withdrawn.

(3) A claim for compensation under this section shall be made to the council within the time and in the manner specified by a development order.

(4) 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.

(5) No compensation is payable under this section—

- (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
- (b) in the case of a claimant who was required to provide information under section 133 or 240 in respect of any loss or damage suffered by the claimant which could have been avoided if he or she had provided the information or had otherwise co-operated with the council or, as the case may be, the Department when responding to the notice.

(6) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

(7) Claims under this section shall be made to and paid by the council which served the notice in question or, where the notice was served by the Department under section 151, the council which is treated as having served it

under that section and references in that section to the council shall be construed accordingly.

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

186.—(1) This section applies where a building preservation notice ceases to have effect without the building having been included in a list compiled by the Department under section 80.

(2) Any person who at the time when the notice was served had an estate in the building shall, on making a claim to the council within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the council in respect of any loss or damage directly attributable to the effect of the notice.

(3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any 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 to it.

Compensation for loss due to temporary stop notice

187.—(1) This section applies if and only if a temporary stop notice is issued and at least one of the following paragraphs applies—

- (a) the activity which is specified in the notice is authorised by planning permission or a development order;
- (b) a certificate in respect of the activity is issued under section 169 or granted under that section by virtue of section 173;
- (c) the council withdraws the notice.

(2) Subsection (1)(a) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in section 135(5).

(3) Subsection (1)(c) does not apply if the notice is withdrawn following the grant of planning permission as mentioned in subsection (2).

(4) A person who at the time the notice is served has an estate in the land to which the notice relates is entitled to be compensated by the council in respect of any loss or damage directly attributable to the prohibition effected by the notice.

(5) A claim for compensation under this section shall be made to the council within the time and in the manner specified by a development order.

(6) 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.

- (7) No compensation is payable under this section—
- (a) in respect of the prohibition in a temporary stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control; or
 - (b) in the case of a claimant who was required to provide information under section 133 or 240 in respect of any loss or damage suffered by that person which could have been avoided if he or she had provided the information or had otherwise co-operated with the council when responding to the notice.
- (8) Any question of disputed compensation under this section shall be determined by the Lands Tribunal.

Compensation where planning permission assumed for other development

188. Where a claim for compensation is made to a council under section 26 of the Act of 1965 in relation to an order, the council may, if it appears to it that planning permission might reasonably be expected to be granted (either unconditionally or subject to conditions) for some development of the land to which the claim relates, direct that in assessing the compensation payable in respect of the order it shall be assumed that permission for that development would be granted either unconditionally or subject to such conditions as may be specified in the direction.

Compensation: failure of consultee to respond under section 229

189. Where a consultee fails to respond to a council or departmental consultation in accordance with section 229(3) and—

- (a) that council or, as the case may be, the Department—
 - (i) takes a decision under this Act to grant planning permission in the absence of such a response; and
 - (ii) subsequently receives information which the council or the Department could reasonably expect to have been included in that response; and
 - (iii) decides to revoke or modify planning permission under section 68, or make an order under section 73, due to the information referred to in sub-paragraph (ii); and
- (b) compensation is payable by a council under section 26 of the Act of 1965 in connection with the decision under sub-paragraph (iii),

the sponsoring department (if any) shall pay to the council the amount of compensation payable.

Interpretation of Part 6

190. In this Part, “compensatable estate” has the same meaning as in the Act of 1965.