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## STATUTORY INSTRUMENTS

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# 1982 No. 712

## The Land Compensation (Northern Ireland) Order 1982

### PART III

#### PROVISIONS DETERMINING AMOUNT OF COMPENSATION

##### *General provisions*

##### **Rules for assessing compensation**

**6.**—(1) Compensation in respect of any compulsory acquisition of land shall, subject to the provisions of this Order and any other enactment, be assessed in accordance with the following rules:—

- (1) No allowance shall be made on account of the acquisition being compulsory:
  - (2) The value of land shall, subject to rules 3 to 6, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise:
  - (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory acquisition powers:
  - (4) Where the value of the land is increased by reason of the use of it or of any premises on it in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account:
  - (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, where reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:
  - (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.
- (2) In assessing compensation to be paid in respect of the compulsory acquisition of any land no account shall be taken—
- (a) of any depreciation in the value of the land which is attributable to the fact that (whether by way of designation, allocation or other particulars contained in any scheme or plan or by any other means) an indication has been given that the land is, or is likely to be, acquired by an authority possessing compulsory acquisition powers;
  - (b) of any increase or diminution in the value of the land which is attributable to the carrying out, or the prospect of the carrying out, of so much of any development on the land or on other land which has been, or is being or is proposed to be acquired (whether compulsorily or other wise) for the purposes of the same scheme or project of development for which the land is being or has been acquired, as would not have been likely to have been, or to

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- be, carried out if the acquiring authority had not acquired or did not propose to acquire that land or that other land;
- (c) in a case where the land forms part of an area designated as the site of a new town by an order under the New Towns Act (Northern Ireland) 1965<sup>F1</sup>, of any increase or diminution in the value of the land which is attributable to the carrying out, of so much of any development on the land or on other land in that area in the course of the development of that area as a new town, as would not have been likely to have been, or to be, carried out if the area had not been so designated;
- (d) [<sup>F2</sup>in a case where, on the date on which the vesting order is made, the land is subject to a tenancy, of any increase or diminution in the value of the land which is attributable to, or to the prospect of, the tenant giving up possession in consequence of being provided with other accommodation under Article 40(1)(a) of the 1973 Order (duty to rehouse residential occupiers where land acquired by authority possessing compulsory acquisition powers);]
- (e) of the fact that the Housing Executive has provided, or undertakes to provide or arrange for the provision of residential accommodation under any statutory provision for the person entitled to the compensation.
- [<sup>F2</sup>(3) In this Article—
- (a) “development” in paragraph (2)(b) and (c) includes any building operations or rebuilding operations and any use of the land or any building upon the land for a purpose which is different from the purpose for which the land or building was last being used;
- (b) the reference in paragraph (2)(d) to land being subject to a tenancy on the date on which the vesting order is made includes a reference to land which would have been subject to a tenancy on that date if the tenant had not given up occupation of a dwelling as mentioned in Article 30(3) of the 1973 Order (deemed displacement in consequence of compulsory acquisition of interest in dwelling where, in certain circumstances, person displaced gives up occupation by arrangement); and
- (c) “the 1973 Order” in paragraph (2)(d) and this paragraph means the Land Acquisition and Compensation (Northern Ireland) Order 1973.]

**F1** 1965 c. 13 (NI)

**F2** 1997 NI 8

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

- C1** Art. 6 applied (with modifications) (1.2.2007) by [Water Abstraction and Impoundment \(Licensing\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/482\)](#), regs. 1(1), 22(4), **Sch. 2 para. 5(1)**
- C2** Art. 6 applied (with modifications) (19.5.2008) by [Waste Management Licences \(Consultation and Compensation\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/160\)](#), **reg. 7(2)**
- C3** Art. 6 applied (with modifications) (24.7.2009) by [Environmental Liability \(Prevention and Remediation\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/252\)](#), reg. 25(2), **Sch. 5 para. 6**
- C4** Art. 6 applied (with modifications) (6.1.2013) by [The Pollution Prevention and Control \(Industrial Emissions\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/453\)](#), reg. 1, **Sch. 6 para. 6** (with reg. 5, Sch. 3)
- C5** Art. 6 applied (with modifications) (20.6.2013) by [The Pollution Prevention and Control \(Industrial Emissions\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/160\)](#), reg. 1, **Sch. 6 para. 6(2)** (with reg. 5, Sch. 3)
- C6** Art. 6(1) rules (2)-(4) applied by 2003 c. 21, Sch. 3A para. 84(3)(c) (as inserted (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 1** (with Sch. 2); S.I. 2017/1286, reg. 2(b))
- C7** Art. 6(1) rules (2)-(4) applied (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **242(7)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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- C8** Art. 6(1) rules (2)-(4) applied (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **242(7)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- C9** Art. 6(1) rules (2)-(4) applied (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **242(7)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

### Compensation on compulsory acquisition of listed buildings

7.—(1) In assessing compensation to be paid in respect of the compulsory acquisition of any land including a building which, before the date of the order vesting the land, was a listed building, it shall be assumed that listed building consent would be granted for any works for the alteration or extension of the building, or for its demolition.

(2) In paragraph (1) “listed building” and “listed building consent” have the same meanings as in the [<sup>F3</sup>Planning Act (Northern Ireland) 2011] .

- F3** Words in art. 7(2) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), **Sch. 6 para. 40** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 (as amended (16.3.2016) by S.R. 2016/159, art. 2))

### Compensation for severance or injurious affection where part of claimant's lands is acquired

8.—(1) In assessing compensation to be paid to any person in respect of the compulsory acquisition of any land, regard shall be had not only to the value of the land acquired but also to the damage, if any, sustained or which may be sustained by that person by reason of the severing of the land from other lands of that person held with that land, or otherwise injuriously affecting such other lands by the exercise of powers conferred on the acquiring authority by any transferred provision.

(2) Where land is acquired or taken from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, compensation payable under paragraph (1) for injurious affecting of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land acquired or taken from him.

(3) Where for the purpose of assessing the amount of any compensation to be paid under this Article the value of any land is required to be determined, that value shall, except in so far as any transferred provision (whether passed before or made or after the making of this Order) otherwise provides, be determined in accordance with rules (2) to (4) of Article 6.

(4) Paragraph (2) shall apply to compensation for injurious affection under section 63 or 121 of the Lands Clauses Consolidation Act 1845<sup>F4</sup> as it applies to compensation under paragraph (1).

- F4** 1845 c. 18.

### Outstanding right to planning compensation

9. Where in consequence of a decision, determination or order under the enactments relating to planning any person is entitled to, but has not received, compensation for depreciation in the value of an estate or interest in any land (in this Article referred to as “planning compensation”), the compensation to be paid to that person in respect of any compulsory acquisition of that land subsequent to the decision, determination or order shall be assessed as if the planning compensation had been paid to him.

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### *Special cases*

#### **Compensation for acquisition of dwelling specially adapted for person in need**

**10.** The compensation to be paid to a person in respect of any compulsory acquisition of an interest in a dwelling which—

- (a) has been constructed or substantially modified to meet the special needs of a person in need; and
- (b) is occupied by such a person as his residence immediately before the date when the acquiring authority take possession of the dwelling or was last so occupied before that date;

shall, if that person so elects, be assessed as if the dwelling were land which is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose.

#### **Compensation for disturbance where business carried on by person over sixty**

**11.—(1)** Where a person is carrying on a trade or business on any land and, in consequence of its compulsory acquisition of the whole of that land is required to give up possession of the land to the acquiring authority, then if—

- (a) on the date on which he gives up possession he has attained the age of sixty; and
- (b) on that date the land is or forms part of a hereditament the annual value of which does not exceed the prescribed amount; and
- (c) that person has not disposed of the goodwill of the whole of the trade or business and gives to the acquiring authority the undertakings mentioned in paragraph (3),

the compensation to be paid to that person in respect of the compulsory acquisition of his interest in the land or, as the case may be, under section 121 of the Lands Clauses Consolidation Act 1845 shall, so far as attributable to disturbance, be assessed on the assumption that it is not reasonably practicable for that person to carry on the trade or business, or, as the case may be, the part of the goodwill of that trade or business which he has retained, elsewhere than on that land.

(2) In paragraph (1) “the prescribed amount” means the amount which on the date mentioned in that paragraph is the amount set out in Article 4 (1) (b) of the Planning Blight (Compensation) (Northern Ireland) Order 1981<sup>F5</sup> (interests qualifying for protection under planning blight provisions) and “annual value” and “hereditament” have the same meanings as in Article 2 (2) of that Order taking references to the date of service of a blight notice under Article 5 of that Order as references to the date mentioned in paragraph (1).

(3) The undertakings to be given by the person claiming compensation are—

- (a) an undertaking that he will not dispose of the goodwill of the trade or business or, as the case may be, of the part of the goodwill of that trade or business which he has retained; and
- (b) an undertaking that he will not, within such area and for such time as the acquiring authority may require, directly or indirectly engage in or have any interest in any other trade or business of the same or substantially the same kind as that carried on by him on the land acquired.

(4) If an undertaking given by a person for the purposes of this Article is broken an amount equal to the difference between the compensation paid and the compensation that would have been payable if it had been assessed without regard to the provisions of this Article shall be a debt recoverable summarily by the acquiring authority from that person.

(5) This Article shall apply to a trade or business carried on by two or more persons in partnership as if references to the person by whom it is carried on were references to all the partners and as if the undertakings mentioned in paragraph (3) were required to be given by all the partners.

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(6) This Article shall apply to a trade or business carried on by a company—

(a) as if paragraph (1) (a) required—

(i) each shareholder, other than a minority shareholder, to be an individual who has attained the age of sixty on the date there mentioned; and

(ii) each minority shareholder to be an individual who either has attained that age on that date or is the spouse of a shareholder who has attained that age on that date; and

(b) as if the undertaking mentioned in paragraph (3) (b) were required to be given both by the company and by each shareholder.

(7) In paragraph (6) “shareholder” means a person who is beneficially entitled to a share or shares in the company carrying voting rights and “minority shareholder” means a person who is so entitled to less than 50 per cent of those shares.

**F5** 1981 NI 16

#### *Assumptions as to planning permission*

### **General as to assumptions relating to planning permission**

**12.—**(1) For the purpose of assessing the compensation in respect of any compulsory acquisition of any land, such one or more of the assumptions mentioned in Article 13 as are applicable to the land or any part of it shall be made in ascertaining the value of the interest to be acquired.

(2) Any planning permission which is to be assumed in accordance with Article 13, is in addition to any planning permission which may be in force at the date on which the vesting order becomes operative.

(3) Nothing in this Part shall be construed as requiring it to be assumed that planning permission would necessarily be refused for any development which is not development for which, in accordance with this Part, the granting of planning permission is to be assumed; but in determining whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of land, regard shall be had to any contrary opinion expressed in relation to that land in any certificate issued under Articles 15 and 17.

(4) For the purposes of any reference in this Article or Article 13 to planning permission which is in force on the date of acquisition, it is immaterial whether the planning permission in question was granted—

(a) unconditionally or subject to conditions, or

(b) in respect of the land in question taken by itself or in respect of an area including that land, and for those purposes where development is permitted by an interim development order, that order shall be taken to be planning permission for that development.

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

**C10** Art. 12 modified (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), ss. 196\(7\), 254\(1\), \(2\) \(with s. 211\)](#); [S.R. 2015/49, arts. 2, 3, Sch. 1 \(with Sch. 2 \(as amended \(16.3.2016\) by S.R. 2016/159, art. 2\)\)](#)

### **Assumptions as to grant of planning permission**

**13.—**(1) In a case where—

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- (a) the interest is to be compulsorily acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the land in which the interest subsists or part of it, and
- (b) on the date on which the vesting order becomes operative there is not in force planning permission for that development,

it shall be assumed that planning permission would be granted in respect of that land or that part of it, as the case may be, such as would permit development of it in accordance with the proposals of the acquiring authority.

(2) It shall be assumed that planning permission would be granted in respect of that land or any part of it, for development of any class specified in Schedule 1 to the Land Development Values (Compensation) Act (Northern Ireland) 1965<sup>F6</sup> (development not constituting new development).

(3) Where a certificate is issued under Article 15 or 17, it shall be assumed that any planning permission which, according to the certificate might reasonably have been expected to be granted in respect of that land or part of it would be so granted, but, where any conditions are, in accordance with those Articles, specified in the certificate, only subject to those conditions and, if any future time is so specified, only at that time.

**F6** 1965 c. 23 (NI)

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

**C11** Art. 13 modified (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), ss. 196\(7\), 254\(1\), \(2\)](#) (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 (as amended (16.3.2016) by S.R. 2016/159, art. 2))

**Special assumptions deriving from development plans**

**14.—**(1) If the land in which the interest to be compulsorily acquired subsists or any part of it (not being land in a proposed redevelopment area or in the area of a proposed development scheme) consists or forms part of an area shown in the [<sup>F7</sup>local development plan] as an area allocated primarily for a use specified in the plan in relation to that area, it shall be assumed that planning permission would be granted in respect of that land or that part of it, as the case may be, for any development which—

- (a) is development for the purposes of that use of that land or that part of it; and
- (b) is development for which planning permission might reasonably have been expected to be granted in respect of that land or that part of it as the case may be.

(2) If that land or any part of it (not being land in a proposed redevelopment area or in the area of a proposed development scheme) consists or forms part of an area shown in the [<sup>F7</sup>local development plan] as an area allocated primarily for a range of two or more uses specified in the plan in relation to the whole of that area, it shall be assumed that planning permission would be granted, in respect of that land or that part of it, as the case may be, for any development which—

- (a) is development for the purposes of a use of that land or that part of it, being a use falling within that range of uses; and
- (b) is development for which planning permission might reasonably have been expected to be granted in respect of that land or that part of it as the case may be.

**F7** Words in art. 14 substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 41](#) (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 (as amended (16.3.2016) by S.R. 2016/159, art. 2))

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 6(2)-(4) applied (by S.I. 1996/725 (N.I.), art. 18B 18C (as inserted)) by [2022 c. 46 s. 64\(2\)](#)