

SCHEDULE 7

Regulation 34(5)

Compensation for grant of rights

Interpretation

1. In this Schedule—

“the 1963 Act” means the Land Compensation (Scotland) Act 1963(1);

“grantor” means a person who has granted or joined in granting any rights pursuant to regulation 34; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to regulation 34.

Period for making an application

2. An application for compensation must be made to the person referred to in regulation 34(6) or, if regulation 33(1)(b) applies and no person has been found, to SEPA, within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates—

- (a) 12 months after the date of the grant of those rights;
- (b) if there is an appeal against the works notice which imposed the requirements in relation to which the rights in question were granted, 12 months after the date of the final determination or abandonment of the appeal; or
- (c) 6 months after the date on which the rights were first exercised.

Form of application

3.—(1) An application for compensation must be made in writing and delivered or sent by pre paid post to the last known address for correspondence of the person liable.

(2) The application must contain, or be accompanied by—

- (a) a description of the grant of rights in respect of which the grantor is applying for compensation, and of any relevant plans;
- (b) a description of the grantor’s relevant interest in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4, indicating how the amount applied for under each sub-paragraph has been calculated.

Loss and damage for which compensation payable

4. Compensation is payable under this Schedule for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;

(1) 1963 c.51; amended by the New Towns Act 1966 (c.44); the Town and Country Planning (Scotland) Act 1969 (c.30); the Tribunals and Enquiries Act 1971 (c.62); the Town and Country Planning (Scotland) Act 1972 (c.52); the Statute Law (Repeals) Act 1974 (c.22); the Interpretation Act 1978 (c.30); the Local Government, Planning and Land Act 1980 (c.65); the Housing (Scotland) Act 1987 (c.26); the Statute Law (Repeals) Act 1989 (c.43); the Planning and Compensation Act 1991 (c.34); the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11); and the Abolition of Feudal Tenure (Scotland) Act 2000 (asp 5).

- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the rights or the exercise of them;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(2) in pursuance of a notice to treat served on the date on which the rights were granted;
- (c) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is attributable to the grant of the rights or the exercise of them; and
- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the rights and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal under paragraph 6).

Basis on which compensation assessed

5.—(1) The rules set out in section 12 of the 1963 Act (rules for assessing compensation) so far as applicable and subject to any necessary modifications, have effect for the purposes of paragraph 4 as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) If the relevant interest in respect of which compensation is to be assessed is subject to a standard security within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(3)—

- (a) the compensation will be assessed as if the interest were not subject to that security;
- (b) no compensation will be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security); and
- (c) any compensation which is payable in respect of the interest which is subject to the security must be paid (subject to the maximum sum due thereunder) to the creditor in that security or, if there is more than one creditor, to the first ranking creditor and must, in either case, be applied by that person as if it were proceeds of sale.

Payment of compensation and determination of disputes

6.—(1) Amounts of compensation determined under this Schedule is payable—

- (a) if the person to whom the rights were granted and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) if the person to whom the rights were granted and the grantor or such a creditor agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; or

(2) 1947 c.42; as amended by the Statute Law Revision Act 1950 (c.6); the Statute Law Revision Act 1953 (c.5); the Tribunals and Inquiries Act 1958 (c.66); the War Damage Act 1964 (c.25); the Land Compensation (Scotland) Act 1973 (c.56); the Criminal Procedure (Scotland) Act 1975 (c.21); the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23); the Gas Act 1986 (c.44); the Electricity Act 1989 (c.29); the National Health Service and Community Care Act 1990 (c.19); the Coal Industry Act 1994 (c.21); the Postal Services Act 2000 (c.26); the Land Reform (Scotland) Act 2003 (asp 2) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820).

(3) 1970 c.35.

- (c) in any other case, subject to any direction of the Lands Tribunal for Scotland as soon as reasonably practicable after the amount of the compensation has been finally determined.
- (2) Any question of disputed compensation must be referred to and determined by the Lands Tribunal for Scotland.
- (3) In relation to the determination of any such questions, sections 9 and 11 of the 1963 Act (procedures on reference to the Lands Tribunal and expenses) apply as if—
 - (a) the reference in section 9(1) of the 1963 Act to section 8 were a reference to sub paragraph (1) above; and
 - (b) references in section 11 of the 1963 Act to the acquiring authority were references to the person to whom the rights were granted.