SCHEDULE 6

Regulation 24

COMPENSATION FOR OFF-SITE CONDITIONS

1. This Schedule applies in any case where—

(a) an operator is required by an off-site condition to carry out works, or do any other thing, in relation to land not forming part of the site of the installation,

(b) a person whose consent is required has granted to the operator a right in relation to the land under regulation 24(2) (an "off-site right"), and

(c) the off-site right, or that right together with any other right, is such as will enable the operator to comply with the off-site condition.

2. Any person who has granted an off-site right is entitled to be paid compensation by the operator.

3. Subject to paragraph 6(3) and (5)(b), compensation is payable for loss and damage for—

(a) depreciation in the value of any relevant interest which results from the grant of the off-site right,

(b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the off-site right,

(c) a relevant interest which—

(i) is attributable to the grant of the off-site right or the exercise of that right,

(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 for disturbance if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(**1**) under a notice to treat served on the date on which the off-site right is granted,

(d) 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 off-site right or the exercise of that right,

(e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of off-site right or the exercise of that right,

(f) the amount of any valuation and legal expenses reasonably incurred by the grantor in—

(i) granting the off-site right,

(ii) 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 for Scotland under paragraph 8(2)).

4.—(1) Subject to sub-paragraph (2), an entitlement to compensation under this Schedule arises on the date of the grant of an off-site right.

(2) The entitlement to compensation arises on the date of the final determination of the appeal where, after the grant of an off-site right, the condition of the permit which rendered the grant of that right necessary is upheld on an appeal against that condition.

5.—(1) An application for compensation under this Schedule must be made by the person granting an off-site right—

(a) within six months from the date on which the right is first exercised, or

(**1**) 1947 c.42.

(b) within 12 months from the date on which the entitlement to compensation arises in the case of that grantor.

(2) An application must be made in writing to an operator to whom the off-site right is granted at the last known address for correspondence of the operator.

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

(a) a copy of the grant of an off-site right in respect of which the compensation is payable, and of any plans attached to that grant,

(b) a description of the exact nature of any interest in land in respect of which compensation is applied for,

(c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each sub-paragraph of paragraph 3, and showing how the amount applied for under each sub-paragraph has been calculated, and

(d) where the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 4(2), a copy of the notice of the final determination of the appeal.

6.—(1) The amount to be paid by way of compensation must be assessed in accordance with this paragraph.

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

(3) No account may be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the person granting the off-site right is (or was at the time of the enhancement) directly or indirectly concerned if—

(a) the enhancement was not reasonably necessary, and

(b) was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 3(e), expenditure incurred in the preparation of plans or on other similar preparatory matters must be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a standard security—

(a) the compensation is assessed as if the interest were not subject to that security,

(b) no compensation is payable to the creditor in respect of their interest in the land, and

(c) any compensation payable in respect of the interest subject to the security must be paid to the—

(i) creditor in that security, or

(ii) if there is more than one creditor, to the first ranking of such creditors,

provided that the sum paid must not be more than the sum due to the creditor, and must be applied by the creditor as if it were proceeds of sale.

7.—(1) Compensation payable carries interest at the rate for the time being prescribed under section 40 of the 1963 Act from the date specified in sub-paragraph (2) until payment.

(2) The specified date is—

(a) in the case of compensation payable by virtue of paragraph 3(a) or (b), the date of depreciation,

(b) in the case of compensation payable by virtue of paragraph 3(c), (d) or (e), the date on which the loss is sustained or the damage done or, where injurious affection is sustained, the date of the injurious affection,

(c) in the case of compensation payable by virtue of paragraph 3(f), the date on which the expenses become payable.

(3) If it appears to any person ("the first person") that the first person may become liable to pay to another person ("the second person") compensation or interest under this paragraph the first person may, if the second person requests the first person in writing for to do so, make one or more payments on account of such compensation or interest.

(4) If, after a payment on account has been made under sub-paragraph (3)—

(a) it is agreed or determined that compensation or interest is not liable to be paid, or

(b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,

the payment or, as the case may be, excess is recoverable by the first person.

8.—(1) Compensation that is determined to be due is payable—

(a) where the operator 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) where the operator 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,

(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 dispute in relation to the payment of compensation or interest shall be referred to and determined by the Lands Tribunal for Scotland.

(3) In relation to the determination of any such question, sections 9 and 11 of the 1963 Act apply as if—

(a) the reference in section 9(1) of that Act to section 8 of that Act were a reference to sub-paragraph (2), and

(b) references in section 11 of that Act to the acquiring authority were references to the operator.

9. In this Schedule—

"1963 Act" means the Land Compensation (Scotland) Act 1963(**2**),

"granted" includes joining in granting,

"grantor" means a person mentioned in sub-paragraph (1)(b),

"relevant interest" means an interest in land in respect of which rights have been granted by the grantor under regulation 24(2), and

"standard security" has the same meaning as in section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(**3**).

(**2**) 1963 c.51. Section 9 was amended by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 33, paragraph 7(2). Section 12 was repealed in part by the Planning and Compensation Act 1991 (c. 34), Schedules 17 and 19.

(**3**) 1970 c.35. Section 9 was amended by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (2000 asp 5), section 31, Schedule 10, paragraph 32(6) and Schedule 11.