



# Land Compensation (Scotland) Act 1963

## 1963 CHAPTER 51

An Act to consolidate the Acquisition of Land (Assessment of Compensation) Act 1919 and certain other enactments relating to the assessment of compensation in respect of compulsory acquisitions of interests in land; to the withdrawal of notices to treat; and to the payment of additional compensation and of allowances in connection with such acquisitions or with certain sales by agreement of interests in land; with corrections and improvements made under the Consolidation of Enactments (Procedure) Act 1949. [31st July 1963]

### Modifications etc. (not altering text)

- C1** Act applied with modifications by Acts listed in [Chronological Table of the Statutes and Local Government, Planning and Land Act 1980 \(c. 65\)](#), **Sch. 27 para. 22**; extended by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), **s. 108(5)**, [Land Compensation \(Scotland\) Act 1973 \(c. 56\)](#), **s. 68(5)**; excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), **s. 107(4)**; amended *ibid.*, s. 17(1), Sch. 21 Pt. I
- C2** Act applied and modified by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **ss. 110(4)**, 117(1)
- C3** Act applied (with modifications) by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), **ss. 10(4)**, 77(4), 120(3), 121(5), 126(4)(6), 335, **Sch. 1**
- C4** Act applied by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), **ss. 95(3)**, 335, **Sch. 8 Pt. III para. 12(1)**, and [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), **s. 36(3)**  
Act applied (27.7.1993) by 1993 c. xii, s. 1, Sch. **ss. 7(3)**, **17(3)**  
Act applied (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. II**, s. 10(6) (with Sch. s. 27)  
Act applied (27.5.1997) by 1997 c. 8, **ss. 194(5)**, 278(2)  
Act applied (27.5.1997) by 1997 c. 9, **ss. 46(5)**, 83(2) (with s. 45(4))
- C5** Act modified by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), **ss. 77(3)(4)**, 335, **Sch. 6 para. 6**  
Act modified (5.1.1994) by 1993 c. 44, **ss. 57(1)**, 64(2) (with s. 30(5), Sch. 6 para. 4)  
Act modified (27.5.1997) by 1997 c. 8, **ss. 24(4)**, 278(2), **Sch. 1 para. 5**  
Act modified (27.5.1997) by 1997 c. 8, **ss. 116(3)**, 278(2)  
Act modified (27.5.1997) by 1997 c. 8, **ss. 195**, 278(2), **Sch. 15 Pt. I**, para. 6
- C6** Act restricted (24.3.1994) by 1994 c. i, s. 1, **Sch. Pt. III**, s. 24(3) (with Sch. **ss. 29**, 30, 34(2)(15))  
Act restricted (24.3.1994) by 1994 c. ii, s. 1, **Sch. Pt. III**, s. 20(3) (with Sch. s. 25)  
Act restricted (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. III**, s. 22(3) (with Sch. s. 27)
- C7** Act amended (27.5.1997) by 1997 c. 8, **ss. 24(1)**, 278(2)

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- Act amended (27.5.1997) by 1997 c. 8, ss. 24(4), 278(2), **Sch. 1 para. 2**
- Act amended (27.5.1997) by 1997 c. 8, **ss. 24(6)**, 278(2)
- C8** Act excluded (27.5.1997) by 1997 c. 9, **ss. 45(4)**, 83(2)
- C9** Act applied (2.4.2004) by The Highland Council (Inverie) Harbour Empowerment Order 2004 (S.S.I. 2004/171), **arts. 14, 15** (with arts. 28, 29)
- C10** Act applied (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **s. 9(6)** (with s. 33)
- C11** Act applied (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **s. 27(3)** (with s. 33)
- C12** Act applied (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **s. 10(5)** (with s. 33)
- C13** Act applied (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **s. 16(4)** (with s. 33)
- C14** Act applied (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **s. 8(7)** (with s. 33)
- C15** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 6(6)** (with s. 75)
- C16** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 20(5)** (with s. 75)
- C17** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 16(6)** (with s. 75)
- C18** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 59(4)** (with s. 75)
- C19** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 26(6)** (with ss. 26(7), 75)
- C20** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 7(8)** (with s. 75)
- C21** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 37(4)** (with s. 75)
- C22** Act applied (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 27(7)** (with ss. 27(8), 75)
- C23** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 6(6)** (with ss. 76, 84)
- C24** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 59(4)** (with ss. 76, 84)
- C25** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 20(5)** (with ss. 76, 84)
- C26** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 36(4)** (with ss. 36(5), 76, 84)
- C27** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 26(6)** (with ss. 26(7), 76, 84)
- C28** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 7(8)** (with ss. 76, 84)
- C29** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 27(7)** (with ss. 27(8), 76, 84)
- C30** Act applied (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 16(6)** (with ss. 73, 76, 84)
- C31** Act applied (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 8(6)** (with ss. 50(2), 51)
- C32** Act applied (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **sch. 5 para. 9** (with ss. 50(2), 51, sch. 5 para. 8)
- C33** Act applied (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 9(5)** (with ss. 50(2), 51)
- C34** Act applied (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 16(4)** (with ss. 50(2), 51)
- C35** Act applied (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 31(3)** (with ss. 50(2), 51)
- C36** Act applied (24.7.2006) by Waverley Railway (Scotland) Act 2006 (asp 13), **s. 17(6)** (with ss. 50(2), 51)
- C37** Act applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **sch. 4 para. 9** (with s. 50)
- C38** Act applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 22(4)** (with s. 50)
- C39** Act applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 32(4)** (with s. 50)
- C40** Act applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 23(7)** (with s. 50)
- C41** Act applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 15(5)** (with s. 50)
- C42** Act applied (15.1.2007) by Glasgow Airport Rail Link Act 2007 (asp 1), **s. 16(6)** (with ss. 16(7), 50)
- C43** Act applied (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), **s. 21(6)** (with ss. 21(7), 52, 60)
- C44** Act applied (19.4.2007) by Edinburgh Airport Rail Link Act 2007 (asp 16), **s. 20(5)** (with ss. 52, 60)

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- C45** Act applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), **s. 37(4)** (with ss. 52, 60)
- C46** Act applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), **s. 10(4)** (with ss. 52, 60)
- C47** Act applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), **s. 27(4)** (with ss. 52, 60)
- C48** Act applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), **s. 28(7)** (with ss. 52, 60)
- C49** Act applied (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), **sch. 4 para. 9** (with ss. 52, 60)
- C50** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 38(4)** (with ss. 48, 59)
- C51** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 20(5)** (with ss. 48, 59)
- C52** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 11(7)** (with ss. 48, 59)
- C53** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 10(4)** (with ss. 48, 59)
- C54** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 27(4)** (with ss. 48, 59)
- C55** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 28(7)** (with ss. 48, 59)
- C56** Act applied (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), **s. 21(6)** (with ss. 21(7), 48, 59)
- C57** Act modified by 1997 c. 8, s. 24 (as substituted (19.5.2008 for specified purposes, 25.6.2008 for specified purposes, 28.2.2009 in so far as not already in force) by [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **ss. 2, 59(2)**; S.S.I. 2008/164, art. 2(1)(2); S.S.I. 2009/70, art. 2, sch.)

#### Commencement Information

- I1** Act partly in force at 1.1.1964; Act wholly in force at 1.3.1971 see s. 49(2)

## PART I

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

- C58** Pt. I (ss. 1-3) modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8 para. 6(c)**(with s. 45(3), Sch. 12 para. 3)

1—7. .... F1

#### Textual Amendments

- F1** Ss. 1–7 ceased to have effect with saving by virtue of s. 49(2)(3) of this Act

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## PART II

### DETERMINATION OF QUESTIONS OF DISPUTED COMPENSATION BY LANDS TRIBUNAL

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

- C59** Pt. II applied with modifications by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\), Sch. 4 paras. 4, 5\(c\)](#);
- C60** Pt. II (ss. 4-20) modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\), ss. 57\(4\), 89\(2\), Sch. 8 para. 6\(c\)](#)(with s. 45(3), Sch. 12 para. 3)
- C61** Pt. II applied (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\), s. 18\(10\)](#) (with ss. 18(9), 75)
- C62** Pt. II applied (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\), s. 18\(10\)](#) (with ss. 18(9), 76, 84)

### **8 Tribunal for assessing compensation in respect of land compulsorily acquired.**

As from the coming into operation of this Part of this Act, where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily, any question of disputed compensation and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease, shall be referred to the Lands Tribunal for Scotland (hereafter in this Part of this Act referred to as “the Lands Tribunal”) and shall be determined by the Lands Tribunal in accordance with the following provisions of this Act.

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

- C63** [S. 8](#) extended with modifications by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 117\(1\)](#)
- C64** [S. 8](#) applied with modifications by [Roads \(Scotland\) Act 1970 \(c. 20\), s. 40\(1\)](#)

### **9 Procedure on references under s. 8.**

- (1) The following provisions shall have effect with respect to any proceedings on a question referred to the Lands Tribunal under section 8 of this Act.
- (2) The Lands Tribunal shall sit in public.
 

[<sup>F2</sup>Provided that this subsection shall not prevent the determination of cases without an oral hearing pursuant to rules under section 3 of the <sup>M1</sup>Lands Tribunal Act 1949.]
- (3) Not more than one expert witness on either side shall be heard unless the Lands Tribunal otherwise directs; except that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.
- (4) A member of the Lands Tribunal dealing with the proceedings shall be entitled to enter on and inspect any land which is the subject of the proceedings.
- (5) The Lands Tribunal shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

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### Textual Amendments

- F2** Proviso added by [Community Land Act 1975 \(c. 77\)](#), **Sch. 10 para. 5(1)**; continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), **Sch. 33 para. 7(1)(2)**

### Modifications etc. (not altering text)

- C65** S. 9 applied with modifications by Acts listed in [Chronological Table of the Statutes and Local Government, Planning and Land Act 1980 \(c. 65\)](#), **s. 167(9)(13)**
- C66** S. 9 extended with modifications by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), **s. 117(1)**
- C67** S. 9 applied by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), ss. 10(1)(5), 112(3), Sch. 4 paras. 7(4), 11(3), Sch. 5 para. 6, **Sch. 17 para. 35(1)**
- C68** S. 9 applied (with modifications) (30.10.1994) by S.I. 1994/2716, **reg. 92(4)**  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 8, **ss. 86(2)**, 278(2)  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 8, **ss. 143(7)**, 278(2)  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 8, **ss. 165(3)**, 278(2)  
S. 9 applied (27.5.1997) by 1997 c. 8, **ss. 185(3)**, 278(2)  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 8, ss. 195, 278(2), **Sch. 15 Pt. I**, paras. 9, 12  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 8, **ss. 204(6)**, 278(2)  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 8, **ss. 235(4)**, 278(2)  
S. 9 applied (with modifications) (27.5.1997) by 1997 c. 9, **ss. 27(5)**, 83(2) (with s. 45(4))  
S. 9 applied (with modifications) (1.4.1999) by S.I. 1999/481, **reg. 8(4)**  
S. 9 applied (with modifications) (26.3.2001) by 2000 c. 26, s. 95, **Sch. 6 para. 5(3)**; S.I. 2000/2957, art. 2(3), **Sch. 3**  
S. 9 applied (with modifications) (28.9.2000) by S.S.I. 2000/323, reg. 9(17), **Sch. 6 para. 8(3)**
- C69** S. 9 applied (with modifications) (1.4.2003) by [The Anti-Pollution Works \(Scotland\) Regulations 2003 \(S.S.I. 2003/168\)](#), reg. 1(1), **sch. para. 6(3)**
- C70** S. 9 applied (with modifications) (1.4.2006) by [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/348\)](#), reg. 1(2), **sch. 7 para. 6(3)** (with regs. 4, 50)
- C71** S. 9 applied (with modifications) (22.5.2008) by [The Transport and Works \(Scotland\) Act 2007 \(Access to Land by the Scottish Ministers\) Order 2008 \(S.S.I. 2008/200\)](#), arts. 1, **10(4)**
- C72** S. 9 applied (with modifications) (22.5.2008) by [The Transport and Works \(Scotland\) Act 2007 \(Access to Land on Application\) Order 2008 \(S.S.I. 2008/199\)](#), arts. 1, **11(4)**

### Marginal Citations

- M1** 1949 c. 42.

## 10 Consolidation of proceedings on claims in respect of several interests in the same land.

Where notices to treat have been served for the [<sup>F3</sup>acquisition of several interests] in any land then, if the acquiring authority so desire, the disputed claims of the persons entitled to those interests shall, so far as practicable, be heard and determined by the same member or members of the Lands Tribunal, and the [<sup>F4</sup>Secretary of State] may make rules under the <sup>M2</sup>Lands Tribunal Act 1949 providing that such claims shall be heard together; but the value of the several interests shall be separately assessed.

### Textual Amendments

- F3** Words in s. 10 substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **sch. 12 para. 25(2)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F4** Words substituted by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), **Sch. 10 para. 5**

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### Marginal Citations

M2 1949 c. 42.

## 11 Expenses.

### (1) Where either—

- (a) the acquiring authority have made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by the Lands Tribunal to that claimant does not exceed the sum offered; or
- (b) the Lands Tribunal is satisfied that a claimant has failed to deliver to the acquiring authority, in time to enable them to make a proper offer, a notice in writing of the amount claimed by him, containing the particulars mentioned in subsection (2) of this section;

the Lands Tribunal shall, unless for special reasons it thinks proper not to do so, order the claimant to bear his own expenses and to pay the expenses of the acquiring authority so far as they were incurred after the offer was made or, as the case may be, after the time when in the opinion of the Lands Tribunal the notice should have been delivered.

- (2) The notice mentioned in subsection (1) (b) of this section must state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.
- (3) Where a claimant has delivered such a notice as is mentioned in subsection (1)(b) of this section and has made an unconditional offer in writing to accept any sum as compensation, then, if the sum awarded to him by the Lands Tribunal is equal to or exceeds that sum, the Lands Tribunal shall, unless for special reasons it thinks proper not to do so, order the acquiring authority to bear their own expenses and pay the expenses of the claimant so far as they were incurred after his offer was made.
- (4) The Lands Tribunal may in any case disallow the cost of counsel.
- (5) Where the Lands Tribunal orders the claimant to pay the expenses, or any part of the expenses, of the acquiring authority, the acquiring authority may deduct the amount so payable by the claimant from the amount of the compensation, if any, payable to him.

### Modifications etc. (not altering text)

- C73** S. 11 applied with modifications by Acts listed in [Chronological Table of the Statutes and Local Government, Planning and Land Act 1980 \(c. 65\)](#), s. **167(9)(13)**
- C74** S. 11 extended with modifications by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. **117(1)**
- C75** S. 11 applied by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), ss. 10(1)(5), 112(3), Sch. 4 paras. 7(4), 11(3), Sch. 5 para. 6, [Sch. 17 para. 35\(1\)](#)
- C76** S. 11 applied (with modifications) (30.10.1994) by S.I. 1994/2716, [reg. 92\(4\)](#)  
 S. 11 applied (with modifications) (27.5.1997) by 1997 c. 8, [ss. 86\(2\)](#), 278(2)  
 S. 11 applied (with modifications) (27.5.1997) by 1997 c. 8, [ss. 143\(7\)](#), 278(2)  
 S. 11 applied (with modifications) (27.5.1997) by 1997 c. 8, [ss. 165\(3\)](#), 278(2)  
 S. 11 applied (27.5.1997) by 1997 c. 8, [ss. 185\(3\)](#), 278(2)  
 S. 11 applied (with modifications) (27.5.1997) by 1997 c. 8, [ss. 204\(6\)](#), 278(2)  
 S. 11 applied (with modifications) (27.5.1997) by 1997 c. 8, [ss. 235\(4\)](#), 278(2)  
 S. 11 applied (27.5.1997) by 1997 c. 9, [ss. 27\(5\)](#), 83(2) (with s. 45(4))

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- S. 11 applied (with modifications) (1.4.1999) by S.I. 1999/481, **reg. 8(4)**
- S. 11 applied (with modifications) (26.3.2001) by 2000 c. 26, s. 95, **Sch. 6 para. 5(3)**; S.I. 2000/2957, art. 2(3), **Sch. 3**
- S. 11 applied (with modifications) (28.9.2000) by S.S.I. 2000/323, reg. 9(17), **Sch. 6 para. 8(3)**
- C77** S. 11 applied (with modifications) (1.4.2003) by The Anti-Pollution Works (Scotland) Regulations 2003 (S.S.I. 2003/168), reg. 1(1), **sch. para. 6(3)**
- C78** S. 11 applied (with modifications) (1.4.2006) by The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348), reg. 1(2), **sch. 7 para. 6(3)** (with regs. 4, 50)
- C79** S. 11 applied (with modifications) (22.5.2008) by The Transport and Works (Scotland) Act 2007 (Access to Land by the Scottish Ministers) Order 2008 (S.S.I. 2008/200), arts. 1, **10(4)**
- C80** S. 11 applied (with modifications) (22.5.2008) by The Transport and Works (Scotland) Act 2007 (Access to Land on Application) Order 2008 (S.S.I. 2008/199), arts. 1, **11(4)**

## PART III

### PROVISIONS DETERMINING AMOUNT OF COMPENSATION

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

- C81** Part III (ss. 12-24) applied (16.1.1995) by 1995 c. i, **s. 27(1)** (with s. 34)
- Part III (ss. 12-24) applied (14.6.2000) 2000 c. Vi, ss. 1, Sch. ss. 3(2), 5(2) (with Sch. hbss. 3(1), 4, 6(2))

#### *General provisions*

## 12 Rules for assessing compensation.

Compensation in respect of any compulsory acquisition shall 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 as hereinafter provided, 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 <sup>F5</sup> . . . the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers:
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon 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, if the official arbiter is satisfied that reinstatement in

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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:  
 and the following provisions of this Part of this Act shall have effect with respect to the assessment.

#### Textual Amendments

- F5** Words in s. 12 rule 3 repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 84(6), Sch. 17 Pt. I, para. 5, [Sch. 19](#), Pt.IV, (with s. 84(5)); S.I. 1991/2092, art.3, [Sch. 1](#) (with savings in art. 4, Sch. 2 Pt. I paras. 4, 6)

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

- C82** S. 12 applied with modifications by Acts listed in Chronological Table of the Statutes; modified by [Agriculture Act 1967 \(c. 22\)](#), s. 50(8), [New Towns \(Scotland\) Act 1968 \(c. 16\)](#), ss. 13, 26, [Sch. 5 para. 2](#) and S.I. 1976/1218, art. 4; extended by [Countryside \(Scotland\) Act 1967 \(c. 86\)](#), s. 70(4) and [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), s. 228(1)
- C83** S. 12 applied (with modifications) by [Aviation Security Act 1982 \(c. 36, SIF 9\)](#), [Sch. 1 para. 9\(a\)](#) and [Aviation and Maritime Security Act 1990 \(c. 31, SIF 39:2\)](#), s. 43(5), Sch. 2 paras. 4, 8
- C84** S. 12 applied (with modifications) (30.10.1994) by S.I. 1994/2716, [reg. 91\(5\)](#)  
 S. 12 applied (with modifications) (27.5.1997) by 1997 c. 8, [ss. 87\(1\)](#), 95(5), 278(2)  
 S. 12 applied (27.5.1997) by 1997 c. 8, [ss. 204\(3\)](#), 278(2)  
 S. 12 applied (27.5.1997) by 1997 c. 8, ss. 234, 278(2), Sch. 9 para. 15(4), [Sch. 10 para. 13\(4\)](#)  
 S. 12 applied (with modifications) (27.5.1997) by 1997 c. 9, [ss. 27\(1\)](#), 85(2) (with s. 45(4))  
 S. 12 applied (with modifications) (1.4.1999) by S.I. 1999/481, [reg. 7\(2\)](#)  
 S. 12 applied (with modifications) (28.9.2000) by S.S.I. 2000/323, reg. 9(17), [Sch. 6 para. 6\(2\)](#)
- C85** S. 12 applied (with modifications) (1.4.2003) by [The Anti-Pollution Works \(Scotland\) Regulations 2003 \(S.S.I. 2003/168\)](#), reg. 1(1), [sch. para. 5\(1\)](#)
- C86** S. 12 applied (with modifications) (1.4.2006) by [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/348\)](#), reg. 1(2), [sch. 7 para. 5\(1\)](#) (with regs. 4, 50)

### 13 Disregard of actual or prospective development in certain cases.

- (1) Subject to section 15 of this Act, no account shall be taken of any increase or diminution in the value of the relevant interest which, in the circumstances described in any of the paragraphs in the first column [<sup>F6</sup>of Part I] of Schedule 1 to this Act, is attributable to the carrying out, or the prospect, of so much of the development mentioned in relation thereto in the second column [<sup>F6</sup>of Part I] of that Schedule as would not have been likely to be carried out if—
- (a) (where the acquisition is for purposes involving development of any of the land authorised to be acquired) the acquiring authority had not acquired and did not propose to acquire any of that land; and
  - (b) (where the circumstances are those described in one or more of paragraphs 2 to [<sup>F7</sup>4A] in the said first column [<sup>F6</sup>of Part I]) the area or areas referred to in that paragraph or those paragraphs had not been defined or designated as therein mentioned or (in a case falling within paragraph 4) if the scheme therein mentioned had not come into operation.
- (2) In determining whether the relevant land forms part of such an area as is mentioned in paragraph 3 of Schedule 1,—



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- (a) in the case of an area designated as the site of a new town by an order which became operative on or before 29th October, 1958, regard shall be had to that order in the form in which, whether as originally made or as subsequently varied, it was in force on that day, and any variation becoming operative after that day shall be disregarded;
- (b) in the case of an area designated as the site of a new town by an order which became operative after the said 29th October, whether before or after the passing of this Act, regard shall be had to the order in its original form, and any variation of the order shall be disregarded.

[<sup>F8</sup>(2A) The provisions of Part II of Schedule 1 to this Act shall have effect with regard to paragraphs 3 and 3A of Part I of that Schedule][<sup>F9</sup>and the provisions of Part III of that Schedule shall have effect with regard to paragraph 4A.]

(3) In this section and in Schedule 1 to this Act—

“the land authorised to be acquired”—

- (a) in relation to a compulsory acquisition authorised by a compulsory purchase order or a special enactment, means the aggregate of the land comprised in that authorisation, and
- (b) in relation to a compulsory acquisition not so authorised but effected under powers exercisable by virtue of any enactment for defence purposes, means the aggregate of the land comprised in the notice to treat and of any land contiguous or adjacent thereto which is comprised in any other notice to treat served under the like powers not more than one month before and not more than one month after the date of service of that notice;

“defence purposes” has the same meaning as in the <sup>M3</sup>Land Powers (Defence) Act 1958;

and any reference to development of any land shall be construed as including a reference to the clearing of that land.

#### Textual Amendments

- F6** Words inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)\(a\)\(3\)](#) except where a notice to treat has been served before 13.11.1980
- F7** Word substituted by [Local Government, Planning and Land Act 1980 \(c. 65\), s. 145\(5\)\(a\)](#)
- F8** [S. 13\(2A\)](#) inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)\(b\)\(3\)](#) except where a notice to treat has been served before 13.11.1980
- F9** Words added by [Local Government, Planning and Land Act 1980 \(c. 65\), s. 145\(5\)\(b\)](#)

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

- C87** [S. 13](#) excluded by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s. 6\(3\)](#); modified by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s. 47\(2\)](#)

#### Marginal Citations

- M3** [1958 c. 30.](#)

## 14 Effect of certain actual or prospective development of adjacent land in same ownership.

- (1) Subject to section 15 of this Act, where, on the date of service of the notice to treat, the person entitled to the relevant interest is also entitled in the same capacity to an interest

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in other land contiguous or adjacent to the relevant land, there shall be deducted from the amount of the compensation which would be payable apart from this section the amount (if any) of such an increase in the value of the interest in that other land as is mentioned in subsection (2) of this section.

- (2) The said increase is such as, in the circumstances described in any of the paragraphs in the first column <sup>[<sup>F10</sup>]</sup>of Part I] of Schedule 1 to this Act, is attributable to the carrying out, or the prospect, of so much of the relevant development as would not have been likely to be carried out if the conditions mentioned in paragraphs (a) and (b) of section 13 (1) of this Act had been satisfied; and the relevant development for the purposes of this subsection is, in relation to the circumstances described in any of the said paragraphs, that mentioned in relation thereto in the second column <sup>[<sup>F10</sup>]</sup>of Part I] of the said Schedule 1, but modified, as respects the prospect of any development, by the omission of the words “other than the relevant land”, wherever they occur.
- (3) Nothing in this section shall affect the amount which is to be taken as the amount of the compensation for the purposes of section 20 of this Act (which relates to the consideration payable for the discharge of land from feu-duty and incumbrances).

#### **Textual Amendments**

**F10** Words inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)](#) **(a)(3)** except where a notice to treat has been served before 13.11.1980

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

**C88** [S. 14](#) excluded by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s. 6\(3\)](#); modified by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s.47\(3\)](#)

## **15 Subsequent acquisition of adjacent land and acquisition governed by enactment corresponding to s. 14.**

- (1) Where, for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land, an increase in the value of an interest in other land has, in any of the circumstances mentioned in the first column <sup>[<sup>F11</sup>]</sup>of Part I] of Schedule 1 to this Act, been taken into account by virtue of section 14 of this Act or any corresponding enactment, then, in connection with any subsequent acquisition to which this subsection applies, that increase shall not be left out of account by virtue of section 13 of this Act, or taken into account by virtue of section 14 of this Act or any corresponding enactment, in so far as it was taken into account in connection with the previous acquisition.
- (2) Where, in connection with a compulsory acquisition of an interest in land, a diminution in the value of an interest in other land has, in any of the circumstances mentioned in the first column <sup>[<sup>F11</sup>]</sup>of Part I] of the said Schedule 1, been taken into account in assessing compensation for injurious affection, then, in connection with any subsequent acquisition to which this subsection applies, that diminution shall not be left out of account by virtue of section 13 of this Act in so far as it was taken into account in connection with the previous acquisition.
- (3) Subsections (1) and (2) of this section apply to any subsequent acquisition where either—
- (a) the interest acquired by the subsequent acquisition is the same as the interest previously taken into account (whether the acquisition extends to the whole

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of the land in which that interest previously subsisted or only to part of that land), or

- (b) the person entitled to the interest acquired is, or derives title to that interest from, the person who at the time of the previous acquisition was entitled to the interest previously taken into account;

and in this subsection any reference to the interest previously taken into account is a reference to the interest the increased or diminished value whereof was taken into account as mentioned in subsection (1) or subsection (2) of this section.

- (4) Where, in connection with a sale of an interest in land by agreement, the circumstances were such that, if it had been a compulsory acquisition, an increase or diminution of value would have fallen to be taken into account as mentioned in subsection (1) or subsection (2) of this section, the preceding provisions of this section shall apply, with the necessary modifications, as if that sale had been a compulsory acquisition and that increase or diminution of value had been taken into account accordingly.
- (5) Section 14 of this Act shall not apply to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any corresponding enactment, nor to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any local enactment which provides (in whatever terms) that, in assessing compensation in respect of a compulsory acquisition thereunder, account shall be taken of any increase in the value of an interest in contiguous or adjacent land which is attributable to any of the works authorised by that enactment.
- (6) Where any such local enactment as is mentioned in subsection (5) of this section includes a provision restricting the assessment of the increase in value thereunder by reference to existing use (that is to say, by providing, in whatever terms, that the increase in value shall be assessed on the assumption that planning permission in respect of the contiguous or adjacent land in question would be granted for development of any class specified in <sup>F12</sup>Schedule 11 to the Town and Country Planning (Scotland) Act 1997] but would not be granted for any other development thereof), the enactment shall have effect as if it did not include that provision.
- (7) References in this section to a corresponding enactment are references to any of the following, that is to say,—
  - (a) section 13 of the <sup>M4</sup>Light Railways Act 1896;
  - (b) ..... <sup>F13</sup>
  - (c) ..... <sup>F14</sup>
  - <sup>F15</sup>(d) paragraph 4 of Schedule 1 to the Housing (Scotland) Act 1987.]
  - <sup>F16</sup>(e) section 35 (3) of the <sup>M5</sup>Roads (Scotland) Act 1970;]and, in subsection (1), include references to any such local enactment as is mentioned in subsection (5).

#### Textual Amendments

- F11** Words inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)](#) **(a)(3)** except where a notice to treat has been served before 13.11.1980
- F12** Words in s. 15(6) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\), Sch. 2 para. 9\(1\)](#)
- F13** [S. 15\(7\)\(b\)](#) repealed by [Miscellaneous Financial Provisions Act 1983 \(c. 29, SIF 99:1\), Sch. 3](#)
- F14** [S. 15\(7\)\(c\)](#) repealed by [Roads \(Scotland\) Act 1970 \(c. 20\), Sch. 2](#)
- F15** [S. 15\(7\)\(d\)](#) substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), ss. 335, 339, Sch. 23 para. 10\(1\)](#)

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**F16** S. 15(7)(e) inserted by Roads (Scotland) Act 1970 (c. 20), **Sch. 1**, para. 11.

#### Marginal Citations

**M4** 1896 c. 48.

**M5** 1970 c. 20.

## 16 Disregard of depreciation due to prospect of acquisition by authority possessing compulsory purchase powers.

No account shall be taken of any depreciation of the value of the relevant interest which is attributable to the fact that (whether by way of . . . <sup>F17</sup> allocation or other particulars contained in the current development plan, or by any other means) an indication has been given that the relevant land is, or is likely, to be acquired by an authority possessing compulsory purchase powers.

#### Textual Amendments

**F17** Word repealed by Town and Country Planning (Scotland) Act 1969 (c. 30), **Sch. 11**.

### *Special Cases*

## 17 Acquisition of houses unfit for human habitation.

The provisions of Schedule 2 to this Act shall have effect as to compensation in respect of the acquisition of land in the circumstances mentioned in that Schedule.

## [17A] <sup>F18</sup> Expenses of owners not in occupation.

Where, in consequence of any compulsory acquisition of land—

- (a) the acquiring authority acquire an interest of a person who is not then in occupation of the land; and
- (b) that person incurs incidental charges or expenses in acquiring, within the period of one year beginning with the date of entry, an interest in other land in the United Kingdom,

the charges or expenses shall be taken into account in assessing his compensation as they would be taken into account if he were in occupation of the land.]

#### Textual Amendments

**F18** S. 17A inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 79, **Sch. 17**, Pt. I, para.6 (with s. 84(5)); S.I. 1991/2092, **art.3** (with art. 4, Sch. 2 Pt. I para. 4)

## 18 Land of statutory undertakers.

In relation to compulsory acquisitions of interests in land which has been acquired by statutory undertakers (within the meaning of the Town and Country Planning (Scotland) Act [<sup>F19</sup>1997]) for the purposes of their undertaking, the provisions of this Act shall have effect subject to the provisions of [<sup>F19</sup>section 233] of that Act

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(which makes special provision as to the compensation payable in respect of certain acquisitions of land so acquired).

#### Textual Amendments

**F19** Words in s. 18 substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 9**

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

**C89** S. 18 extended by **Post Office Act 1969** (c. 48), **Sch. 4 para. 93(1)(xxi)** and **Civil Aviation Act 1971** (c. 75), **Sch. 5 para. 5** (s)

**C90** S. 18 extended by **Civil Aviation Act 1982** (c. 16, SIF 9), **Sch. 2 para. 4**

**C91** S. 18 modified (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 1(2)(i)** (with s. 106); S.I. 2001/869, **art. 2**

## 19 Outstanding right to compensation for refusal, etc. of planning permission.

(1) Where, in the case of any compulsory acquisition, a planning decision or order has been made before the service of the notice to treat, and in consequence of the decision or order any person is entitled (subject to the making and determination of a claim in accordance with the relevant provisions, and to the effect of any direction by the Secretary of State under [F20section 35 of the Town and Country Planning (Scotland) Act 1972]) to compensation for depreciation of the value of an interest in land which consists of or includes the whole or part of the relevant land, then if—

- (a) no notice stating that the compensation has become payable has been recorded before the date of service of the notice to treat (whether or not a claim for compensation has been made); but
- (b) such a notice is recorded on or after that date;

the compensation payable in respect of the compulsory acquisition shall be assessed as if the said notice had been recorded before the date of service of the notice to treat.

(2) In this section any reference to compensation for depreciation of the value of an interest in land is a reference to compensation payable either—

- (a) under Part II or Part V of the <sup>M6</sup>Town and Country Planning (Scotland) Act 1954 in respect of depreciation of the value of that interest, or
- (b) under [F20section 153 of the <sup>M7</sup>Town and Country Planning (Scotland) Act 1972], in respect of loss or damage consisting of depreciation of the value of that interest;

any reference to recording is a reference to recording in the appropriate Register of Sasines under section 29 (1) or under section 41 of the Town and Country Planning (Scotland) Act 1954, or under the provisions of the said section 29 (1) as applied by section 48 of that Act; and “the relevant provisions”, in relation to compensation under the said Part II or the said Part V, means the provisions of the said Part II, or those provisions as applied by the said Part V, and, in relation to compensation under [F20section 153 of the Town and Country Planning (Scotland) Act 1972], means the provisions of regulations made under that Act with respect to claims for compensation under that subsection.

#### Textual Amendments

**F20** Words substituted by virtue of **Town and Country Planning (Scotland) Act 1972** (c. 52), **Sch. 22 Pt. I para. 2**

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

**C92** References to [Town and Country Planning \(Scotland\) Act 1954 \(c. 73\)](#), **Pt. II** (except reference to provisions of Pt. II as applied by Pt. V) and s. 41 and the first reference to *ibid.*, s. 29(1) to be construed as references to [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), **Pt. VII** and ss. 155 and 147(4) respectively

#### **Marginal Citations**

**M6** 1954 c. 73.

**M7** 1972 c. 52.

## **20 Consideration in respect of discharge of feu-duty, etc.**

- (1) Subject to the provisions contained in section 32 of this Act relating to increased compensation in cases falling under section 31 of this Act, the aggregate amount of the consideration payable under section 108 of the <sup>M8</sup>Lands Clauses Consolidation (Scotland) Act 1845 in respect of the discharge from all relevant prestations of land <sup>F21</sup>... which has been acquired (whether compulsorily or by agreement) by an authority possessing compulsory purchase powers, shall be an amount equal to the difference between—
  - (a) the amount of the compensation payable in respect of the acquisition of <sup>F21</sup>... the land, and
  - (b) the amount of the compensation which would have been so payable if the land had not been subject to any relevant prestation.
- (2) Any reference in this section to a “relevant prestation” is a reference to any <sup>F22</sup>... annual or recurring payment or incumbrance (or any portion thereof), to which the said section 108 applies <sup>F22</sup>....
- (3) Where the [<sup>F23</sup>land] has been acquired by agreement it shall be assumed for the purpose of estimating the amounts referred to in subsections (1)(a) and (1) (b) of this section that it was acquired compulsorily in pursuance of a notice to treat served on the date of the making of the agreement.
- (4) If the land is subject to only one relevant prestation the amount of the consideration in respect of the discharge of the land from that prestation shall be equal to the aggregate amount of the consideration.
- (5) If the land is subject to two or more relevant prestations the market value of each such prestation immediately before the service of the notice to treat or, as the case may be, the making of the agreement, shall be estimated and the aggregate amount of the consideration shall be attributed to the discharge of the land from the relevant prestations in order of priority, so however that so much thereof as is attributed to the discharge of the land from any prestation shall (without prejudice to the next following subsection) not exceed the value, estimated as aforesaid, of that prestation.
- (6) If, after giving effect to the provisions of the last preceding subsection in any case to which they apply, there remains an unattributed balance of the aggregate amount of the consideration, the amounts attributed in accordance with those provisions shall be increased proportionately so as to extinguish the balance.
- (7) Subject to the next following subsection references in this section to the compensation payable in respect of the acquisition of the <sup>F24</sup>... land shall be construed as references

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to such compensation exclusive of any compensation for disturbance or for severance or injurious affection.

- (8) In relation to the acquisition of <sup>F24</sup>... any land to which Rule (5) of section 12 of this Act applies, references in this section to the compensation payable in respect of the acquisition shall be construed as references to the compensation (exclusive of any compensation for disturbance or for severance or injurious affection) which would have been so payable if the said Rule (5) had not applied.

#### Textual Amendments

- F21** Words in s. 20(1) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 25(3)(a), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F22** Words in s. 20(2) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 25(3)(b), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F23** Word in s. 20(3) substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), **Sch. 12 para. 25(3)(c)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F24** Words in s. 20(7)(8) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 25(3)(d), (e), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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

- C93** S. 20 excluded by Land Tenure Reform (Scotland) Act 1974 (c. 38), s. 6(2)(c)(4)

#### Marginal Citations

- M8** 1845 c. 19.

## 21 War-damaged land.

<sup>F25</sup>

#### Textual Amendments

- F25** S. 21 repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), **Sch. 1 Pt. VII**

### *Assumptions as to planning permission*

## 22 Assumptions as to planning permission.

- (1) For the purpose of assessing compensation in respect of any compulsory acquisition, such one or more of the assumptions mentioned in sections 23 and 24 of this Act as are applicable to the relevant land or any part thereof shall [<sup>F26</sup>(subject to subsection (3A) of this section)] be made in ascertaining the value of the relevant interest.
- (2) Any planning permission which is to be assumed in accordance with any of the provisions of those sections is in addition to any planning permission which may be in force at the date of service of the notice to treat.
- (3) Nothing in those provisions shall be construed as requiring it to be assumed that planning permission would necessarily be refused for any development which is not

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development for which, in accordance with those provisions, the granting of planning permission is to be assumed;

[<sup>F27</sup>(3A) In determining—

- (a) for the purpose referred to in subsection (1) of this section whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of any land; or
- (b) whether any of the assumptions mentioned in section 24 of this Act (but not section 23) are applicable to the relevant land or any part thereof,

regard shall be had to any contrary opinion expressed in relation to that land in any certificate issued under Part IV of this Act.]

(4) For the purposes of any references in this section, or in section 23 of this Act, to planning permission which is in force on the date of service of the notice to treat, 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, or
- (c) on an ordinary application or on an outline application or by virtue of a development order,

or is planning permission which, in accordance with any direction or provision given or made by or under any enactment, is deemed to have been granted.

[<sup>F28</sup>(5) If, in a case where—

- (a) the relevant land is to be acquired for use for, or in connection with, providing, altering or improving a public road; or
- (b) that use, or its use in that connection, is being considered by the roads authority,

a determination mentioned in subsection (7) of this section falls to be made, that determination shall be made on the following assumption.

(6) The assumption is that, if the relevant land were not so used, no public road would be provided, altered or improved to meet the same or substantially the same need as would have been met by the provision, alteration or improvement of the public road referred to in paragraph (a) or (b) of subsection (5) of this section.

(7) The determinations referred to in subsection (5) of this section are—

- (a) a determination, for the purpose of assessing compensation in respect of any compulsory acquisition, whether planning permission might reasonably have been expected to be granted for any development if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers, and
- (b) a determination under section 25 of this Act as to the development for which, in the opinion of the planning authority, planning permission would or would not have been granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers .]

#### Textual Amendments

**F26** Words in s. 22(1) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 79, [Sch. 17 Pt. I para. 7\(1\)](#), (with s. 84(5)); [S.I. 1991/2092](#), [art.3](#) (with [art. 4](#), [Sch. 2 Pt. II](#))



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- F27** S. 22(3A) substituted (25.9.1991) for words in s. 22(3) by [Planning and Compensation Act 1991](#) (c. 34, SIF 28:2), s. 79, [Sch. 17 Pt. I para. 7\(2\)](#), (with s. 84(5)); S.I. 1991/2092, [art.3](#) (with art. 4, Sch. 2 Pt. II)
- F28** S. 22(5)(6)(7) added (25.9.1991) by [Planning and Compensation Act 1991](#) (c. 34, SIF 28:2), s.74, (with s. 84(5)); S.I. 1991/2092, [art.3](#) (with art. 4 Sch. 2 Pt. I para. 2)

## 23 Assumptions not directly derived from development plans.

(1) In a case where—

- (a) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part thereof, and
- (b) on the date of service of the notice to treat there is not in force planning permission for that development,

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

(2) For the purposes of paragraph (b) of the preceding subsection, no account shall be taken of any planning permission so granted as not to enure (while the permission remains in force) for the benefit of the land and of all persons for the time being interested therein.

<sup>F29</sup>(3) Subject to subsection (4) of this section, it shall be assumed that, in respect of the relevant land or any part of it, planning permission would be granted—

- (a) subject to the condition set out in <sup>F30</sup>[Schedule 12 to the Town and Country Planning (Scotland) Act 1997], for any development of a class specified in <sup>F30</sup>[paragraph 1 of Schedule 11 to that Act]; and
- (b) for any development of a class specified in <sup>F30</sup>[paragraph 2 of Schedule 11 to that Act].

(4) Notwithstanding anything in subsection (3) of this section—

- <sup>F31</sup>(a) .....
- <sup>F31</sup>(b) .....

(c) where, at any time before the said date, an order was made under <sup>F32</sup>[section 71 of the said Act of 1997], in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and compensation became payable in respect of that order under <sup>F32</sup>[section 83 of that Act] of that Act, it shall not by virtue of the said subsection (3) be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for the rebuilding of that building or the resumption of that use.

(5) Where a certificate is issued under the provisions of Part IV of this Act, it shall be assumed that any planning permission which, according to the certificate, <sup>F33</sup>[would have been] granted in respect of the relevant land or part thereof <sup>F34</sup>[if it were not proposed to be acquired by any authority possessing compulsory purchase powers] would be so granted, but, where any conditions are, in accordance with those provisions, specified in the certificate, only subject to those conditions and, if any future time is so specified, only at that time.

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### Textual Amendments

- F29** S. 23(3) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 60(6), [Sch. 12 para. 1\(1\)\(a\)](#), (with s. 84(5)); S.I. 1991/2092, [art. 3](#)
- F30** Words in s. 23(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 9\(3\)\(a\)](#)
- F31** S. 23(4)(a)(b) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), ss. 60(6), 84(6), [Sch. 12 para. 1\(1\)\(b\)](#), [Sch. 19 Pt. IV](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#), [Sch. 1](#)
- F32** Words in s. 23(4)(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 9\(3\)\(b\)](#)
- F33** Words substituted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 5\(2\)\(5\)](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 33 para. 7\(1\)\(3\)\(5\)](#) in relation to applications, or certificates issued in pursuance of applications, made after 12.12.1975
- F34** Words inserted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 5\(2\)\(5\)](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 33 para. 7\(1\)\(3\)\(5\)](#) in relation to applications, or certificates issued in pursuance of applications, made after 12.12.1975

## 24 Special assumptions in respect of certain land comprised in development plans.

- (1) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of a site defined in the current development plan as the site of proposed development of a description specified in relation thereto in the plan, it shall be assumed that planning permission would be granted for that development.
- (2) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current 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 the relevant land or part thereof, as the case may be, for any development which—
  - (a) is development for the purposes of that use of the relevant land or that part thereof, and
  - (b) is development for which planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.
- (3) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current 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 the relevant land or that part thereof, as the case may be, for any development which—
  - (a) is development for the purposes of a use of the relevant land or that part thereof, 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 the relevant land or that part thereof, as the case may be.
- (4) If the relevant land or any part thereof is land subject to comprehensive development, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development for the purposes of a use of the relevant land or that part thereof falling within the planned range of uses (whether it is the use which, in accordance with the particulars and proposals comprised in the current development plan in relation to the area in question,

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is indicated in the plan as the proposed use of the relevant land or that part thereof, or is any other use falling within the planned range of uses) being development for which, in the circumstances specified in the next following subsection, planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.

- (5) The circumstances referred to in the last preceding subsection are those which would have existed if—
- (a) the area in question had not been defined in the current development plan as an area of comprehensive development, and no particulars or proposals relating to any land in that area had been comprised in the plan, and
  - (b) in a case where, on the date of service of the notice to treat, land in that area has already been developed in the course of the development or redevelopment of the area in accordance with the plan, no land in that area had been so developed on or before that date;

and in that subsection “the planned range of uses” means the range of uses which, in accordance with the particulars and proposals comprised in the current development plan in relation to the area in question, are indicated in the plan as proposed uses of land in that area.

- (6) Where in accordance with any of the preceding subsections it is to be assumed that planning permission would be granted as therein mentioned—
- (a) the assumption shall be that planning permission would be so granted subject to such conditions (if any) as, in the circumstances mentioned in the subsection in question, might reasonably be expected to be imposed by the authority granting the permission, and
  - (b) if, in accordance with any map or statement comprised in the current development plan, it is indicated that any such planning permission would be granted only at a future time, then (without prejudice to the preceding paragraph) the assumption shall be that the planning permission in question would be granted at the time when, in accordance with the indications in the plan, that permission might reasonably be expected to be granted.
- (7) Any reference in this section to development for which planning permission might reasonably have been expected to be granted is a reference to development for which planning permission might reasonably have been expected to be granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers.
- (8) In this section “land subject to comprehensive development” means land which consists or forms part of an area defined in the current development plan as an area of comprehensive development.

## PART IV

### CERTIFICATION BY PLANNING AUTHORITIES OF APPROPRIATE ALTERNATIVE DEVELOPMENT

#### **[<sup>F35</sup>25 Certification of appropriate alternative development.**

- [ Where an interest in land is proposed to be acquired by an authority possessing <sup>F36</sup>(1) compulsory purchase powers, either of the parties directly concerned may, subject to

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subsection (2) of this section, apply to the planning authority for a certificate under this section]

- (2) [<sup>F37</sup>If the authority proposing to acquire the interest] have served a notice to treat in respect thereof, or an agreement has been made for the sale thereof to that authority, and a reference has been made to the Lands Tribunal for Scotland to determine the amount of the compensation payable in respect of that interest, no application for a certificate under this section shall be made by either of the parties directly concerned after the date of that reference except either—
- (a) with the consent in writing of the other of those parties, or
  - (b) with the leave of the Lands Tribunal for Scotland.
- (3) An application for a certificate under this section—
- (a) shall state whether or not there are, in the applicant’s opinion, any classes of development which, either immediately or at a future time, would be appropriate for the land in question if it were not proposed to be acquired by any authority possessing compulsory purchase powers and, if so, shall specify the classes of development and the times at which they would be so appropriate;
  - (b) shall state the applicant’s grounds for holding that opinion; and
  - (c) shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served on the other party directly concerned.
- (4) Where an application is made to the planning authority for a certificate under this section in respect of an interest in land, the planning authority shall, not earlier than twenty-one days after the date specified in the statement mentioned in subsection (3) (c) of this section, issue to the applicant a certificate stating that, in the opinion of the planning authority in respect of the land in question, either—
- [<sup>F38</sup>(a) planning permission would have been granted for development of one or more classes specified in the certificate (whether specified in the application or not) and for any development for which the land is to be acquired, but would not have been granted for any other development; or
  - (b) planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development,
- and for the purposes of this subsection development is development for which the land is to be acquired if the land is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for that development.]
- (5) Where, in the opinion of the planning authority, planning permission would have been granted as mentioned in subsection (4) (a) of this section, but would only have been granted subject to conditions, or at a future time, or both subject to conditions and at a future time, the certificate shall specify those conditions, or that future time, or both, as the case may be, in addition to the other matters required to be contained in the certificate.
- (6) For the purposes of subsection (5) of this section, a planning authority may formulate general requirements applicable to such classes of case as may be described therein; and any conditions required to be specified in the certificate in accordance with that subsection may, if it appears to the planning authority to be convenient to do so, be specified by reference to those requirements, subject to such special modifications thereof (if any) as may be set out in the certificate.

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(7) In determining, for the purposes of the issue of a certificate under this section, whether planning permission for any particular class of development would have been granted in respect of any land, the planning authority shall not treat development of that class as development for which planning permission would have been refused by reason only that it would have involved development of the land in question (or of that land together with other land) otherwise than in accordance with the provisions of the development plan relating thereto.

<sup>F39</sup>(8) . . . . .

(9) On issuing to either of the parties directly concerned a certificate under this section in respect of an interest in land, the planning authority shall serve a copy of the certificate on the other of those parties.]

[<sup>F40</sup>(9A) In assessing the compensation payable to any person in respect of any compulsory acquisition, there shall be taken into account any expenses reasonably incurred by him in connection with the issue of a certificate under this section (including expenses incurred in connection with an appeal under section 26 of this Act where any of the issues on the appeal are determined in his favour)]

#### Textual Amendments

- F35** S. 25 substituted by virtue of [Community Land Act 1975 \(c. 77\)](#), s. 47(1), **Sch. 9 Pt. II**; continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), s. 121, **Sch. 24 Pt. II** in relation to applications, and certificates issued in pursuance of applications, made after 12.12.1975
- F36** S. 25(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 75(1), (with s. 84(5)); S.I. 1991/2092, **art.3** (with art. 4, Sch. 2 Pt. II)
- F37** Words in s. 25(2) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 79, **Sch. 17, Pt. I, para. 8(a)**, (with s. 84(5)); S.I. 1991/2092, **art. 3** (with art. 4, Sch. 2 Pt. II)
- F38** S. 25(4)(a)(b) and words following substituted (25.9.1991) for paras. (a)(b) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 75(2), (with s. 84(5)); S.I. 1991/2092, **art. 3** (with art. 4, Sch. 2 Pt. II)
- F39** S. 25(8) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), ss. 79, 84(6), Sch. 17 Pt. I, para. 8(b), **Sch. 19 Pt.IV**. (with s. 84(5)); S.I. 1991/2092, art.3, **Sch. 1** (with art. 4, Sch. 2 Pt. II)
- F40** S. 25(9A) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 75(3), (with s. 84(5)); S.I. 1991/2092, **art. 3** (with art. 4, Sch. 2 Pt. II)

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

- C94** S. 25(2) modified by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 77(3)(4), 335, **Sch. 6 para. 7**
- C95** S. 25(2) modified by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), s. 141(5), **Sch. 27 para. 23**

## 26 Appeals against certificates under s. 25.

- (1) Where the local planning authority have issued a certificate under section 25 of this Act in respect of an interest in land,—
- (a) the person for the time being entitled to that interest, or
  - (b) any authority possessing compulsory purchase powers by whom that interest is proposed to be acquired,
- may appeal to the Secretary of State against that certificate.

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- (2) On any appeal under this section against a certificate the Secretary of State shall consider the matters to which the certificate relates as if the application for a certificate under section 25 of this Act had been made to him in the first instance, and shall either confirm the certificate, or vary it, or cancel it and issue a different certificate in its place, as he may consider appropriate.
- (3) Before determining any such appeal the Secretary of State shall, if any such person or authority as is mentioned in subsection (1) (a) or subsection (1) (b) of this section so desires, afford to each such person or authority and to the local planning authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) Where an application is made for a certificate under section 25 of this Act, and at the expiry of the time prescribed by a development order for the issue thereof (or, if an extended period is at any time agreed upon in writing by the parties directly concerned and the local planning authority, at the end of that period) no certificate has been issued by the local planning authority in accordance with that section, the preceding provisions of this section shall apply as if the local planning authority had issued such a certificate containing such a statement as is mentioned in subsection (4) (b) of that section.

## 27 **Extension of ss. 25 and 26 to special cases.**

- (1) Where an interest in land is proposed to be acquired [<sup>F41</sup>by an authority possessing compulsory purchase powers] and, by reason that the person entitled to the interest is absent from the United Kingdom or cannot be found, the compensation payable in respect of the interest falls to be determined by the valuation of a valuator under section 56 of the <sup>M9</sup>Land Clauses Consolidation (Scotland) Act 1845, the valuator, before carrying out his valuation, may apply to the local planning authority for a certificate under section 25 of this Act; and the provisions of that section and of section 26 of this Act shall apply in relation to an application made by virtue of this subsection as they apply in relation to an application made by virtue of the said section 25 (1).
- (2) Where, in pursuance of an application made by virtue of subsection (1) of this section, the local planning authority issue a certificate to the valuator, the authority shall serve copies of the certificate on both the parties directly concerned.
- (3) Where an interest in land is proposed to be acquired in the circumstances mentioned in the said section 25 (1), <sup>F42</sup>... an application to the local planning authority for a certificate under that section may be made by any person entitled to any <sup>F42</sup>... annual or recurring payment or incumbrance out of the land <sup>F42</sup>... in the like circumstances and in the like manner as such an application may be made by the person entitled to the interest.
- (4) Where, in pursuance of an application made by virtue of the last preceding subsection, the local planning authority issue a certificate to the applicant, the authority shall serve copies of the certificate on both the parties directly concerned.
- (5) An application for a certificate made by virtue of subsection (1) or subsection (3) of this section shall specify the matters referred to in [<sup>F43</sup>subsection (3) (a) and (b) of section 25] of this Act, and shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served on each of the parties directly concerned; and, in relation to such an application, subsection (4) of that section shall

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have effect with the substitution, for the reference to the date specified in the statement mentioned in [F43 subsection (3) (c)] of that section of a reference to the date specified in accordance with this subsection, or, where more than one date is so specified, the later of those dates.

- (6) Where a certificate has been issued in pursuance of an application made by virtue of subsection (3) of this section, or in a case where an application for a certificate could have been made thereunder, the provisions of section 26 of this Act shall apply as if any reference to the person entitled to the interest in question, or to the parties directly concerned, included a reference to the person who made or could have made that application as the case may be.

#### Textual Amendments

- F41** Words in s. 27(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 79, [Sch. 17 Pt. I, para.9](#), (with s. 84(5)); [S.I. 1991/2092, art.3](#) (with art. 4, [Sch. 2 Pt. II](#))
- F42** Words in s. 27(3) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 25\(4\)](#), [sch. 13 Pt. 1](#) (with ss. 58, 62, 75); [S.S.I. 2003/456, art. 2](#)
- F43** Words substituted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 5\(3\)\(5\)](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 33 para. 7\(1\)\(4\)\(5\)](#) in relation to applications, or certificates issued in pursuance of applications, made after 12.12.1975

#### Marginal Citations

- M9** 1845 c. 19.

## 28 Power to prescribe matters relevant to Part IV.

[F44 Regulations made under [F45 section 275(1)(c) of the Town and Country Planning (Scotland) Act 1997] or a development order may] include provision for regulating the manner in which applications under section 25 or 27 of this Act and appeals under section 26 of this Act are to be made and dealt with respectively, and other procedural matters ancillary to such applications and appeals, and in particular—

- (a) for prescribing (subject to the provisions of section 25 (4) of this Act) the time within which a certificate is required to be issued under that section;
- (b) for prescribing the manner in which notices of appeals under section 26 of this Act are to be given, and the time for giving any such notice;
- (c) for requiring local planning authorities to furnish the Secretary of State, and such other persons (if any) as may be prescribed by or under the order, with such information as may be so prescribed with respect to applications under the said section 25 or the said section 27, including information whether any such application has been made in respect of any particular land and information as to the manner in which any such application has been dealt with, together, in such cases as may be so prescribed, with copies of certificates issued under the said section 25;
- (d) for requiring a local planning authority, on issuing a certificate specifying conditions by reference to general requirements in accordance with subsection (6) of the said section 25, to supply a copy of those requirements (or of so much thereof as is relevant to the certificate) with each copy of the certificate, unless, before the certificate is issued, the requirements in question have been made available to the public in such manner as may be specified in the development order;

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- (e) for requiring an authority possessing compulsory purchase powers who—
  - (i) propose to acquire <sup>F46</sup>... any land (where the land or part thereof does not consist or form part of any such area as is mentioned in section 25 (1) (a) or section 25 (1) (b) of this Act), and
  - (ii) also propose to require the discharge of the land from any such <sup>F46</sup>... incumbrance as is mentioned in section 27 (3) of this Act,
 to serve, at such time as may be specified in the order, notice of the proposals on the person entitled to the <sup>F46</sup>... incumbrance;
- (f) for requiring an authority possessing compulsory purchase powers, when serving a notice to treat in relation to, or purchasing, <sup>F46</sup>... any land (where the land or part thereof does not consist or form part of any such area as is mentioned in section 25 (1) (a) or section 25 (1) (b) of this Act) to give notice of the fact that they have done so to such persons as may be prescribed in the order, being persons who might be entitled to apply under section 26 (3) of this Act for a certificate relating to the land.

#### Textual Amendments

- F44** Words in s. 28 substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 79, [Sch. 17 Pt. II para. 16](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)
- F45** Words in s. 28 substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(4\)](#)
- F46** Words in s. 28(e)(f) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), sch. 12 para. 25(5), [sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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

- C96** S. 28 applied (27.5.1997) by [1997 c. 8, ss. 275\(1\)\(c\), 278\(2\)](#)

## 29 Proceedings for challenging validity of decision on appeal under s. 26.

- (1) If any person aggrieved by a decision of the Secretary of State under section 26 of this Act or the local planning authority desires to question the validity of that decision on the ground that it is not within the powers of this Act or that any of the requirements of this Act or of a development order or of [<sup>F47</sup>the <sup>M10</sup>Tribunals and Inquiries Act 1971] or rules made thereunder have not been complied with in relation to it, that person or authority may, within six weeks from the date of the decision, make an application to the Court of Session, and the Court of Session—
  - (a) may by interim order suspend the operation of the decision until the determination of the proceedings;
  - (b) if satisfied that the decision is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with the said requirements, may quash the decision.
- (2) Subject to subsection (1) of this section, the validity of a decision on an appeal under section 26 of this Act shall not be questioned in any legal proceedings whatsoever.
- (3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to give a decision on an appeal under section 26 of this Act.



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**Textual Amendments**

**F47** Words substituted by virtue of [Tribunals and Inquiries Act 1971 \(c. 62\), s. 18\(4\)](#)

**Marginal Citations**

**M10** [1971 c. 62.](#)

**30 Interpretation of Part IV.**

- (1) In this Part of this Act “the parties directly concerned”, in relation to an interest in land, means the person entitled to the interest and the authority by whom it is proposed to be acquired.
- (2) For the purposes of sections 25 and 26 of this Act, an interest in land shall be taken to be an interest proposed to be acquired by an authority possessing compulsory purchase powers in the following (but no other) circumstances, that is to say—
  - (a) where, for the purposes of a compulsory acquisition by that authority of land consisting of or including land in which that interest subsists, a notice required to be published or served in connection with that acquisition, either by an Act or by any Standing Order of either House of Parliament relating to petitions for private bills, has been published or served in accordance with that Act or Order; or
  - (b) where a notice requiring the purchase of that interest has been served under any enactment, and in accordance with that enactment that authority are to be deemed to have served a notice to treat in respect of that interest; or
  - (c) where an offer in writing has been made by or on behalf of that authority to negotiate for the purchase of that interest.

<sup>F48</sup>(3) .....

**Textual Amendments**

**F48** S. 30(3) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), ss. 79, 84(6), Sch. 17 Pt. I, para. 10, [Sch. 19, Pt.IV](#) (with s. 84(5)); S.I. 1991/2092, art.3, [Sch. 1](#) (with art. 4, Sch. 2 Pt. II)

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

**C97** S. 30(2) modified by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), s. 141, [Sch. 27 para. 24](#)

**C98** S. 30(2) modified by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 77(3)(4), 335, [Sch. 6 para. 8](#)

**C99** S. 30(2)(a) modified (15.1.2007) by [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#), s. 19 (with s. 50)

**C100** S. 30(2)(a) modified (19.4.2007) by [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#), s. 24 (with ss. 52, 60)

**C101** S. 30(2)(a) modified (8.5.2007) by [Airdrie-Bathgate Railway and Linked Improvements Act 2007 \(asp 19\)](#), s. 24 (with ss. 48, 59)

**PART V**

31— ..... <sup>F49</sup>  
37.

*Status: Point in time view as at 22/05/2008.*

*Changes to legislation: Land Compensation (Scotland) Act 1963 is up to date with all changes known to be in force on or before 07 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F49** Ss. 31—37 repealed by [Land Commission Act 1967 \(c. 1\)](#), ss. 86, 101, [Sch. 17](#)

[<sup>F50</sup>**PART V**

COMPENSATION WHERE PERMISSION FOR ADDITIONAL  
DEVELOPMENT GRANTED AFTER ACQUISITION

**Textual Amendments**

**F50** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.1](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

<sup>F51</sup>**31 Compensation where planning decision made after acquisition.**

(1) Where—

- (a) any interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers and, before the end of the period of ten years beginning with the date of completion, a planning decision is made granting permission for the carrying out of additional development of any of the land; and
- (b) the principal amount of the compensation which was payable in respect of the compulsory acquisition or, in the case of a sale by agreement, the amount of the purchase price, was less than the amount specified in subsection (2) of this section,

then, subject to the following provisions of this section, the person to whom the compensation or purchase price was payable shall be entitled, on a claim duly made by him, to compensation from the acquiring authority of an amount equal to the difference.

- (2) The amount referred to in subsection (1)(b) of this section is the principal amount of the compensation which would have been payable in respect of a compulsory acquisition of the interest by the acquiring authority, in pursuance of a notice to treat served on the relevant date if—
  - (a) the planning decision mentioned in subsection (1)(a) of this section had been made before that date; and
  - (b) the permission granted by it had been in force on that date.
- (3) No compensation shall be payable by virtue of this section in respect of a planning decision in so far as it relates to land acquired by the acquiring authority, whether compulsorily or by agreement—
  - (a) under section 142 or 143 of the Local Government, Planning and Land Act 1980 (acquisitions by urban development corporations and by roads authorities in connection with urban development areas);
  - (b) under the New Towns (Scotland) Act 1968 (acquisitions by development corporations and by roads authorities in connection with new town areas); or
  - (c) where the compulsory purchase order included a direction under [<sup>F52</sup>section 45 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act

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1997] (minimum compensation in case of listed building deliberately left derelict).

(4) If—

- (a) in accordance with the preceding provisions of this section the person referred to in subsection (1) of this section would be entitled to compensation under this section; but
- (b) before the planning decision in question that person has died, or any other act or event has occurred whereby the right to compensation under this section, if vested in him immediately before that act or event, would thereupon have vested in some other person,

the right to compensation under this section shall be treated as having devolved as if that right had been vested in him immediately before his death or immediately before that act or event, as the case may be, and the compensation shall be payable to the persons claiming under him accordingly.

(5) Compensation under this section shall carry interest at the rate prescribed under section 40 of this Act from the date of the planning decision in question until payment.

(6) The provisions of Part II of this Act (so far as applicable) shall apply (subject to the following provisions) in relation to the assessment of compensation under this section as they apply in relation to the assessment of compensation in respect of the compulsory acquisition of an interest in land.

#### Textual Amendments

- F51** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para. 1](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)
- F52** Words in s. 31(3)(c) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(5\)](#)

### <sup>F53</sup>32 Provisions as to claims under section 31.

(1) For the purpose of facilitating the making of claims for compensation under section 31 of this Act—

- (a) the person entitled to receive the compensation or purchase price in respect of such an acquisition or sale as is mentioned in section 31(1)(a) of this Act; or
- (b) any person claiming under him as being a person who, if compensation under that section became payable, would be entitled to it by virtue of subsection (4) of that section,

may give to the acquiring authority an address for service under this section.

(2) Where, at any time—

- (a) after a person has given an acquiring authority an address for service under this section; and
- (b) before the end of the period mentioned in paragraph (a) of section 31(1) of this Act,

such a planning decision is made as is mentioned in that paragraph, the acquiring authority shall, subject to subsection (3) of this section, give notice of the decision in the prescribed form to that person at that address.

(3) If—

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- (a) an address for service has been given by such a person as is mentioned in subsection (1)(b) of this section; and
  - (b) the acquiring authority have reasonable grounds for believing that the person mentioned in subsection (1)(a) of this section is dead or that any other act or event has occurred as mentioned in section 31(4)(b) of this Act,
- the acquiring authority need not give a notice to the person mentioned in subsection (1)(a).
- (4) A claim for compensation under section 31 of this Act in respect of a planning decision shall not have effect if made more than six months after the following date, that is to say—
- (a) if the claim is made by a person who has not given the acquiring authority an address for service under this section, the date of the decision;
  - (b) if the claim is made by a person who has given the acquiring authority such an address, the date on which notice of the decision is given to him in accordance with subsection (2) of this section;
- but, where there is an appeal against the planning decision, the reference in paragraph (a) of this subsection to the date of the planning decision shall be read as a reference to the date of the decision on the appeal.
- (5) The references in subsection (4) of this section to an appeal against a planning decision include an appeal made by virtue of [<sup>F54</sup>section 47(2) of the Town and Country Planning (Scotland) Act 1997].
- (6) Where—
- (a) a person has given to an acquiring authority an address for service under this section; and
  - (b) that authority, before the end of the period mentioned in section 31(1)(a) of this Act, cease to be entitled to an interest in the whole or part of the land comprised in the acquisition or sale, without remaining or becoming entitled to the [<sup>F55</sup>ownership] , or a tenancy, of that land or that part of it, as the case may be,
- they shall notify the planning authority; and after that it shall be the duty of the planning authority to give notice to the acquiring authority of any planning decision of which the acquiring authority are required to give notice under subsection (2) of this section.
- (7) Notice under subsection (6) of this section of a planning decision—
- (a) in the case of a decision made by the planning authority, shall be given within seven days after the making of the decision; and
  - (b) in any other case, shall be given within seven days after the making of the decision has been notified to the planning authority.

#### Textual Amendments

- F53** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para. 1](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)
- F54** Words in s. 32(5) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 9\(6\)](#)
- F55** Word in s. 32(6)(b) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 25\(6\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, [art. 2](#)

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**F56 33 Extension to planning permission where no planning decision made.**

- (1) The provisions of sections 31 and 32(1) of this Act shall have effect in relation to any planning permission falling within column 1 of the following table for any development as if a planning decision granting that permission had been made on the date shown in column 2.

<b>Planning permission</b>	<b>Date of decision</b>
Permission granted by a development order	When development is initiated
Permission granted by the adoption or approval of a simplified planning zone scheme	When the scheme is approved or adopted
Permission granted by an order designating an enterprise zone	When the designation takes effect
Permission deemed to be granted by a direction under section 37 of the Town and Country Planning (Scotland) Act 1972	When the direction is given
Permission deemed to be granted by a planning authority	The occurrence of the event in consequence of which the permission is deemed to be granted

- (2) Where the provisions of section 31 of this Act have effect as applied by subsection (1) of this section in relation to any planning permission falling within column 1 of that table for any development, then if—
- before the date shown in column 2, a person who (under section 32(1) of this Act as so applied) is entitled to give an address for service under that section has given such an address to the acquiring authority; and
  - the development is proposed to be carried out by the acquiring authority or, if it is proposed to be carried out by a person other than the acquiring authority, notice of that proposal is given to the acquiring authority by the person proposing to carry out the development,
- it shall, subject to subsection (3) of this section, be the duty of the acquiring authority to give notice of that proposal in the prescribed form to the person mentioned in paragraph (a) of this subsection at the address given by him to the authority.
- (3) An acquiring authority shall not be required by virtue of subsection (2) of this section to give notice of proposed development to the person mentioned in section 32(1)(a) of this Act if—
- an address for service has been given to them by such a person as is mentioned in section 32(1)(b) of this Act; and
  - they have reasonable grounds for believing that the former person is dead or that any other act or event has occurred as mentioned in section 31(4)(b) of this Act.
- (4) A claim for compensation under section 31 of this Act in respect of a planning permission falling within column 1 of that table shall not have effect if made more than six months after the following date, that is to say—

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- (a) if the claim is made by a person to whom notice has been given under subsection (2) of this section, the date on which the notice was given;
- (b) in any other case, the date shown in column 2.

**Textual Amendments**

**F56** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.1](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

<sup>F57</sup>**34 Extension to Crown development.**

- (1) Where—
  - (a) any interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers, and before the end of the period of ten years beginning with the date of completion there is initiated any additional development of any of the land which was comprised in the acquisition or sale; and
  - (b) by reason of any such circumstances as are mentioned in subsection (2) of this section the development in question is development for which planning permission is not required,

the provisions of sections 31 and 32(1) of this Act shall apply as if a planning decision granting permission for that development had been made at the time when the additional development is so initiated.
- (2) The circumstances referred to in subsection (1) of this section are either or both of the following—
  - (a) that the development is initiated by or on behalf of the Crown;
  - (b) that there is a Crown interest in the land and the development is initiated in right of that interest.
- (3) Where—
  - (a) the provisions of section 31 of this Act have effect as applied by subsection (1) of this section in relation to the initiation of any development; and
  - (b) before the development is initiated a person who (under section 32(1) of this Act as so applied) is entitled to give an address for service under that section has given such an address to the acquiring authority,

it shall, subject to subsections (4) and (5) of this section, be the duty of the acquiring authority to give notice in the prescribed form of the initiation of the development to the person mentioned in paragraph (b) of this subsection at the address given by him to the authority.
- (4) Where—
  - (a) by virtue of subsection (3) of this section, it is the duty of a government department to give notice of development initiated by or on behalf of that department; and
  - (b) the Minister in charge of the department certifies that for reasons of national security it is necessary that the nature of the development should not be disclosed, except to the extent specified in the certificate,

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the department shall give notice of development, but shall not be required to give any particulars of the nature of the development except to the extent specified in the certificate.

- (5) An acquiring authority shall not be required by virtue of subsection (3) of this section to give notice of proposed development to the person mentioned in section 32(1)(a) of this Act if—
- (a) an address for service has been given to them by such a person as is mentioned in section 32(1)(b) of this Act; and
  - (b) they have reasonable grounds for believing that the former person is dead or that any other act or event has occurred as mentioned in section 31(4)(b) of this Act.
- (6) A claim for compensation under section 31 of this Act in respect of the initiation of any development shall not have effect if made more than six months after the following date, that is to say—
- (a) if the claim is made by a person to whom notice has been given under subsection (3) of this section, the date on which the notice was given;
  - (b) in any other case, the time the development is initiated.
- (7) In this section “Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department.

#### Textual Amendments

**F57** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.1](#) (with s. 84(5)); S.I. 1991/2092, art. 3

#### <sup>F58</sup>35 Application of Part V to certain cases.

The preceding provisions of this Part of this Act shall have effect subject to the provisions of the Third Schedule to this Act.

#### Textual Amendments

**F58** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.1](#) (with s. 84(5)); S.I. 1991/2092, art. 3

#### <sup>F59</sup>36 Regulations for purposes of Part V.

- (1) The Secretary of State may by statutory instrument make regulations for prescribing the form of any notice required by this Part of this Act to be given in the prescribed form.
- (2) Any statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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#### Textual Amendments

**F59** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.1](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

### <sup>F60</sup>37 Interpretation of Part IV.

(1) In this Part of this Act—

“additional development”, in relation to an acquisition or sale of an interest in land, means any development of the land other than the following, that is to say—

- (a) where the acquiring authority are a local authority, and acquired the interest for the purposes of any of their functions, development for the purposes of the functions for which they acquired it;
- (b) where the acquiring authority are not a local authority, development for the purposes of the project in connection with which they acquired the interest;
- (c) development for which planning permission was in force on the relevant date;
- (d) in the case of compulsory acquisition, development for which it was assumed (in accordance with the provisions of sections 22 to 24 of this Act) for the purpose of assessing compensation that planning permission would be granted; and
- (e) in the case of a sale by agreement, development for which, if the interest (instead of being sold by agreement) had been compulsorily acquired by the acquiring authority in pursuance of a notice to treat served on the relevant date, it would have been so assumed;

“date of completion”, in relation to an acquisition or sale of an interest in land, means the date on which the acquisition or sale is completed by the vesting of that interest in the acquiring authority;

“local authority” means a regional, islands or district council;

“prescribed” means prescribed by regulations under this Part of this Act;

“the relevant date”, in relation to a compulsory acquisition of an interest in land, means the date of service of the notice to treat and, in relation to a sale of such an interest by agreement, means the date of the making of the contract in pursuance of which the sale was effected.

(2) In this Part of this Act any reference to the granting of permission for the carrying out of development of any land is a reference to the granting of permission (including where applicable outline permission) for that development—

- (a) either unconditionally or subject to conditions; and
- (b) either in respect of that land taken by itself or in respect of an area including that land.]

#### Textual Amendments

**F60** Pt. V (ss. 31-37) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.1](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)



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## PART VI

### MISCELLANEOUS AND GENERAL

#### [<sup>F61</sup>38 Power to pay allowances to persons displaced.

- (1) Where any interest in land is compulsorily acquired or is sold by agreement to an authority possessing compulsory purchase powers, the acquiring authority—
  - (a) may pay to any person displaced from a house or other building on that land such reasonable allowance as they think fit towards his expenses in removing therefrom; and
  - (b) may pay to any person carrying on any trade or business in any such house or other building such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent upon his having to quit the house or building.
- (2) Where any interest in land is acquired or sold as aforesaid and the land is used for the purposes of agriculture (within the meaning of [<sup>F62</sup>section 277(1) of the Town and Country Planning (Scotland) Act 1997]) by way of a trade or business, the acquiring authority may pay to any person carrying on that trade or business who is displaced from the land such reasonable allowance as they think fit towards his removal expenses and the loss which, in their opinion, he will sustain by reason of the resulting disturbance of his trade or business.
- (3) In estimating the loss of any person for the purposes of subsection (1)(b) or subsection (2) of this section, the authority shall have regard to the period for which the premises or, as the case may be, land occupied by him might reasonably have been expected to be available for the purpose of his trade or business, and to the availability of other premises or, as the case may be, land suitable for that purpose.
- (4) The operation of any provision of this section enabling an allowance to be paid shall not prejudice the operation of—
  - (a) any other such provision of this section, or
  - (b) any enactment authorising the making of payments to or in respect of persons displaced or otherwise affected by acquisitions by authorities possessing compulsory purchase powers or persons otherwise displaced from any land.]

#### Textual Amendments

- F61** S. 38 repealed by [Land Compensation Act 1973 \(c. 26\)](#), [Sch. 3](#) except so far as relating to land used for the purposes of agriculture
- F62** Words in [s. 38\(2\)](#) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(7\)](#)

#### 39 Withdrawal of notices to treat.

- (1) Where a claimant has delivered such a notice as is mentioned in section 5 (1)(b) or section 11 (1) (b) of this Act, the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on him or on any other person interested in the land authorised to be acquired.
- (2) Where a claimant has failed to deliver a notice as required by the said section 5 (1) (b) or the said section 11 (1) (b), the acquiring authority may, at any time after the

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decision of the official arbiter on his claim but not later than six weeks after the claim has been finally determined, withdraw any notice to treat which has been served on him or on any other person interested in the land authorised to be acquired, unless the authority have entered into possession of the land by virtue of the notice.

- (3) Where the acquiring authority withdraw a notice to treat under this section the authority shall be liable to pay compensation to the person to whom it was given for any loss or expenses occasioned to him by the giving and withdrawal of the notice, but, if the notice is withdrawn under subsection (2) of this section, not for any loss or expenses incurred by the claimant mentioned therein after the time when, in the opinion of the official arbiter, a proper notice of claim should have been delivered by him.
- (4) The amount of any compensation payable under subsection (3) of this section shall, in default of agreement, be determined by the official arbiter.
- (5) So long as the acquiring authority are entitled to withdraw a notice to treat under subsection (2) of this section, the authority shall not be compellable to take the land to which the notice relates or to pay any compensation awarded in respect of the taking.
- (6) For the purposes of this section, a claim shall not be deemed to be finally determined so long as the time for requiring the official arbiter to state a case with respect thereto, or for appealing from any decision on the points raised by a case so stated, has not expired.

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

- C102** S. 39 excluded by Forestry Act 1967 (c. 10), s. 22(5), Agriculture Act 1967 (c. 22), s. 49(7)(ii), Town and Country Planning (Scotland) Act 1972 (c. 52), ss. 197, 278, Sch. 24 Pt. II para. 18, Land Compensation (Scotland) Act 1973 (c. 56), s. 50(4) and Offshore Petroleum Development (Scotland) Act 1975 (c. 8), s. 1, Sch. 2 para. 3(2)  
S. 39 excluded (5.1.1994) by 1993 c. 44, ss. 57(2), 64(2) (with s. 30(5), Sch. 6 para. 4)
- C103** S. 39 restricted (27.5.1997) by 1997 c. 8, ss. 90(6), 278(2)  
S. 39 restricted (27.5.1997) by 1997 c. 8, ss. 94(8), 278(2)  
S. 39 restricted (27.5.1997) by 1997 c. 8, ss. 97(6), 278(2)  
S. 39 restricted (27.5.1997) by 1997 c. 8, ss. 118, 278(2)  
S. 39 restricted (27.5.1997) by 1997 c. 8, ss. 195, 278(2), Sch. 15 Pt. II, para. 18

#### 40 Rate of interest after entry on land.

- (1) The rate of interest on any compensation in respect of the compulsory acquisition of an interest in any land on which entry has been made before the payment of the compensation shall (instead of being the rate of five per cent. specified under section 84 of the <sup>M11</sup>Lands Clauses Consolidation (Scotland) Act 1845) be such rate as may from time to time be prescribed by regulations made by the Treasury.
- (2) Any such regulations shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Subordinate Legislation Made

- P1** S. 40: for previous exercises of this power, see Index to Government Orders  
**P2** S. 40(1): s. 40(1) power exercised (30.12.1991) by S.I.1991/2733

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

**C104** S. 40 applied with modifications by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\), Sch. 4 paras. 4, 5\(c\)](#)

**C105** S. 40 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\), ss. 57\(4\), 89\(2\), Sch. 8 para. 6\(c\)](#)(with s. 45(3), Sch. 12 para. 3)

#### **Marginal Citations**

**M11** 1845 c. 19.

### **41 Application of Act to Crown.**

This Act applies in relation to the acquisition of interests in land (whether compulsorily or by agreement) by government departments, being authorities possessing compulsory purchase powers, as it applies in relation to the acquisition of interests in land by such authorities which are not government departments.

### **42 Certificates of value.**

The official arbiter may on the application of any person certify the value of land being sold by him to an authority possessing compulsory purchase powers, and the sale of the land to that authority at the price so certified shall be deemed to be a sale at the best price that can reasonably be obtained.

### **43 Saving for certain statutory purchases of statutory undertakings.**

- (1) Nothing in this Act shall apply to any purchase of the whole or any part of any statutory undertaking under any enactment in that behalf prescribing the terms on which the purchase is to be effected.
- (2) In this section, “statutory undertaking” means an undertaking established by an enactment.

### **44 Provisions as to inquiries and service of notices.**

[<sup>F63</sup>Section 265 of the Town and Country Planning (Scotland) Act 1997] (which authorises the Secretary of State to hold local inquiries for the purposes of that Act) and [<sup>F63</sup>section 271] of that Act (which relates to the service of notices) shall apply for the purposes of this Act.

#### **Textual Amendments**

**F63** Words in s. 44 substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\), Sch. 2 para. 9\(8\)](#)

### **45 Interpretation.**

- (1) In this Act, except where the context otherwise requires,—
  - “acquiring authority”, in relation to an interest in land, means the person or body of persons by whom the interest is, or is proposed to be, acquired;
  - “authority possessing compulsory purchase powers”, where it occurs otherwise than in relation to a transaction, means any person or body of

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persons who could be or have been authorised to acquire an interest in land compulsorily, and, in relation to any transaction, means any person or body of persons who could be or have been so authorised for the purposes for which the transaction is or was effected:

Provided that in relation to any such transaction to which an executive council or a joint committee constituted by virtue of section 32 of the National Health Service (Scotland) Act 1947 are a party in the exercise of their statutory functions, the said expression shall be construed as including that council or joint committee;

“building” includes any structure or erection and any part of a building as so defined, but does not include plant or machinery comprised in a building;

“the current development plan”, in relation to any land, means a development plan comprising that land, in the form in which (whether as originally approved or made <sup>F64</sup> or as for the time being amended) that plan is in force on the date of service of the notice to treat;

“development” has the meaning assigned to it by [<sup>F65</sup>section 26 of the Town and Country Planning (Scotland) Act 1997], and “develop” shall be construed accordingly;

“development order” means an order under [<sup>F66</sup>section 30 of the Town and Country Planning (Scotland) Act 1997];

[<sup>F67</sup>“development plan” shall be construed in accordance with section 24 of the Town and Country Planning (Scotland) Act 1997;]

“enactment” includes an enactment in any local or private Act of Parliament and an order, rule, regulation, byelaw or scheme made under an Act of Parliament, including an order or scheme confirmed by Parliament;

“land” includes land covered with water and any building as defined by this section, and includes any interest or right in or over land;

“local enactment” means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;

“local planning authority” has the meaning assigned to it by Town and Country Planning (Scotland) Act [<sup>F68</sup>1997];

“outline application” means an application for planning permission subject to subsequent approval on any matters;

“owner”, in relation to any land, includes any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking;

“planning decision” means a decision made on an application under [<sup>F69</sup>Part III of the Town and Country Planning (Scotland) Act 1997];

“planning permission” means permission under [<sup>F70</sup>Part III of the Town and Country Planning (Scotland) Act 1997];

“special enactment” means a local enactment, or a provision contained in an Act other than a local or private Act, being a local enactment or provision authorising the compulsory acquisition of land specifically identified therein.

[<sup>F71</sup>(1A) Any reference in this Act to an “interest” in land shall be construed as a reference to a right in land and as including a reference to ownership of land.]

(2) In this Act, in relation to a compulsory acquisition in pursuance of a notice to treat, “the relevant interest” means the interest acquired in pursuance of that notice, “the

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relevant land” means the land in which the relevant interest subsists, and “the notice to treat” means the notice to treat in pursuance of which the relevant interest is acquired.

- (3) As respects references in this Act to planning decisions—
- (a) in relation to a decision altered on appeal by the reversal or variation of the whole or any part thereof, such references shall be construed as references to the decision as so altered;
  - (b) in relation to a decision upheld on appeal, such references shall be construed as references to the decision of the local planning authority and not to the decision of the Secretary of State on the appeal;
  - (c) in relation to a decision given on an appeal made by virtue of <sup>F72</sup>section 47(2) of the Town and Country Planning (Scotland) Act 1997] in default of a decision by the local planning authority, such references shall be construed as references to the decision so given;
  - (d) the time of a planning decision, in a case where there is or was an appeal, shall be taken to be or have been the time of the decision as made by the local planning authority, whether or not that decision is or was altered as aforesaid on that appeal, or, in the case of such a decision as is mentioned in paragraph (c) of this subsection, the time when by virtue of <sup>F73</sup>section 47(4) and (5) of the Town and Country Planning (Scotland) Act 1997] the notification of a decision by the local planning authority is deemed to have been given.
- (4) References in this Act to the local planning authority in relation to any land are references to the local planning authority for the district in which the land is situated.
- (5) For the purposes of this Act, a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled—
- (a) to both of them beneficially, or
  - (b) to both of them as trustee of one particular trust, or
  - (c) to both of them as personal representative of one particular person;
- and in this subsection “trustee” has the same meaning as in the <sup>M12</sup>Trusts (Scotland) Act 1921.
- (6) For the purposes of this Act development of land shall be taken to be initiated—
- (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
  - (b) if the development consists of a change in use, at the time when the new use is instituted;
  - (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in the preceding paragraphs.
- (7) References in this Act to a notice to treat include references to a notice to treat which, under any enactment, is deemed to have been served, and references to the service of such a notice and to the date of service shall be construed accordingly.
- <sup>F74</sup>(8) . . . . .
- <sup>F74</sup>(9) . . . . .
- (10) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment.

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### Textual Amendments

- F64** Words repealed by [Town and Country Planning \(Scotland\) Act 1969 \(c. 30\)](#), [Sch. 11](#)
- F65** Words in definition of “development” in s. 45(1) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(a\)\(i\)](#)
- F66** Words in definition of “development order” in s. 45(1) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(a\)\(ii\)](#)
- F67** Definition of “development plan” in s. 45(1) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(a\)\(iii\)](#)
- F68** Words in definition of “local planning authority” substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(a\)\(iv\)](#)
- F69** Words in definition of “planning decision” substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(a\)\(v\)](#)
- F70** Words in definition of “planning permission” substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(a\)\(vi\)](#)
- F71** S. 45(1A) inserted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 25\(7\)\(a\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F72** Words in s. 45(3)(c) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(b\)\(i\)](#)
- F73** Words in s. 45(3)(d) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(9\)\(b\)\(ii\)](#)
- F74** S. 45(8)(9) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 25\(7\)\(b\)](#), [sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### Modifications etc. (not altering text)

- C106** Definition in s. 45(1) applied (25.9.1991) by [London Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), [s. 28\(7\)](#) (as substituted by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), [s. 71\(3\)\(9\)](#); S.I. 1991/2092, [art. 3](#))
- C107** The text of the proviso, now spent, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C108** S. 45(2) modified by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), s. 141, [Sch. 27 para. 25](#)
- C109** S. 45(2) modified by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), s. 77(3)(4), 335, [Sch. 6 para. 9](#)

### Marginal Citations

- M12** [1921 c. 58](#).

## 46 Amendment of s. 1 (6) of the Lands Tribunal Act 1949.

In section 1(6) of the Lands Tribunal Act 1949, for the words “an authority to whom the Acquisition of Land Act applies” there shall be substituted the words “any person”.

### Modifications etc. (not altering text)

- C110** The text of s. 46 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## 47 Consequential amendments, repeals, and transitional provisions.

- (1) Any enactment or document referring to an enactment repealed by this Act shall be construed as referring to the corresponding enactment in this Act.

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- (2) Without prejudice to the generality of subsection (1) of this section, any enactment excluding the power conferred by section 5 (2) of the <sup>M13</sup>Acquisition of Land (Assessment of Compensation) Act 1919 to withdraw notices to treat shall be construed as excluding any such power conferred by section 39 of this Act.
- (3) . . . . . <sup>F75</sup>
- (4) The mention of particular matters in this section shall not be taken to affect the general application to this Act of [<sup>F76</sup>sections 16 (1) and 17 (2) (a) of the <sup>M14</sup>Interpretation Act 1978] (which relates to the effect of repeals).
- (5) Any regulations made under section 54 (2) of the <sup>M15</sup>Town and Country Planning (Scotland) Act 1947 or made under section 52 of the <sup>M16</sup>Town and Country Planning (Scotland) Act 1959 for the purposes of section 20 or section 21 of that Act shall have effect respectively as if made under section 40 or section 36 of this Act.

**Textual Amendments**

**F75** S. 47(3) repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), [Sch. Pt. XI](#)

**F76** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\)](#), [s. 25\(2\)](#)

**Marginal Citations**

**M13** 1919 c. 57.

**M14** 1978 c. 30.

**M15** 1947 c. 53.

**M16** 1959 c. 70.

**48 Saving for transactions before commencement of Act.**

This Act (including the amendments and repeals made by it) shall not have effect in relation to any compulsory acquisition in pursuance of a notice to treat served before the commencement of this Act . . . <sup>F77</sup>; nor in relation to any sale of an interest in land by agreement in pursuance of a contract made before the commencement of this Act.

**Textual Amendments**

**F77** Words repealed by [Statute Law \(Repeals\) Act 1989 \(c. 43\)](#), [s. 1\(1\)](#), [Sch. 1 Pt. VII](#)

**49 Short title, commencement and extent.**

- (1) This Act may be cited as the Land Compensation (Scotland) Act 1963.
- (2) This Act (except Part II thereof) shall come into operation on 1st January, 1964; and Part II of this Act shall come into operation on the day appointed by Her Majesty by Order in Council under section 10 (2) of the <sup>M17</sup>Lands Tribunal Act 1949 for the coming into force in Scotland of sections 1 to 4 of that Act.

Any reference in this Act to the commencement of this Act shall be construed as a reference to the date on which this Act (except Part II thereof) comes into operation.

- (3) As from the coming into operation of Part II of this Act,—

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- (a) Part I of this Act shall cease to have effect without prejudice however to the operation of the said Part I in cases where a decision has been given before the coming into operation of the said Part II, so far as relates to appeals, cases stated, expenses or fees; and
  - (b) for any reference in this Act to an official arbiter there shall be substituted a reference to the Lands Tribunal for Scotland or, as the case may require, a member of that Tribunal.
- (4) This Act shall extend to Scotland only.

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

C111 1.3.1971 appointed under [Lands Tribunal Act 1949 \(c. 42\)](#), **s. 10(2)** by S.I. 1971/215

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**Marginal Citations**

M17 1949 c. 42.



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## SCHEDULES

### SCHEDULE 1

Sections 13 and 14.

#### [<sup>F78</sup>PART I]

##### Textual Amendments

- F78** Cross heading inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 para. 9\(1\)](#) (3) except where a notice to treat has been served before 13.11.1980

Actual or Prospective Development relevant for purposes of Sections 13 & 14

#### DESCRIPTION OF DEVELOPMENT

<i>Case</i>	<i>Development</i>
1. Where the acquisition is for purposes involving development of any of the land authorised to be acquired.	Development of any of the land authorised to be acquired, other than the relevant land, being development for any of the purposes for which any part of the first-mentioned land (including any part of the relevant land) is to be acquired.
2. Where any of the relevant land forms part of an area defined in the current development plan as an area of comprehensive development.	Development of any land in that area, other than the relevant land, in the course of the development or redevelopment of the area in accordance with the plan.
3. Where on the date of service of the notice to treat any of the relevant land forms part of an area designated as the site of a new town by an order under [ <sup>F79</sup> the New Towns (Scotland) Act 1968].	Development of any land in that area, other than the relevant land, in the course of the development of that area as a new town.
[ <sup>F80</sup> 3A. Where on the date of service of the notice to treat any of the relevant land forms part of an area designated as an extension of the site of a new town by an order under the <sup>M18</sup> New Towns Act 1946 becoming operative after the date of the commencement of the <sup>M19</sup> New Towns Act 1966.	Development of any land included in that area, other than the relevant land, in the course of the development of that area as part of a new town.]

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4. Where any of the relevant land forms part of an area to which a town development scheme under Part II of the

M20

Housing and Town Development (Scotland) Act 1957 relates, being a scheme which is in operation on the date of service of the notice to treat.

[  
F81

4A. Where any of the relevant land forms part of an area designated as an urban development area by an order under section 134 of the

M21

Local Government, Planning and Land Act 1980.

Development of any land in that area, other than the relevant land, in the course of the execution of the scheme.

Development of any land other than the relevant land, in the course of the development or redevelopment of that area as an urban development area.]

#### Textual Amendments

**F79** Words substituted by virtue of [New Towns \(Scotland\) Act 1968 \(c. 16\)](#), [Sch. 9 para. 5](#)

**F80** [Para. 3A](#) inserted by [New Towns Act 1966 \(c. 44\)](#), [Sch. Pt. II](#), para. 4

**F81** [Para. 4A](#) inserted by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [s. 145\(1\)](#)

#### Marginal Citations

**M18** 1946 c. 68.

**M19** 1966 c. 44.

**M20** 1957 c. 38.

**M21** 1980 c. 65.

## [<sup>F82</sup>PART II]

### SPECIAL PROVISION AS TO NEW TOWNS

#### Textual Amendments

**F82** [Pt. II](#) added by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 25 para. 9\(1\)\(3\)](#) except where a notice to treat has been served before 13.11.1980

- 5 (1) This paragraph applies where, before the date of service of the notice to treat for the purposes of a compulsory acquisition (the relevant acquisition), the land has been disposed of by an authority or body in circumstances where paragraph 3 or 3A of this Schedule would have applied if (at the time of the disposal) the authority or body had been compulsorily acquiring the land.
- (2) in that case, paragraphs 3 and 3A shall not apply for the purposes of the relevant acquisition.

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### [<sup>F83</sup>PART III]

#### SPECIAL PROVISIONS AS TO URBAN DEVELOPMENT AREAS

##### Textual Amendments

**F83** Pt. III added by [Local Government, Planning and Land Act 1980 \(c. 65\), s. 145\(4\)](#)

- 6 For the avoidance of doubt it is hereby declared—
- (a) that, in assessing in the circumstances described in paragraph 4A in the first column of Part I of this Schedule the increase or diminution in value to be left out of account by virtue of section 13 of this Act no increase or diminution of value is to be excluded from being left out of account; and
  - (b) that, in assessing in those circumstances the increase in value to be taken into account by virtue of section 14 of this Act, no increase in value is to be excluded from being taken into account,
- merely because it is attributable—
- (i) to any development of land which was carried out before the area was designated as an urban development area;
  - (ii) to any development or prospect of development of land outside the urban development area;
  - (iii) to any development or prospect of development of land by an authority, other than the acquiring authority, possessing compulsory purchase powers.
- 7 Paragraph 6 of this Schedule shall have effect in relation to any increase or diminution in value to be left out of account by virtue of any rule of law relating to the assessment of compensation in respect of compulsory acquisition as it has effect in relation to any increase or diminution in value to be left out of account by virtue of section 13 of this Act.

### [<sup>F84</sup>SCHEDULE 2

#### ACQUISITION OF HOUSES WHICH DO NOT MEET THE TOLERABLE STANDARD

##### Textual Amendments

**F84** Sch. 2 substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), ss. 335, 339\(2\), Sch. 23 para. 10\(2\)](#)

##### *Acquisitions to which this Schedule applies*

- 1 (1) This Schedule applies to a compulsory acquisition of a description mentioned in subparagraph (2) where the land in question comprises a house which, in the opinion of the appropriate local authority does not meet the tolerable standard.
- (2) The compulsory acquisitions referred to are—
- (a) an acquisition under [<sup>F85</sup>Part VIII of the Town and Country Planning (Scotland) Act 1997 or sections 42 to 47 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997], or

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- (b) an acquisition under section 13 of the Housing and Town Development (Scotland) Act <sup>M22</sup>1957, or
- (c) an acquisition in pursuance of [<sup>F86</sup>Part V of the Town and Country Planning (Scotland) Act 1997 or sections 28 to 33 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997], or
- (d) an acquisition of land within the area designated by an order under section 1 of the New Towns (Scotland) Act <sup>M23</sup>1968 as the site of a new town, or
- (e) an acquisition by a development corporation or a local roads authority or the Secretary of State under the New Towns (Scotland) Act 1968 or under any enactment as applied by any provision of that Act, or
- (f) an acquisition by means of an order under section 141 of the Local Government, Planning and Land Act 1980 vesting land in an urban development corporation; or
- (g) an acquisition by such a corporation under section 142 of that Act.

#### Textual Amendments

**F85** Words in Sch. 2 para. 1(2)(a) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 9(10)(a)(i)

**F86** Words in Sch. 2 para. 1(2)(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 9(10)(a)(ii)

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

**C112** Para. 1(2) modified by Land Commission Act 1967 (c. 1), s. 23(3) and Local Government, Planning and Land Act 1980 (c. 65), s. 141, Sch. 27 para. 26

#### Marginal Citations

**M22** 1957 c.38 (123:4).

**M23** 1968 c.16 (123:4).

#### *Procedure*

- 2 (1) The local authority may make and submit to the Secretary of State an order, in such form as may be prescribed by regulations made under section 330 of the Housing (Scotland) Act 1987, declaring that the house does not meet the tolerable standard and if—
- (a) that order is confirmed by the Secretary of State, either before or concurrently with the confirmation of a compulsory purchase order for the acquisition of the land, or
  - (b) in a case where the acquisition is in pursuance of a notice to treat deemed to have been served in consequence of the service of a notice under [<sup>F87</sup>section 90 of the Town and Country Planning (Scotland) Act 1997] or the provisions of that section as applied by or under any other enactment or in consequence of the service of a notice under section 11 of the New Towns (Scotland) Act 1968 or under [<sup>F88</sup>section 101 of the Town and Country Planning (Scotland) Act 1997], the order is made before the date on which the notice to treat is deemed to have been served and is subsequently confirmed by the Secretary of State,
- section 305 and paragraph 12(2) and (3) of Schedule 8 to the Housing (Scotland) Act 1987 (which relate respectively to payments in respect of certain well-maintained houses under Part XV and to compensation for compulsory acquisition under Part IV of the Housing (Scotland) Act 1987) shall apply as if the house had been purchased

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under Part IV as not meeting the tolerable standard, and as if any reference in that section and paragraph to the local authority were a reference to the acquiring authority.

- (2) Before submitting to the Secretary of State an order under this paragraph, the local authority by whom the order was made shall serve on every owner, and (so far as it is reasonably practicable to ascertain such persons) on <sup>F89</sup>... the holder of every heritable security over, the land or any part thereof, a notice in such form as may be prescribed as mentioned in the last preceding sub-paragraph, stating the effect of the order and that it is about to be submitted to the Secretary of State for confirmation, and specifying the time within which, and the manner in which, objection thereto can be made.
- (3) If no objection is duly made by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, the Secretary of State may, if he thinks fit, confirm the order; but in any other case he shall, before confirming the order, consider any objection not withdrawn, and shall, if either the person by whom the objection was made or the local authority so desires, afford to that person and the authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (4) Section 86 of the Housing (Scotland) Act 1987 shall have effect in determining for the purposes of this paragraph whether a house meets the tolerable standard as it has effect in so determining for the purposes of that Act.
- (5) In this paragraph “appropriate local authority” means a local authority who, in relation to the area in which the land in question is situated, are a local authority for the purposes of the provisions of Part IV of the Housing (Scotland) Act 1987 relating to housing action areas; and “owner,” in relation to any land, includes any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes also a lessee under a lease the unexpired period of which exceeds three years.

#### Textual Amendments

**F87** Words in Sch. 2 para. 2(1)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 9(10)(b)(i)**

**F88** Words in Sch. 2 para. 2(1)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 9(10)(b)(ii)**

**F89** Words in Sch. 2 para. 2(2) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 25(8), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

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

**C113** Sch. 2 para. 2(1)(a) modified by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 77(3)(4), 335, **Sch. 6 para. 10**

#### *Amount of compensation*

- 3 (1) Where in relation to a compulsory acquisition, section 120(2) to (4) or paragraph 12(2) and (3) of Schedule 8 to the Housing (Scotland) Act 1987 (which relate respectively to the compensation to be paid on the compulsory acquisition of closed houses, and of houses not meeting the tolerable standard) apply (whether by virtue of that Act or of an order under paragraph 2 of this Schedule) and-

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- (a) the relevant land consists of or includes the whole or part of a house (in this paragraph referred to as "the relevant house") and, on the date of the making of the compulsory purchase order in pursuance of which the acquisition is effected, the person then entitled to the relevant interest was, in right of that interest, in occupation of the relevant house or part thereof as a private dwelling, and
- (b) that person either continues, on the date of service of the notice to treat, to be entitled to the relevant interest, or, if he has died before that date, continued to be entitled to that interest immediately before his death,

the following provisions of this paragraph shall apply in relation to the acquisition; and in those provisions "the dwelling" means so much of the relevant house as the said person occupied as aforesaid.

- (2) Subject to the next following sub-paragraph, the amount of the compensation payable in respect of the acquisition of the relevant interest shall not in any event be less than the gross annual value of the dwelling.
- (3) Where a payment falls to be made under section 304 or 305 of the Housing (Scotland) Act 1987 to the person entitled to the relevant interest, and that payment is attributable to the relevant house, any reference in the last preceding sub-paragraph to the amount of the compensation payable in respect of the acquisition of the relevant interest shall be construed as a reference to the aggregate of that amount and of the amount of the payment.
- (4) For the purposes of this paragraph the gross annual value of the dwelling shall be determined as follows-
  - (a) if the dwelling constitutes the whole of the relevant house, the gross annual value of the dwelling shall be taken to be the value which, on the date of service of the notice to treat, is shown in the valuation roll then in force as the gross annual value of that house for rating purposes;
  - (b) if the dwelling is only part of the relevant house, an apportionment shall be made of the gross annual value of the relevant house for rating purposes, as shown in the valuation roll in force on the date of service of the notice to treat, and the gross annual value of the dwelling shall be taken to be the amount which, on such an apportionment, is properly attributable to the dwelling.
- (5) Any reference in this paragraph to the compensation payable in respect of the acquisition of the relevant interest shall be construed as excluding so much (if any) of that compensation as is attributable to disturbance or to severance or injurious affection.
- (6) Nothing in this paragraph shall affect the amount which is to be taken for the purposes of section 20 of this Act (which relates to the consideration payable for the discharge of land from feu-duty and incumbrances) as the amount of the compensation payable in respect of the acquisition of the relevant interest.
- (7) In the application of this paragraph to any lands and heritages whose net annual value is ascertained under subsection (8) of section 6 of the Valuation and Rating (Scotland) Act 1956 (and for which there is therefore no gross annual value shown in the valuation roll)-
  - (a) in sub-paragraph (2) above, for the word 'gross' there shall be substituted the words '1.25 times the net'; and
  - (b) in sub-paragraph (4) above, for the word 'gross', wherever it occurs, there shall be substituted the word 'net'.

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### Interpretation

- 4 This Schedule shall be construed as one with Parts IV and XV of the Housing (Scotland) Act 1987.]

## <sup>F90</sup>SCHEDULES 3

### Textual Amendments

**F90** Sch. 3 repealed by [Land Commission Act 1967 \(c. 1\)](#), s. 101, [Sch. 17](#)

<sup>F90</sup>

## [<sup>F91</sup>THIRD SCHEDULE

### APPLICATION OF PART V TO CERTAIN CASES

### Textual Amendments

**F91** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

### <sup>F92</sup>*Disturbance, severance and injurious affection*

### Textual Amendments

**F92** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)

- <sup>F93</sup><sub>1</sub> Subject to paragraph 2 of this Schedule, any reference in section 31 of this Act to the principal amount of any compensation shall be construed as including any sum attributable to disturbance, severance or injurious affection.

### Textual Amendments

**F93** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)

- <sup>F94</sup><sub>2</sub> If the person entitled to the compensation under section 31 of this Act—
- (a) was, at the time of the compulsory acquisition or sale mentioned in subsection (1) of that section, entitled to an interest in other land contiguous or adjacent to the land acquired or purchased; but
  - (b) is, at the time of the planning decision in question, no longer entitled to that interest, either in respect of the whole or in respect of part of that land;

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any reference in section 31 of this Act to the principal amount of any compensation or the amount of the purchase price shall be construed as excluding so much of the compensation or purchase price as was or would have been attributable to severance or injurious affection of that land or, as the case may be, of that part.

**Textual Amendments**

**F94** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

*F95 Increase in value of contiguous or adjacent land*

**Textual Amendments**

**F95** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

**F96**<sup>3</sup> In determining for the purposes of section 31 of this Act the difference between the principal amount of the compensation specified in subsection (2) of that section and the principal amount of the compensation or the amount of the purchase price mentioned in subsection (1) of that section, in a case where—

- (a) the compensation or the purchase price was or would have been reduced (whether by virtue of section 14 of this Act or otherwise) by reason of an increase in the value of an interest in contiguous or adjacent land; but
- (b) at the time of the planning decision the person entitled to the compensation under section 23 of this Act is not entitled to the interest or is entitled to it only as respects part of the contiguous or adjacent land,

the amount specified in section 31(2) and the principal amount or purchase price mentioned in section 31(1) shall be calculated as if the circumstances by reason of which it was or would have been so reduced had not existed or, as the case may be, as if the interest in the contiguous or adjacent land had subsisted only in that part of the land.

**Textual Amendments**

**F96** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)

*F97 Land held subject to heritable security*

**Textual Amendments**

**F97** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)

**F98**<sup>4</sup> Subject to the provisions of this Schedule relating to settled land, where, in a case falling within section 31(1) of this Act, the interest in land which was acquired or sold was subject to a heritable security, any reference (however expressed) in



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section 31 or section 32 of this Act to the person entitled to the compensation or purchase price shall be construed as a reference to the person who, subject to the heritable security, was entitled to that interest, and not as a reference to the heritable creditor.

#### Textual Amendments

**F98** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

**F99** 5 For the purposes of the application of section 31 of this Act, and of the provisions of this Schedule other than this paragraph, to a case falling within the preceding paragraph, any reference to the principal amount of the compensation which was or would have been payable in respect of any compulsory acquisition shall be construed as a reference to the principal amount of the compensation which would have been payable if the interest in question had not been subject to a heritable security.

#### Textual Amendments

**F99** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)

**F100** 6 No compensation shall be payable by virtue of section 31 of this Act in respect of a compulsory acquisition or sale by agreement where the interest acquired or sold was the interest of a heritable creditor (as distinct from an interest subject to a heritable security).

#### Textual Amendments

**F100** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#)

#### *F101 Land held in trust*

#### Textual Amendments

**F101** Sch. 3 (paras. 1-8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 77, [Sch. 16 para.2](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#)

**F102** 7 (1) Where, in a case falling within section 31(1) of this Act, the interest in land which was acquired or sold was subject to a trust, and accordingly the compensation or purchase price was payable to the trustees of that trust, any reference (however expressed) in section 31 or section 32 of this Act to the person entitled to the compensation or purchase price shall be construed as a reference to the trustees for the time being of the trust.

(2) Where sub-paragraph (1) of this paragraph applies, section 31(4) of this Act shall not apply.

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- (3) Any compensation paid to the trustees of the trust by virtue of section 31 of this Act in respect of a compulsory acquisition or sale by agreement shall be applicable by the trustees as if it were proceeds of the sale of the interest acquired or sold.
- (4) In this paragraph “trust” has the same meaning as in the Trusts (Scotland) Act 1921.

**Textual Amendments**  
**F102** Sch. 3 (paras. 1-8) inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 77, Sch. 16 para.2 (with s. 84(5)); S.I. 1991/2092, art.3

*F103 Interpretation*

**Textual Amendments**  
**F103** Sch. 3 (paras. 1-8) inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 77, Sch. 16 para.2 (with s. 84(5)); S.I. 1991/2092, art.3

**F104g** References in this Schedule to sections 31 and 32 of this Act include references to those sections as applied by section 33 or 34 of this Act, and references to the time of any planning decision shall be construed accordingly.]

**Textual Amendments**  
**F104** Sch. 3 (paras. 1-8) inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 77, Sch. 16 para.2 (with s. 84(5)); S.I. 1991/2092, art.3

**F105**SCHEDULES 4

**Textual Amendments**  
**F105** Sch. 4 repealed by Statute Law (Repeals) Act 1974 (c. 22), Sch. Pt. XI

F105

**Status:**

Point in time view as at 22/05/2008.

**Changes to legislation:**

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