



Land Compensation (Scotland) Act 1963

1963 CHAPTER 51

PART I

DETERMINATION OF QUESTIONS OF DISPUTED COMPENSATION BY OFFICIAL ARBITER

1 Period during which Part I shall have effect

Until the coming into force in Scotland of sections 1 to 4 of the Lands Tribunal Act 1949 this Part of this Act shall have effect in relation to the determination of any such question as is mentioned in the next following section.

2 Tribunal for assessing compensation in respect of land compulsorily acquired

- (1) 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 arbitration of such one of a panel of official arbiters appointed under this section as may be selected in accordance with rules made by the Reference Committee under this section and shall be determined by such arbiter in accordance with the following provisions of this Act.
- (2) Such number of persons, being persons with special knowledge in the valuation of land, as may be appointed by the Reference Committee shall form a panel of persons to act as official arbiters for the purposes of this Part of this Act.
- (3) A person appointed to be a member of the panel of official arbiters shall hold office for such term certain as may be determined by the Treasury before his appointment.
- (4) There shall be paid out of moneys provided by Parliament to official arbiters such salaries or remuneration as the Treasury may determine.
- (5) The Reference Committee shall consist of the Lord President of the Court of Session, the Lord Justice Clerk and the Chairman of the Scottish Committee of the Royal Institution of Chartered Surveyors.

3 Procedure on references under s. 2

- (1) The following provisions shall have effect with respect to any proceedings on a question referred to the official arbiter under section 2 of this Act.
- (2) The official arbiter shall sit in public.
- (3) Not more than one expert witness on either side shall be heard unless the official arbiter 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) The official arbiter shall be entitled to enter on and inspect any land which is the subject of proceedings before him.
- (5) An official arbiter shall be entitled to be furnished with such returns and assessments as he may require.
- (6) The official arbiter shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.
- (7) The fees to be charged in respect of proceedings before official arbiters shall be such as the Treasury may prescribe.
- (8) Subject as aforesaid, the Reference Committee may make rules regulating the procedure before official arbiters.
- (9) The decision of an official arbiter upon any question of fact shall be final and binding on the parties and the persons claiming under them respectively, but the official arbiter may, and shall, if the Court of Session so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the said Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the said Court.

4 Consolidation of proceedings on claims in respect of several interests in the same land

Where notices to treat have been served for the acquisition of the 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 official arbiter, and the Reference Committee may make rules providing that such claims shall be heard together; but the value of the several interests shall be separately assessed.

5 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 official arbiter to that claimant does not exceed the sum offered; or
 - (b) the official arbiter 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 official arbiter shall, unless for special reasons he 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 official arbiter 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 official arbiter is equal to or exceeds that sum, the official arbiter shall, unless for special reasons he 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) Subject as aforesaid, the expenses of an arbitration under this Part of this Act shall be in the discretion of the official arbiter who may direct to and by whom, and in what manner, those expenses or any part thereof shall be paid, and the official arbiter may, in any case, disallow the cost of counsel.
- (5) An official arbiter may himself tax the amount of expenses ordered to be paid or may direct in what manner they are to be taxed.
- (6) Where the official arbiter 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.
- (7) For the purposes of this section, expenses include any fees, charges and expenses of the arbitration or award.

6 Power to refer to Commissioners of Inland Revenue or to agreed arbiter

- (1) Nothing in this Part of this Act shall prevent, if the parties so agree, the reference of any question as to disputed compensation or apportionment of rent to the Commissioners of Inland Revenue or to an arbiter agreed on between the parties.
- (2) Where a question is so referred to the Commissioners of Inland Revenue, the Commissioners shall not proceed by arbitration, but shall cause an assessment to be made in accordance with the rules for the assessment of compensation under this Act, and the following provisions shall have effect:—
 - (a) The parties shall comply with any direction or requirements as to the furnishing of information (whether orally or in writing) and the production of documents and otherwise;
 - (b) Any officer of the Commissioners appointed for the purpose shall be entitled to enter on and inspect any land which is subject to the reference to them;
 - (c) The Commissioners, if either party so desires within such time as the Commissioners may allow, shall give the parties an opportunity of being heard before such officer of the valuation office of the Commissioners as the Commissioners may appoint for the purpose;
 - (d) The assessment when made shall be published to the parties and take effect as if it were an award of an official arbiter under this Part of this Act;

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- (e) If either party refuses or neglects to comply with any direction or requirement of the Commissioners, the Commissioners may decline to proceed with the matter, and in that case the question shall be referred to an official arbiter as if there had been no reference to the Commissioners, and the official arbiter when awarding expenses shall take into consideration any report of the Commissioners as to the refusal or neglect which rendered such a reference to him necessary.
- (3) Where a question is referred to an arbiter under subsection (1) of this section, the provisions of this Part of this Act, except sections 2 and 4 and so much of section 3 as requires proceedings to be in public and as provides for the fixing of fees, shall apply as if the arbiter was an official arbiter.
- (4) Either party to a claim for compensation may require the Commissioners of Inland Revenue to assess the value of the land in respect of which the claim arises, and a copy of any such assessment shall be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment shall be admissible in evidence of that value in proceedings before the official arbiter, and the officer who made the assessment shall attend, if the official arbiter so require, to answer such questions as the official arbiter may think fit to put to him thereon.

7 Rules and fees

- (1) Any power to make rules conferred by this Part of this Act on the Reference Committee and the power to prescribe fees conferred by this Part of this Act on the Treasury shall be exercisable by statutory instrument.
- (2) The Statutory Instruments Act 1946 shall apply to a statutory instrument containing rules made for the purposes of this Part of this Act as if the rules had been made by a Minister of the Crown.

PART II

DETERMINATION OF QUESTIONS OF DISPUTED COMPENSATION BY LANDS TRIBUNAL

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.

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. .

- (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.

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

Where notices to treat have been served for the acquisition of the 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 Lord President of the Court of Session may make rules under the Lands Tribunal Act 1949 providing that such claims shall be heard together ; but the value of the several interests shall be separately assessed.

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.

PART III

PROVISIONS DETERMINING AMOUNT OF COMPENSATION

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 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 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.

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 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 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 4 in the said first column) 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.—
- (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.
- (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 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.

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 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 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)

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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 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).

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 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 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 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 Schedule 3 to the Town and Country Planning (Scotland) Act 1947 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 Light Railways Act 1896 ;
 - (b) paragraph (2) (C) of the Schedule to the Development and Road Improvement Funds Act 1909 ;
 - (c) paragraph (a) of the proviso to section 13 (1) of the Restriction of Ribbon Development Act 1935 ;
 - (d) paragraph 5 of Schedule 4 to the Housing (Scotland) Act 1950;

and, in subsection (1), include references to any such local enactment as is mentioned in subsection (5).

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 designation, 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.

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.

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 1947) for the purposes of their undertaking, the provisions of this Act shall have effect subject to the provisions of section 42(5) of that Act (which makes special provision as to the compensation payable in respect of certain acquisitions of land so acquired).

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 section 23 or section 47 of the Town and Country Planning (Scotland) Act 1954) 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 Town and Country Planning (Scotland) Act 1954 in respect of depreciation of the value of that interest, or
- (b) under section 20(1) of the Town and Country Planning (Scotland) Act 1947, 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 section 20(1) of the Town and Country Planning (Scotland) Act 1947, means the provisions of regulations made under that Act with respect to claims for compensation under that subsection.

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 Lands Clauses Consolidation (Scotland) Act 1845 in respect of the discharge from all relevant prestations of land the *dominium utile* in 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 the *dominium utile* in 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 feu-duty, or ground annual or other annual or recurring payment or incumbrance (or any portion thereof), to which the said section 108 applies (not being stipend or standard charge in lieu of stipend).

- (3) Where the *dominium utile* 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 *dominium utile* in any land shall be construed as references to such compensation exclusive of any compensation for disturbance or for severance or injurious affection.
- (8) In relation to the acquisition of the *dominium utile* in 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.

21 War-damaged land

- (1) Where an interest in any hereditament or part of a hereditament which has sustained war damage is compulsorily acquired, then if—
 - (a) any of the damage has not been made good at the date of the notice to treat; and
 - (b) the appropriate payment under the War Damage Act 1943 would, apart from the compulsory acquisition and apart from any direction given by the Treasury under section 20(2)(b) of that Act, be a payment of cost of works;the following provisions of this section shall have effect.
- (2) Where the land would, but for the occurrence of the war damage, be devoted to any such purpose as is mentioned in Rule (5) of the rules set out in section 12 of this Act, the provisions of that rule shall have effect for the purposes of the assessment of compensation payable in respect of the compulsory acquisition as if the land were devoted to that purpose.
- (3) Where (whether by virtue of subsection (2) of this section or otherwise) the compensation payable in respect of the acquisition falls to be assessed in accordance with the said Rule (5), the reasonable cost of equivalent reinstatement shall be ascertained for the purposes of that rule by reference to the state of the land immediately before the occurrence of the war damage.

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 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 development for which, in accordance with those provisions, the granting of planning permission is to be assumed; but, in determining whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of any land, 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 reference 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.

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.
- (3) Subject to subsection (4) of this section, it shall be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in Schedule 3 to the Town and Country Planning (Scotland) Act 1947 (which relates to development included in the existing use of land).

- (4) Notwithstanding anything in subsection (3) of this section—
- (a) it shall not by virtue of that subsection be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in Part II of the said Schedule 3, if it is development for which planning permission was refused at any time before the date of service of the notice to treat and compensation under section 18 of the said Act of 1947 became payable in respect of that refusal;
 - (b) where, at any time before the said date, planning permission was granted, in respect of the relevant land or any part thereof, for development of any class specified in the said Part II, but was so granted subject to conditions, and compensation under the said section 18 became payable in respect of the imposition of the conditions, it shall not by virtue of the said subsection (3) be assumed that planning permission for that development, in respect of the relevant land or that part thereof, as the case may be, would be granted otherwise than subject to those conditions;
 - (c) where, at any time before the said date, an order was made under section 24 of the said Act of 1947, 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 section 25 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, might reasonably have been expected to be granted in respect of the relevant land or part thereof 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.

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 that 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

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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, 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

25 Certification of appropriate alternative development

- (1) Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, and that land or part thereof does not consist or form part of—
- (a) an area defined in the development plan as an area of comprehensive development, or
 - (b) an area shown in the development plan as an area allocated primarily for a use which is of a residential, commercial or industrial character, or for a range of two or more uses any of which is of such a character,
- then, subject to subsection (2) of this section, either of the parties directly concerned may apply to the local planning authority for a certificate under this section.
- (2) If, in the case of an interest in land falling within subsection (1) of this section, the authority proposing to acquire it 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 official arbiter 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 official arbiter.
- (3) An application under this section made by either of the said parties—
- (a) shall specify one or more classes of development appearing to the applicant to be classes of development which would be appropriate for the land in question if it were not proposed to be acquired by any authority possessing compulsory purchase powers ; and
 - (b) shall be accompanied by a statement specifying the date on which a copy of the application has been or will be served upon the other of those parties.
- (4) Where an application is made to the local planning authority for a certificate under this section in respect of an interest in land, the local planning authority shall, not earlier than twenty-one days after the date specified in the statement mentioned in subsection (3)(b) of this section, issue to the applicant a certificate stating that, in the opinion of the local planning authority in respect of the land in question, either—
- (a) planning permission for development of one or more classes specified in the certificate (whether specified in the application or not) might reasonably have been expected to be granted; or

- (b) planning permission could not reasonably have been expected to be granted for any development other than the development (if any) which is proposed to be carried out by the authority by whom the interest is proposed to be acquired.
- (5) Where, in the opinion of the local planning authority, planning permission might reasonably have been expected to be 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 local 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 local 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.
- (7) In determining, for the purposes of the issue of a certificate under this section, whether planning permission for any particular class of development might reasonably have been expected to be granted in respect of any land, the local 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.
- (8) Where an application for a certificate under this section relates to land of which part (but not the whole) consists or forms part of such an area as is mentioned in subsection (1)(a) or subsection (1)(b) of this section, any certificate issued under this section in pursuance of that application shall be limited to so much of that land as does not fall within any such area.
- (9) On issuing to either of the parties directly concerned a certificate under this section in respect of an interest in land, the local planning authority shall serve a copy of the certificate on the other of those parties.

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.
- (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 in the circumstances mentioned in section 25 (1) of this Act, 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 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), and that interest is the *dominium utile* of the land, an application to the local planning authority for a certificate under that section may be made by any person entitled to any feu-duty or ground annual or other annual or recurring payment or incumbrance out of the land (not being stipend or standard charge in lieu of stipend) 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 section 25(3)(a) 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 have effect with the substitution, for the reference to the date specified in the statement mentioned in subsection (3)(b) 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.

28 Power to prescribe matters relevant to Part IV

The provisions which may be made by a development order shall 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;
- (e) for requiring an authority possessing compulsory purchase powers who—
 - (i) propose to acquire the *dominium utile* of 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 feu-duty or 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 feu-duty or incumbrance;
- (f) for requiring an authority possessing compulsory purchase powers, when serving a notice to treat in relation to, or purchasing, the *dominium utile* of 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.

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 the Tribunals and Inquiries Act 1958 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.

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.
- (3) For the purpose of determining whether an application can be made at any time in relation to any land under section 25(1) or under section 27 of this Act, any reference in the said section 25(1) to the development plan shall be construed as a reference to a development plan comprising that land, in the form in which (whether as originally approved or made by the Secretary of State or as for the time being amended) that plan is in force at the following time, that is to say, where neither of the following paragraphs apply, the time of the application, and—
- (a) where the interest in question is to be acquired in the circumstances mentioned in subsection (2)(b) of this section or the acquiring authority (otherwise than in those circumstances) have served a notice to treat in respect of that interest; or
 - (b) where the acquiring authority have entered into a contract for the purchase of that interest,
- the date of service of the notice to treat or the date of the contract or, where both paragraphs apply, the later of those dates.

PART V

COMPENSATION IN CERTAIN CASES OF DEVELOPMENT AFTER ACQUISITION

31 Compensation for new planning permission granted after acquisition of land

(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 five 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 said interest by the acquiring authority, in pursuance of a notice to treat served on the relevant date, if the planning decision mentioned in subsection (1)(a) of this section had been made before that date and the permission granted thereby 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—
 - (a) to land which on the relevant date consisted or formed part of an area defined in a development plan as an area of comprehensive development; or
 - (b) to land acquired by the acquiring authority, whether compulsorily or by agreement, under section 4(1)(a) of the New Towns Act 1946 (which relates to the acquisition by development corporations of land within areas designated as the sites of new towns); or
 - (c) to land acquired by the acquiring authority in consequence of the service of a notice under section 6(4) of the New Towns Act 1946 (whereby a development corporation can be required to purchase an interest in land in a new town); or
 - (d) to land acquired by a local authority, whether compulsorily or by agreement, where on the relevant date the land consisted or formed part of an area to which a town development scheme under Part II of the Housing and Town Development (Scotland) Act 1957 related.
- (4) If 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 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) The provisions of Parts I and III of Schedule 3 to this Act shall have effect for the purposes of this section.

32 Consideration in respect of discharge of feu-duty etc., in cases falling under s. 31

- (1) In calculating for the purposes of subsection (1)(a) of section 20 of this Act (which relates to the consideration payable for the discharge of land from feu-duty and incumbrances) the amount of the compensation payable in respect of the acquisition or sale of the *dominium utile* in any land, that amount shall be increased by an amount equal to the compensation, if any, which would be payable under the last preceding section in respect of that acquisition or sale if subsection (5) of that section were disregarded.
- (2) In calculating for the purposes of subsection 1(b) of the said section 20 the amount of the compensation which would have been so payable in accordance with that subsection, that amount shall be increased by an amount equal to the compensation, if any, which would have been payable under the last preceding section in respect of that acquisition or sale if the land had not been subject to any relevant prestation (as construed in the said section 20) and subsection (5) of the last preceding section were disregarded.
- (3) Where in respect of an acquisition or sale such as is mentioned in section 31(1)(a) of this Act any consideration has been paid in accordance with the said section 20, and a planning decision relating to the land in question is made thereafter in the circumstances mentioned in the said section 31(1)(a), the person who has received the consideration shall, on a claim duly made by him, be entitled to receive from the acquiring authority an amount (in this and the next following subsection referred to as "additional consideration ") equal to the difference between—
- (a) the amount of the consideration he has received, and
 - (b) the amount of the consideration he would have received if that planning decision had been made before the date when the consideration which he has received was determined and the permission thereby granted had been in force before that date,
- if the last mentioned amount is greater than the amount mentioned in paragraph (a) of this subsection.
- (4) If in accordance with the last preceding subsection a person would be entitled to additional consideration in respect of an acquisition or sale, but before the planning decision in question that person has died, or any other act or event has occurred whereby the right to the additional consideration, if vested in him immediately before that act or event, would thereupon have vested in some other person, the right to the additional consideration 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 additional consideration shall be payable to the persons claiming under him accordingly.
- (5) The provisions of Parts II and III of Schedule 3 to this Act shall have effect for the purposes of this section.

33 Provisions as to claims under ss. 31 and 32

(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 subsection (1)(a) of that section, or
- (b) any person claiming under him as being a person who, if compensation under that section became payable, would be entitled thereto 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 after a person has given to an acquiring authority an address for service under this section, a planning decision is made in the circumstances mentioned in section 31(1) of this Act, the acquiring authority shall give notice of the decision in the prescribed form to that person at that address; but the acquiring authority need not give notice of the decision to the person mentioned in paragraph (a) of the preceding subsection after an address for service has been given to them by such a person as is mentioned in paragraph (b) of that subsection, if 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) of this Act.

(3) 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;

except that where there is an appeal against the planning decision the date of the decision on the appeal shall be substituted in paragraph (a) of this subsection for the date of the decision.

The references in this subsection to an appeal against a planning decision include an appeal made by virtue of section 14(3) of the Town and Country Planning (Scotland) Act 1947.

(4) Where a person has given to an acquiring authority an address for service under this section, and 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 *dominium utile*, or a tenancy, of that land or that part thereof, as the case may be, they shall notify the local planning authority; and thereafter it shall be the duty of the local 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.

(5) Notice under subsection (4) of this section of a planning decision—

- (a) in the case of a decision made by the local 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 local planning authority.

- (6) Subject to the preceding provisions of this section, the provisions of Part I or, as the case may be, Part II of this Act shall (so far as applicable) apply in relation to the assessment of compensation under section 31 of this Act as they apply in relation to the assessment of compensation in respect of the compulsory acquisition of an interest in land.
- (7) The preceding provisions of this section, except subsection (6), shall apply to claims for additional consideration such as is mentioned in section 32(3) of this Act as they apply to claims for compensation payable under section 31 of this Act, with the substitution—
- (a) for any reference to 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, of a reference to any person who has received consideration in accordance with section 20(1) of this Act in respect of such an acquisition or sale,
 - (b) for any reference to compensation under the said section 31, of a reference to additional consideration as aforesaid, and
 - (c) for any reference to section 31(4) of this Act, of a reference to section 32(4) of this Act.

34 Extension of ss. 31, 32 and 33 to planning permission where no planning decision made

- (1) The provisions of sections 31, 32 and 33 of this Act (except subsection (2) of the said section 33) shall have effect in relation to any planning permission which, in accordance with any direction or provision given or made by or under an enactment, is deemed to be granted for any development, as if a planning decision granting that permission had been made at the following time, that is to say.—
- (a) where the enactment contains provision as to the time when the permission is deemed to be granted, at that time;
 - (b) where the enactment contains no such provision, at the time when the direction is given.
- (2) The provisions of sections 31, 32 and 33 of this Act (except subsection (2) of the said section 33) shall have effect in relation to any planning permission which is granted for any development by virtue of a development order, as if—
- (a) a planning decision granting that permission had been made at the time of the occurrence of the event in consequence of which (in accordance with the provisions of the order) the development is deemed to be sanctioned by a government department, or
 - (b) in a case not falling within the preceding paragraph, such a planning decision had been made at the time when the development is initiated.
- (3) Where the provisions of sections 31 and 32 of this Act have effect as applied by subsection (1) or subsection (2) of this section, then if—
- (a) before the time of the planning decision which is to be assumed in accordance with those provisions as so applied, a person who (under section 33(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
 - (b) 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

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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 (4) 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.

- (4) 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 33(1)(a) of this Act after an address for service has been given to them by such a person as is mentioned in paragraph (b) of the said section 33(1), if 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) of this Act.
- (5) Any reference in this section to section 33(1) of this Act shall include a reference to that subsection as extended by subsection (7) thereof, and any reference in this section to section 31(4) of this Act shall accordingly include a reference to section 32(4) of this Act.

35 Extension of ss. 31, 32 and 33 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 five 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, 32 and 33 of this Act (except subsection (2) of the said section 33) 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 said circumstances are either or both of the following, that is to say—
- (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) Subject to subsection (4) of this section, sections 34(3) and 34(4) of this Act shall apply where the provisions of sections 31 and 32 of this Act have effect as applied by subsection (1) of this section as they apply where those provisions have effect as applied by section 34(1) or section 34(2) of this Act.
- (4) Where, 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 the Minister or Board 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, the department shall give notice of development, but shall not be required to give any particulars of the nature thereof except to the extent specified in the certificate.

- (5) 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.

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.

37 Interpretation of Part V

- (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; and
 - (d) development for which—
 - (i) in the case of a compulsory acquisition, it was, for the purpose of assessing compensation in respect thereof, assumed (in accordance with the provisions of section 23 or section 24 of this Act) that planning permission would be granted, or
 - (ii) in the case of a sale by agreement it would have been so assumed that planning permission would be granted 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;
- " 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 any county council, town council or district council, or any other authority within the meaning of the Local Authorities Loans (Scotland) Act 1891, and includes any joint board or joint committee of which all the constituent authorities are such local authorities as aforesaid;
- " 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.

Status: This is the original version (as it was originally enacted).

- (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 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, and
 - (c) either on an ordinary application or on an outline application,
- and any reference to an area defined in a development plan is a reference to an area defined in such a plan in the form in which (whether as originally approved or made by the Secretary of State or as subsequently amended) that plan was in force on the relevant date.

PART VI

MISCELLANEOUS AND GENERAL

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 section 113(1) of the Town and Country Planning (Scotland) Act 1947) 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.

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 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.

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 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.

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.

Status: This is the original version (as it was originally enacted).

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

Section 100 of the Town and Country Planning (Scotland) Act 1947 (which authorises the Secretary of State to hold local inquiries for the purposes of that Act) and section 101 of that Act (which relates to the service of notices) shall apply for the purposes of this Act.

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 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 by the Secretary of State 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 section 10 of the Town and Country Planning (Scotland) Act 1947, and "develop" shall be construed accordingly;

"development order" means an order under section 11(1) of the Town and Country Planning (Scotland) Act 1947;

Status: This is the original version (as it was originally enacted).

" development plan " has the meaning assigned to it by section 3 of the Town and Country Planning (Scotland) Act 1947 and includes a plan made under subsection (5) of that section ;

" enactment " includes an enactment in any local or private Act of Parliament and an order, rule, regulation, bye-law 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 section 2 of the Town and Country Planning (Scotland) Act 1947;

" 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 Part II of the Town and Country Planning (Scotland) Act 1947;

" planning permission " means permission under Part II of the Town and Country Planning (Scotland) Act 1947;

" 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.

- (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 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 section 14(3) of the Town and Country Planning (Scotland) Act 1947 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 section 14(3) of the Town and Country Planning (Scotland) Act 1947 the notification of a decision by the local planning authority is deemed to have been given.

Status: This is the original version (as it was originally enacted).

- (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 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.
- (8) Any reference in this Act to the *dominium utile* in relation to land which is not held on feudal tenure shall be construed as a reference to the interest in the land of the owner thereof.
- (9) In this Act any reference to a sale or purchase includes a reference to a sale or purchase by way of feu, and any reference to the price in relation to a sale or purchase includes a reference to grassum, feu-duty and ground annual.
- (10) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment.

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 ".

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.
- (2) Without prejudice to the generality of subsection (1) of this section, any enactment excluding the power conferred by section 5(2) of the 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) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

- (4) The mention of particular matters in this section shall not be taken to affect the general application to this Act of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).
- (5) Any regulations made under section 54(2) of the Town and Country Planning (Scotland) Act 1947 or made under section 52 of the 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.

48 Saving for transactions before commencement

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 or served in the exercise of powers conferred by Part II of the Requisitioned Land and War Works Act 1945 ; 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.

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 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—
 - (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.