



# Land Development Values (Compensation) Act (Northern Ireland) 1965

## 1965 CHAPTER 23

An Act to make fresh provision in relation to the payment of compensation in respect of planning decisions and orders revoking or modifying the grant of planning permission; to authorise the recovery of planning compensation on the initiation of certain subsequent development; to make further provision in relation to applications for planning permission; and for purposes connected with those matters. [4th November 1965]

### PART I <sup>F1</sup>

#### DEVELOPMENT VALUE OF LAND

**F1** rep. with saving by [2001 c. 2 \(NI\)](#)

#### **1** <sup>F2</sup>Development value of land.

For the purposes of this Part, land shall, subject to section 3(8), be taken to have a development value where the unrestricted value of that land exceeds the restricted value of that land; and subject to this Part, any reference in this Part to the development value of any land is a reference to the amount of that excess.

**F2** rep. with saving by [2001 c. 2 \(NI\)](#)

#### **2** <sup>F3</sup>Meaning of “unrestricted” and “restricted” value.

(1) Subject to section 3, in this Part—

- (a) the unrestricted value of any land is the value that a fee simple absolute in possession in the land would have had on 25th February 1963;

*Status: Point in time view as at 01/01/2006.*

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- (b) the restricted value of any land is the value that such a fee simple would have had on 25th February 1963 if computed on the assumption that planning permission would have been granted for any development of that land of a class specified in Schedule 1, but would not have been granted for any other development.

- (2) Schedule 2 shall have effect for the purpose of specifying the general classes referred to in paragraph 6 of Schedule 1.

**F3** rep. with saving by 2001 c. 2 (NI)

### 3 <sup>F4</sup>**Basis of calculation of restricted and unrestricted values of land.**

- (1) In determining the value which a fee simple absolute in possession in any land would have had on 25th February 1963 it shall be assumed that such a fee simple was offered for sale—

- (a) in the open market;
- (b) with vacant possession;
- (c) with the benefit of any restrictive covenant, easement, quasi-easement, or other right which enured for the benefit of the fee simple in the land immediately before the passing of this Act;
- (d) subject to—
  - (i) any restrictive covenant, easement, quasi-easement, or other right enuring for the benefit of other land;
  - (ii) any public right of way or other right enuring for the benefit of the public or any section thereof; and
  - (iii) any restriction imposed by or under any statutory provision;
 to which the fee simple in the land was subject immediately before the passing of this Act; but
- (e) free from any other incumbrance, and without regard to any liability of the land to become subject after the passing of this Act to any restriction under any statutory provision;

and the land shall be treated as having been in the same state on 25th February 1963 as it was immediately before the passing of this Act.

- (2) For the purposes of this Part, the value of a fee simple absolute in possession in any land shall be calculated by reference to prices current immediately before 26th February 1963.
- (3) In computing the restricted and unrestricted values of a fee simple absolute in possession subject to a mortgage it shall be assumed that the mortgage has been discharged.
- (4) Where at the date of the passing of this Act—
  - (a) planning permission to develop any land has been granted (whether with or without conditions) in pursuance of an application for planning permission made before 26th February 1963; but
  - (b) the development for which the permission was granted has not been initiated or has not been completed;

the restricted and unrestricted values of that land shall be computed on the basis that the development for which the permission was granted might lawfully be carried out.

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- (5) Where, at the date of the passing of this Act—
- (a) a planning decision given in pursuance of an application for planning permission made before 26th February 1963 refuses planning permission to carry out any new development in or on any land, or grants such permission subject to conditions; or
  - (b) planning permission to carry out any such development (granted in pursuance of an application for such permission made before 26th February 1963) has been revoked or modified by an order made under section 3 of the Act of 1944; and a claim for compensation under the Act of 1944 in respect of the planning decision or order has been made before, or by virtue of section 6(5) of that Act may be made after, the passing of this Act, the restricted and unrestricted values of that land shall be computed on the assumption that the planning decision or, as the case may be, the planning decision as so revoked or modified binds the land for ever.
- (6) Where by virtue of Part II any compensation becomes payable under that Part by reference to a date occurring before the passing of this Act, the foregoing provisions of this section shall have effect as if for any reference to the passing of this Act there were substituted a reference to that date.
- (7) In computing the restricted and unrestricted values of any land for the purposes of this Part, rules (2) to (4) of the rules set out in<sup>F5</sup> Article 6(1) of the Land Compensation (Northern Ireland) Order 1982] shall, so far as applicable, have effect as they have effect for the purpose of assessing compensation for the compulsory purchase of land, so, however, that rule (3) of the said rules shall not have effect in relation to any land which is held by any person in order that he may develop that land for the purposes of any trade or business carried on by him on any adjoining land.
- (8) Land shall be taken not to have a development value if the amount of the excess of the unrestricted value of the land over the restricted value of the land is less than ten per cent. of the restricted value of the land.

**F4** rep. with saving by 2001 c. 2 (NI)  
**F5** 1982 NI 9

#### **4** <sup>F6</sup>**Land held by public bodies.**

- (1) Where at the date of the passing of this Act—
- (a) a public body are in the actual possession of any land; and
  - (b) the body are entitled to a fee simple absolute in possession in that land or a tenancy therein under which not less than forty years of the term thereof remain unexpired;
- that land shall be taken not to have a development value.
- (2) The Ministry may, with the consent of the Ministry of Finance, make regulations excluding any land specified in the regulations, or land of a class or description so specified, from the operation of subsection (1).
- (3) In making any regulations under subsection (2), the Ministry shall have regard to any representations made to it by any public body as to the land or class or description of land to be specified in the regulations.

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**F6** rep. with saving by 2001 c. 2 (NI)

**5<sup>F8</sup> F7 Applications for ascertainment of development value.**

- (1) Subject to the provisions of this Part, any of the following persons, namely:—
- (a) any person in whom an estate in any land is vested in possession at the specified date, by virtue of which he—
    - (i) is in the actual possession of the land at that date; and
    - (ii) is entitled to remain in the actual possession of the land for a period of not less than five years beginning with that date;
  - (b) any person in whom an estate in any land is vested in interest or possession at the specified date by virtue of which he will be entitled to enter into the actual possession of the land within the period of forty years beginning with the specified date;
  - (c) the personal representatives of any deceased person if, at the specified date, an estate in land to which the deceased person was entitled is vested in them and, but for his death, the deceased person would have been entitled to remain in, or to enter into, the actual possession of the land as mentioned in paragraph (a)(ii) or (b), as the case may be;
  - (d) any trustees (other than the personal representatives, as such, of a deceased person) in whom an estate in any land is vested in interest or possession at the specified date, if any beneficiary under the trust is entitled to remain in, or will be entitled to enter into, the actual possession of the land as mentioned in paragraph (a)(ii) or (b), as the case may be;
  - (e) the trustees of a settlement, if at the specified date an estate in any land is under the settlement vested in the beneficiaries in interest or possession and one or more of the beneficiaries are entitled to remain in, or will be entitled to enter into, the actual possession of the land as mentioned in paragraph (a)(ii) or (b), as the case may be;
  - (f) any person who is entitled to any compensation under Part II in relation to a planning decision given before the specified date;

may make an application to the Ministry requiring it to ascertain the development value of that land or any specified part thereof (in this Act referred to as a “Part I application”).

- (2) Where—
- (a) it is necessary to determine whether any person is, by virtue of any estate in land, entitled to remain in the actual possession of the land for a period of not less than five years beginning with the specified date or whether he will, by virtue of any estate in land, be entitled to enter into the actual possession of the land within the period of forty years beginning with that date; and
  - (b) an event may occur within the said period of five years or forty years by reason of which he would cease to be entitled to the actual possession of the land or would become entitled to the actual possession of the land;

then, for the purposes of subsection (1), he shall be taken to be entitled to remain in the actual possession of the land for the said period of five years, or as the case may be, to enter into the actual possession of the land within the said period of forty years.

- (3) Where it is necessary to determine any such question as is referred to in paragraph (a) of subsection (2) in relation to any land in which a tenancy subsists, that question

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shall, notwithstanding the provisions of that subsection, be determined on the basis that the tenant will at all times pay the rent and perform his other obligations under the tenancy.

(4) Where—

- (a) an estate in land is the subject of a trust or settlement; and
- (b) the trustees of the trust or settlement make a Part I application in relation to that land;

then, if but for this subsection, the beneficiaries under the trust or settlement would have been entitled to make a Part I application in relation to that land, they shall not make such an application and, if they have made such an application in relation to that land before the date on which the trustees make an application, they shall be treated as if they had not made the application.

(5) Where a person—

- (a) makes a Part I application in relation to any land (in this section and in section 6 referred to as “the designated land”); and
- (b) gives notice of the application in the prescribed form to any person who is entitled to make a Part I application in relation to the designated land or any part thereof;

the person referred to in paragraph (b) shall not make a Part I application in relation to the designated land or the part thereof after the expiration of the period of three months beginning with the date on which the notice is served on him.

(6) Where two or more Part I applications are made in respect of contiguous or adjacent areas of land which are held under the same instrument, the Ministry may direct that those applications shall be dealt with together and treated as if they were one application in relation to all the land included in the applications.

(7) Where a person entitled to make a Part I application in relation to any land makes such an application in respect of part only of that land, then, notwithstanding anything in this Part or in any regulations made under section 7, he shall not make a Part I application in respect of any other land contiguous or adjacent to that part after the date on which any development value is determined in relation to that part.

(8) For the purposes of this section an administrator of the estate of a person who died before the specified date shall be deemed to be entitled to any estate in land to which the deceased person was entitled as if there had been no interval of time between the date of the death of the deceased person and the grant of letters of administration.

(9) Where any person makes a Part I application, then any person to whom he conveys an estate in the land may, with the consent in writing of the first-mentioned person, act in relation to that application in his place.

(10) Where any dispute arises under this section it shall be referred to the Lands Tribunal for determination.

(11) In this section “convey” includes lease, and transfer by an assent, and “the specified date” means the day on which a period of three months beginning with the passing of this Act expires.

F7 rep. with saving by 2001 c. 2 (NI)

F8 1972 NI 17

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## 6 <sup>F9</sup>Restrictions on determination of Part I applications.

- (1) Where a Part I application is made to determine the development value of any land, that value shall not be determined until after the expiration of the prescribed period unless every person who is entitled to make a Part I application in relation to the designated land or any part thereof either—
- (a) has made such an application; or
  - (b) has joined in any Part I application which has been made by another person.
- (2) In this section “the prescribed period” means the period prescribed by regulations made under section 7 as the period within which all Part I applications must be made.

**F9** rep. with saving by [2001 c. 2 \(NI\)](#)

## 7 <sup>F10</sup>Regulations as to Part I applications.

The Ministry shall make regulations—

- (a) prescribing the manner in which, and the period (not being shorter than one year, nor longer than two years beginning with the specified date as defined in section 5(11)) within which, Part I applications must be made;
- (b) prescribing the particulars which must accompany such an application and the evidence required to verify it;
- (c) requiring development values to be determined by or on behalf of the Ministry in accordance with such procedure as may be prescribed;
- (d) requiring any objection to any development value so determined, or to any determination that land has not a development value, to be made to the Ministry within such period as may be prescribed (not being a period shorter than two months from the date on which the Ministry gives notice of the determination in question to the person making the Part I application);
- (e) providing for the settlement of any disputes arising in relation to the determinations referred to in paragraph (c) by the Lands Tribunal;
- (f) requiring any question arising under this Part to be referred to the Lands Tribunal within such period as may be prescribed;
- (g) prescribing the practice and procedure to be followed in connection with the determination of development values and the settlement of any such disputes as are mentioned in paragraph (e) and the time within which and the manner in which proceedings may be taken in respect of any alleged irregularity in connection therewith;
- (h) rendering the right to have the development value of any land ascertained conditional upon compliance with the provisions of the regulations with respect to the making of applications for the ascertainment of that value.

**F10** rep. with saving by [2001 c. 2 \(NI\)](#)

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## PART II <sup>F11</sup>

### <sup>F12</sup>COMPENSATION FOR PLANNING DECISIONS RESTRICTING NEW DEVELOPMENT

**F11** 1972 NI 17  
**F12** rep. with saving by 2001 c. 2 (NI)

#### ATTRIBUTION OF DEVELOPMENT VALUE TO LAND

### 8 <sup>F13</sup>Interpretation (Part II).

- (1) In this Part any reference to the development value of land is, subject to the following provisions of this Part, a reference to the value which is determined to be the development value of the land under Part I.
- (2) For the purposes of this Part, land shall be taken to have a development value if, and only if, either—
  - (a) the land consists of a valued area and of no other land; or
  - (b) the land consists of part of a valued area and of no other land.
- (3) For the purposes of this Part, the development value of part of a valued area shall be so much of the amount of the development value of the land which forms that area as might reasonably have been attributed to that part if the Ministry had been required to apportion it between that part and the residue of the valued area in accordance with sections 1 to 3, but so that the aggregate of the development values of all the parts of a valued area shall equal the development value of that area.

*Subs. (3A) inserted by 1972 NI 17 art. 96 which was rep. by 1973 NI 21*

- (4) In this section ... <sup>F14</sup>“valued area” means any land in respect of which, in pursuance of a Part I application, a development value is determined to exist.

**F13** rep. with saving by 2001 c. 2 (NI)  
**F14** 1973 NI 21

### 9 <sup>F15</sup>Reduction or extinguishment of development value following planning compensation.

- (1) Where at any time any such compensation as is mentioned in subsection (2) has been paid or becomes payable, then, for the purpose of determining whether the land in question or any part thereof has or had a balance of development value at any subsequent time—
  - (a) the amount of the compensation shall be deducted from the development value of that land; and
  - (b) the development value of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) The said compensation is either—



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- (a) any compensation under the Act of 1944 in relation to—
    - (i) a planning decision given on an application for planning permission for new development made after 25th February 1963; or
    - (ii) a planning decision given after the passing of this Act on an application for planning permission for new development made before 26th February 1963; or
  - (b) any compensation under this Part.
- (3) Subsection (1) shall have effect subject to the provisions of this Act relating to the recovery of compensation on subsequent development.

**F15** rep. with saving by 2001 c. 2 (NI)

**10** <sup>F16</sup>**Reduction or extinguishment of development value on initiation of new development.**

- (1) Where any land has a development value and any new development of that land to which this section applies, is or was initiated, then for the purpose of determining whether that land or any part thereof has or had a balance of development value at any subsequent time:—
- (a) if the development relates or related only to that land the value (ascertained in accordance with Schedule 3) of that development; or
  - (b) if the development relates or related to that land together with other land, so much of the value (so ascertained) of that development as is or was attributable to that land;
- shall be deducted from the development value of that land, and that value shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) This section applies to new development other than—
- (a) development which, when determining the state of the land for the purposes of section 3, was taken to have been completed at the date of the passing of this Act;
  - (b) development initiated in pursuance of a planning decision given (whether with or without conditions) before the passing of this Act on an application for planning permission made before 26th February 1963.
- (3) Where, under subsection (1), it becomes necessary to determine whether any land had a balance of development value by reference to a date occurring before the passing of this Act, for the references in subsection (2) to the passing of this Act there shall be substituted references to that date.

**F16** rep. with saving by 2001 c. 2 (NI)

**11** <sup>F17</sup>**Reduction or extinguishment of development value following severance or injurious affection.**

- (1) Where—
- (a) at any time after the passing of this Act, any land is acquired by or sold to a public body; and



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- (b) compensation is or was payable, or an amount is or was included in the purchase price, in respect of a compensatable estate in land other than the acquired land for damage sustained by reason that the acquired land is or was severed from other land held therewith, or that any other land (whether held with the acquired land or not) is or was injuriously affected;

then for the purpose of determining whether that other land or any part thereof has a balance of development value at any subsequent time, there shall be deducted from the development value of that other land an amount calculated in accordance with subsection (2) and the development value of that land, or of the part thereof in question, as the case may be, shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.

- (2) The amount required under subsection (1) to be deducted shall be the amount, if any, by which the compensation payable, or amount included in the purchase price as therein mentioned exceeds or exceeded the compensation which would have been so payable or the amount which would have been so included, if the extent of the damage sustained in respect of the other land in question had fallen to be ascertained on the assumption that planning permission would not be granted for any new development of that land, but would be granted for any development thereof other than new development.
- (3) In this section “the acquired land” , in relation to an acquisition or sale, means the land acquired or sold.

F17 rep. with saving by 2001 c. 2 (NI)

## 12 <sup>F18</sup>Supplementary provisions as to deductions from development value.

- (1) Where—
- (a) any land taken as a whole has a development value; and
- (b) an act or event occurs or has occurred in relation to part of that land such that, in accordance with any of the preceding provisions of this Part, an amount is required to be deducted from the development value of that part of that land for the purpose of determining whether that part has or had a balance of development value at any subsequent time;
- then (without prejudice to the operation of any of the preceding provisions of this Part with respect to any part of the land taken separately) the land taken as a whole shall be treated as not having (or as not having had) any such balance at that subsequent time.
- (2) Where in accordance with any of the preceding provisions of this Part an amount is required to be deducted from the development value of any land, there shall be attributed to the various parts of that land so much of that amount as might reasonably be expected to have been attributed thereto if the authority determining the amount had been required to apportion it between those parts in accordance with the same principles as applied to its determination.
- (3) Where two or more acts or events occur or have occurred in relation to the same land such that in accordance with any of the preceding provisions of this Part, an amount is required to be deducted from the development value of that land or any part thereof—
- (a) those provisions shall apply cumulatively; and
- (b) the requisite deduction from the development value of that land or that part shall be made by reference to each of those acts or events.

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**F18** rep. with saving by [2001 c. 2 \(NI\)](#)

**13** <sup>F19</sup>**Information relating to development value.**

- (1) Subject to subsections (2) to (9), the Ministry shall, on application being made to it by any person, and may if it thinks fit without any such application issue a certificate in the prescribed form with respect to any land—
  - (a) stating whether any of that land has a development value;
  - (b) if it has, specifying the amount of the development value;
  - (c) giving a general statement of what was taken to be the state of the land for the purposes of Part I and specifying any planning decision which, under section 3(4), affected the development value of that land.
- (2) Any such certificate issued with respect to any land shall contain additional information with respect to acts or events (being acts or events of which the Ministry is aware) which are or may be relevant for the purpose of determining the balance of the development value of that land under this Part.
- (3) Nothing in subsection (1) shall be construed as entitling any person to the issue of a certificate under this section unless and until the development value, if any, of any land to which the application relates has been determined in accordance with Part I.
- (4) Where the issue of a certificate under this section with respect to any land involves a new apportionment, then—
  - (a) except where the certificate is a certificate which the Ministry proposes to issue without an application in that behalf, the certificate shall not be issued otherwise than on the application of a person who is for the time being entitled to an estate in the land;
  - (b) before issuing the certificate, the Ministry shall serve a notice in writing on any person entitled to an estate in land appearing to it to be an estate which will be substantially affected by the apportionment—
    - (i) giving particulars of the proposed apportionment; and
    - (ii) stating that objections or other representations with respect thereto may be made to the Ministry within the period of thirty days from the date of the notice; and
  - (c) the certificate shall not be issued before the end of that period, and if within that period an objection to the proposed apportionment has been made by any person to whom notice has been given under paragraph ( b ), or by any other person who establishes that he is entitled to an estate in land which is substantially affected by the apportionment, and that objection has not been withdrawn, subsection (5) shall have effect.
- (5) Where, by virtue of subsection (4)( c ) this subsection has effect, then—
  - (a) if within a further period of thirty days the person by whom any such objection was made requires the matter to be referred to the Lands Tribunal, the matter shall be so referred, and the certificate shall not be issued until either the Tribunal has decided the matter or the reference to the Tribunal has been withdrawn;
  - (b) the certificate may be issued before the end of that further period if every such objection has been withdrawn;

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- (c) the certificate shall be issued at the end of that further period notwithstanding that every such objection has not been withdrawn, if a requirement has not been made within that period under paragraph ( a ).
- (6) Where, on a reference to the Lands Tribunal under this section, it is shown—
- (a) that a new apportionment relates partly to the same matters as a previous apportionment; and
- (b) that the new apportionment is consistent with the previous apportionment in so far as it relates to those matters;
- the Tribunal shall not vary the new apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.
- (7) A certificate under this section shall be sufficient proof of any facts stated therein unless the contrary is shown.
- (8) An application for a certificate under this section—
- (a) shall be made in such form and manner as may be prescribed; and
- (b) shall be accompanied by sufficient particulars, including a map if necessary, to enable the land to be identified, and, where a new apportionment will be involved—
- (i) particulars of the nature of the applicant's estate; and
- (ii) such information as to the nature of any other estate in the land, and as to the name and address of the person entitled to that other estate, as may be known to the applicant.
- (9) On any application under subsection (1)—
- (a) the applicant shall pay in the prescribed manner a fee of [<sup>F20</sup> 25p]; and
- (b) if the application involves a new apportionment the certificate shall not be issued until the applicant has paid in the prescribed manner a further fee of [<sup>F20</sup> 75p].
- (10) In this section “new apportionment” means an apportionment which relates wholly or partly to any matter to which no previous apportionment related.

**F19** rep. with saving by 2001 c. 2 (NI)

**F20** 1969 c. 19

## RIGHT TO COMPENSATION

### 14 <sup>F21</sup>Right to compensation arising out of certain planning decisions.

- (1) Subject to this Part, compensation shall be payable under this Part in respect of, and only in respect of, a compensatable estate subsisting in land which is the subject of a planning decision, given on an application for planning permission made after 25th February 1963, whereby planning permission for the carrying out of any new development is refused, or is granted subject to conditions, if at the time of the decision—
- (a) the land to which the decision relates has a balance of development value; and

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- (b) the value of that compensatable estate, or, in the case of a compensatable estate extending to other land, the value of that compensatable estate in so far as it subsists in such land as is referred to in paragraph ( a ), is depreciated by the decision; and
  - (c) compensation under the Act of 1944 has not been paid and is not payable in respect of the planning decision.
- (2) Subsection (1) shall not apply in relation to a compensatable estate to which at the date of the planning decision in question a public body are entitled unless the compensatable estate subsists in land specified in regulations made under section 4 or land of a class or description so specified.

**F21** rep. with saving by 2001 c. 2 (NI)

**15** <sup>F22</sup>**Exclusion of compensation in certain cases.**

- (1) Compensation shall not be payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision whereby permission for the carrying out of any new development is refused—
- (a) where the development consists of—
    - (i) a change in the use of (including the conversion or adaptation of any building for the purpose of the proposed development); or
    - (ii) a change in the use of any land other than buildings, unless the development consists of the carrying out of any building operations or the getting of minerals or the stationing of any caravans on the land;
  - (b) if the reason or one of the reasons stated for the refusal is that development of the kind proposed would be premature having regard to either or both of the following matters, that is to say—
    - (i) the order of priority, if any, for development contained in [<sup>F23</sup> a development plan for the area in which the land is situated];
    - (ii) any existing deficiency in the provision of water supplies, sewerage services or roads and the period within which any such deficiency may reasonably be expected to be made good;
- so, however, that paragraph ( b ) shall not apply if the planning decision refusing the permission is given on an application made more than seven years after the date of a previous planning decision whereby permission to develop the same land was refused for the same reason, or for reasons which included the same reason.
- (2) Compensation shall not be payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision whereby permission for the carrying out of any new development is refused if the reason or one of the reasons stated for the refusal is that the land is unsuitable for the proposed development on account of its liability to flooding or subsidence.
- (3) Compensation shall not be payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision whereby permission to display any advertisements is refused or is granted subject to conditions.
- (4) Compensation shall not be payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision whereby permission for the carrying out of any new development is granted subject to conditions relating to—

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- (a) the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction;
  - (b) the number of any buildings included in the development or the disposition of any building so included;
  - (c) the character or user of any building or other land included in the development;
  - (d) the position in which caravans may be stationed on a caravan site at any one time or the number of caravans which may be so stationed;
  - (e) the net annual value of any building included in the development;
  - (f) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land;
  - (g) without prejudice to paragraph ( h ), the width, position or arrangement of streets or the materials to be used in the construction of streets;
  - (h) the width, position or arrangement of any means of access to a highway or the materials to be used in the construction of any such means of access;
  - (i) the getting of minerals or any operations incidental thereto.
- (5) Where a planning decision is given whereby permission to develop land is granted subject to conditions, compensation shall not be payable under this Part in respect of a compensatable estate subsisting in land which is the subject of that decision if any development permitted by the decision is initiated before the date on which an appeal is determined under<sup>F24</sup> Article 32 of the Planning Order in respect of that decision].
- (6) For the purposes of this section, a planning decision whereby permission for the carrying out of any new development is granted subject to a condition prohibiting development on a specified part of that land shall be treated as a decision refusing the permission with respect to that part of the land.
- (7) In this section—
- “advertisement” means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure which is used or intended for use for displaying advertisements;
- “street” has the same meaning as in the Private Streets Act (Northern Ireland) 1964 .

**F22** rep. with saving by 2001 c. 2 (NI)

**F23** 1972 NI 17

**F24** 1991 NI 11

## 16 <sup>F25</sup>Exclusion of compensation where permission for alternative development is available.

- (1) Compensation shall not be payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision whereby permission for the carrying out of any new development is refused if, notwithstanding the refusal, there is available with respect to that land permission for development to which this subsection applies, but where the permission is available with respect to part only of the land, this subsection shall have effect with respect only to that part.

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- (2) Where a claim for any Part II compensation is made in respect of a compensatable estate subsisting in any land, permission for development to which subsection (1) applies shall, for the purposes of that subsection, be taken to be available with respect to that land or a part thereof, if immediately before the Ministry gives notice of its findings in respect of that claim there is in force with respect to that land or part, a grant of, or an undertaking by the Ministry to grant, some such permission, subject to no conditions other than such as are mentioned in section 15(4).
- (3) Subsection (1) applies to any development of a residential, commercial or industrial character, being development which consists wholly or mainly of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof.

**F25** rep. with saving by [2001 c. 2 \(NI\)](#)

#### MEASURE OF COMPENSATION

### 17 <sup>F26</sup> **Amount of compensation.**

- (1) Where compensation is payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision depreciating the value of that compensatable estate, the amount of the compensation shall, subject to subsections (2) to (5), be whichever is the lesser of the following amounts:—
  - (a) the amount by which the value of that compensatable estate (if it is a compensatable estate subsisting only in land to which this section applies), or (if it is a compensatable estate extending to other land) the amount by which the value of the compensatable estate in so far as it subsists in land to which this section applies, is depreciated by the decision;
  - (b) the amount of the balance of development value, immediately before the decision, of so much of the land in which the compensatable estate subsists as is land to which this section applies.
- (2) Land to which this section applies, in relation to a planning decision, is land which—
  - (a) constitutes or forms part of the decision area; and
  - (b) at the time of the decision has a balance of development value.
- (3) If in relation to any land to which this section applies—
  - (a) compensation is payable under this Part in respect of two or more compensatable estates in that land by reason of the same planning decision; and
  - (b) the aggregate amount of compensation payable apart from this subsection in respect of the compensatable estates referred to in paragraph (a) would exceed the amount mentioned in subsection (1)(b);

the amount mentioned in subsection (1)(b) shall be allocated between those compensatable estates in proportion to the depreciation of the value of each of them respectively, and the amount of the compensation payable in respect of any of those compensatable estates shall be the sum so allocated to that compensatable estate.
- (4) Where—



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- (a) at the date of such a planning decision as is mentioned in section 14(1), a public body are entitled to a compensatable estate in the land constituting or forming part of the decision area; and
- (b) by virtue of section 14(2), compensation is not payable in respect of that compensatable estate;

then for the purpose of determining the amount of compensation payable in respect of any other compensatable estate in that land, subsection (3) shall have effect as if the public body had made a claim for and were entitled to compensation under this Part.

- (5) Where the land constituting the decision area, taken as a whole, does not satisfy both of the following conditions—
  - (a) that at the time of the decision it has a balance of development value; and
  - (b) that every compensatable estate subsisting therein, the value of which is depreciated by the decision, subsists in the whole of that land;

subsection (6) shall have effect for the purpose of assessing the compensation payable under this Part in respect of any compensatable estate subsisting in that land or any part thereof.

- (6) Where this subsection applies in relation to a compensatable estate in land—
  - (a) the depreciation of the value of the compensatable estate by the planning decision shall first be ascertained with reference to the whole of the land which constitutes or forms part of the decision area and is land in which that compensatable estate subsists;
  - (b) the land referred to in paragraph (a) shall then be treated as divided into as many parts as may be requisite to ensure that each such part consists of land which either—
    - (i) satisfies both of the conditions mentioned in subsection (5); or
    - (ii) is not land which, at the time of the decision, has a balance of development value;
  - (c) the depreciation of the value of the compensatable estate, ascertained in accordance with paragraph (a), shall then be apportioned between those parts, according to the nature of those parts and the effect of the planning decision in relation to each of them;

and the amount of the compensation shall be the aggregate of the amounts which would be payable by virtue of the preceding provisions of this section if the planning decision had been made separately with respect to each of those parts.

- (7) In this section “the decision area” in relation to a planning decision means the aggregate of the land to which the decision relates.

**F26** rep. with saving by 2001 c. 2 (NI)

## 18 <sup>F27</sup>Assessment of depreciation.

- (1) For the purposes of this Part, the value of a compensatable estate in land, or of a compensatable estate in so far as it subsists in particular land, shall be taken to be depreciated by a planning decision (in this section referred to as “the relevant decision”) if, and to the extent to which, that value, calculated in accordance with subsections (2) to (5), falls short of what that value, so calculated, would have been if the relevant decision had been a decision to the contrary effect.



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- (2) Subject to subsections (3) to (5), any such value shall for the purposes of this section be calculated as at the time of the relevant decision, but—
- (a) as affected by that decision, by any grant of planning permission made in relation to the land in question after that decision and by any [<sup>F28</sup> direction under Article 69 of the Order of 1972]; and
  - (b) on the assumption that, after the relevant decision, and apart from any such permission or [<sup>F28</sup> direction] as is mentioned in paragraph ( a ), planning permission would not be granted for any new development of the land in question but would be granted for any development thereof other than new development.
- (3) If in consequence of another planning decision or of an order under [<sup>F29</sup> Article 38 of the Planning Order] revoking or modifying any planning permission, being a decision given or order made—
- (a) before the relevant decision; and
  - (b) either in respect of the whole or part of the land to which the relevant decision relates, or in respect of land which includes the whole or part of that land;
- compensation to which this subsection applies has been paid or is payable in respect of a compensatable estate subsisting in land which is the subject of that other planning decision or that order, the calculation to be made under this section shall be made as if that other planning decision had been a decision to the contrary effect, or that order had not been made, as the case may be.
- (4) Where under this section a calculation has to be made as if a planning decision were a decision to the contrary effect or an order under [<sup>F29</sup> Article 38 of the Planning Order] had not been made the calculation shall be made on the footing that any development must comply with the provisions of any statutory provision (other than the Planning [<sup>F29</sup> Order]) which would be applicable thereto.
- (5) Subsection (3) applies—
- (a) to any compensation under the Act of 1944;
  - (b) to any compensation under this Part; and
  - (c) to so much of any compensation as is payable or was paid under section 26 in respect of loss or damage consisting of depreciation of the value of a compensatable estate in land.
- (6) In this section and in section 19 “a decision to the contrary effect” means—
- (a) in relation to a decision refusing permission, a decision granting the permission subject to such conditions, if any, of a description falling within section 15(4) as the person giving the decision might reasonably have been expected to impose had he not refused the permission;
  - (b) in relation to a decision granting the permission subject to conditions, a decision granting the permission subject only to such of those conditions, if any, as fall within section 15(4).

**F27** rep. with saving by 2001 c. 2 (NI)

**F28** 1972 NI 17

**F29** 1991 NI 11

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## 19 <sup>F30</sup>Further provisions as to calculation of depreciation.

- (1) For the purpose of calculating in accordance with section 18 the value of a compensatable estate subsisting in any relevant land on the basis that the relevant decision had been a decision to the contrary effect, the following provisions shall have effect:—
  - (a) where a person entitled to a compensatable estate in the relevant land is also at the date of a relevant decision entitled to a compensatable estate in any other land, the value of the first-mentioned compensatable estate shall be reduced by the amount, if any, by which the value of the second-mentioned compensatable estate would be depreciated if any development permitted by a decision to the contrary effect to the relevant decision were carried out; and
  - (b) the value of the compensatable estate in the relevant land shall be reduced by the amount, if any, of any loss in the nature of disturbance in respect of the purposes for which the relevant land was being used at the date of the relevant decision which would necessarily be involved if any development permitted by a decision to the contrary effect were carried out.
- (2) Where a compensatable estate in any land is vested in any trustees or in the beneficiaries under a settlement, then the trustees or beneficiaries shall not, for the purposes of subsection (1), be taken to be entitled to a compensatable estate in any other land unless that other land and the relevant land are held on trust or settled under the same instrument or series of instruments.
- (3) In this section “relevant decision” has the same meaning as in section 18 and “relevant land” means land to which a relevant decision relates.

**F30** rep. with saving by 2001 c. 2 (NI)

## 20 <sup>F31</sup>Claims for compensation.

- (1) Compensation under this Part shall not be payable unless a claim for it is duly made to the Ministry in accordance with this section.
- (2) A claim for compensation under this Part shall not have effect unless it is made before the end of the period of six months beginning with the date of the planning decision to which it relates or beginning with the passing of this Act, whichever period last expires, but the Ministry may in any particular case (either before, on or after the date on which the time for claiming compensation under this Part would otherwise have expired) allow an extended, or further extended, period for making such a claim.
- (3) Regulations made under this section may—
  - (a) require claims for compensation under this Part to be made in a form prescribed by the regulations;
  - (b) require a claimant to provide such evidence and information in support of the claim and as to the interests of other persons in the land to which the claim relates (being evidence, information or interests of which the claimant is aware) as may be so prescribed.
- (4) Where a claim is made to the Ministry under subsection (1)—
  - (a) if it appears to the Ministry—
    - (i) that the development to which the planning decision related was not new development; or

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- (ii) that at the time of the planning decision no part of the land to which the claim relates had a balance of development value; or
  - (iii) that compensation is excluded by section 15 or 16;
- the Ministry shall notify the claimant accordingly, stating on which of those grounds it appears to the Ministry that compensation is not payable;
- (b) in any other case or if a claimant disputes the Ministry's findings, the Ministry shall serve notice of the claim on every other person appearing to it to be entitled to an estate in the land to which the claim relates and, where the land is the subject of a settlement, on the trustees of the settlement, if any, if an estate in the land is not vested in them.

**F31** rep. with saving by [2001 c. 2 \(NI\)](#)

## **21** <sup>F32</sup> **Apportionment of compensation.**

- (1) Where on a claim for compensation which is payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision, the Ministry determines that compensation exceeding fifty pounds is payable, the Ministry may, if it appears to it to be practicable to do so, apportion the amount of compensation between different parts of the land to which the claim relates.
- (2) In making an apportionment under subsection (1) the Ministry shall divide the land into parts and distribute the compensation between those parts, according to the manner in which the different parts of the land appear to the Ministry to be differently affected by the planning decision in respect of which the claim for compensation is made.
- (3) On a reference to the Lands Tribunal under section 23, subsections (1) and (2) shall, unless the decision of the Tribunal will not affect the amount of the compensation or any apportionment thereof by the Ministry, have effect as if for references to the Ministry there were substituted references to the Lands Tribunal.

**F32** rep. with saving by [2001 c. 2 \(NI\)](#)

## **22** <sup>F34</sup> <sup>F33</sup> **Payment of compensation.**

- (1) Where any compensation (in this Act referred to as “Part II compensation”) is payable under this Part in respect of a compensatable estate in land (other than a compensatable estate which at the date of the relevant decision is the subject of a settlement), the Ministry shall pay that compensation to the person who was entitled to that estate at the date of the relevant decision, except that if that person does not make a claim for the compensation, the Ministry may pay the compensation to any person or persons (being persons entitled to equitable interests) who as against the person in whom the compensatable estate is vested are entitled absolutely to that estate.
- (2) Where any Part II compensation is payable in respect of a compensatable estate in land (being a compensatable estate which at the date of the relevant decision is the subject of a settlement), the Ministry shall pay that compensation to the trustees of the settlement, except that where the trustees do not make a claim for the compensation, the Ministry may—

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- (a) where the compensatable estate in question is vested in trustees, pay the compensation to the persons, if any, who as against the trustees are entitled absolutely to that estate;
  - (b) where the compensatable estate is not vested in trustees, pay the compensation to the persons, if any, who as against the trustees of the settlement are entitled absolutely to the capital moneys of the settlement.
- (3) Where under subsection (1) or (2) the Ministry is required to pay any Part II compensation to any trustees, the Ministry may, if there is only one trustee or the others cannot be found (or being corporations have been dissolved), pay the compensation to one trustee of a trust or settlement, notwithstanding anything in any enactment or any instrument.
- (4) Where the amount of any Part II compensation which is payable in respect of a compensatable estate does not exceed fifty pounds, the Ministry may, without prejudice to subsections (1) and (2), pay the compensation to any person who at the date of the relevant decision was entitled to the rents and profits of the compensatable estate in respect of which the compensation was payable or, where he is under a disability, to his guardian or committee.
- (5) Where the Ministry is unable to determine to whom any Part II compensation is payable under this section, the Ministry may—
  - (a) where the amount of the compensation does not exceed<sup>F35</sup> £30,000, pay the money into the county court, and that court may exercise all the jurisdiction exercisable by the High Court under the Lands Clauses Acts in relation to the compensation;
  - (b) where the amount of the compensation exceeds<sup>F35</sup> £30,000, pay the money into the High Court, and that Court may deal with the compensation under the Lands Clauses Acts as if the compensation were purchase money under those Acts coming to persons having limited interests.
- (6) Where the Ministry pays any Part II compensation to any person under this section or into court under subsection (5), the liability of the Ministry to pay the compensation shall, to the extent of the payment, be discharged.
- (7) Subsections (1) to (6) shall have effect subject to section 32.
- (8) In this section “relevant decision” has the same meaning as in section 18.

**F33** rep. with saving by 2001 c. 2 (NI)

**F34** 1972 NI 17

**F35** SR 1992/372

## 23 <sup>F36</sup>Determination of claims.

- (1) Provision shall be made by regulations under this section—
  - (a) for requiring claims for compensation under this Part to be determined by the Ministry in such manner as may be prescribed;
  - (b) for regulating the practice and procedure to be followed in connection with the determination of such claims;
  - (c) for requiring the Ministry, on determining any such claim to give notice of its findings to the claimant, and to every other person, if any, who has made a claim for compensation under this Part in respect of the same planning

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decision, and, if the Ministry's findings include an apportionment, to give particulars of the apportionment to any other person entitled to an estate in land appearing to the Ministry to be an estate substantially affected by the apportionment.

- (2) Subject to subsection (3), provision shall be made by regulations under this section—
- (a) for enabling the claimant or any other person to whom notice of the Ministry's findings has been given in accordance with subsection (1), if he wishes to dispute the findings, and any other person to whom particulars of an apportionment included in those findings have been so given, or who establishes that he is entitled to an estate in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require the findings or, as the case may be, the apportionment to be referred to the Lands Tribunal;
  - (b) for enabling the claimant and every other person to whom notice of any findings or apportionment has been given as mentioned in paragraph (a) to be heard by the Lands Tribunal on any reference under this section of those findings or of that apportionment, as the case may be; and
  - (c) for requiring the Lands Tribunal, on any such reference, either to confirm or to vary the Ministry's findings or the apportionment, as the case may be, and to notify the parties of the decision of the Lands Tribunal.
- (3) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment—
- (a) relates wholly or partly to the same matters as a previous apportionment; and
  - (b) is consistent with that previous apportionment in so far as it relates to those matters;
- the Lands Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.
- (4) Any reference in this section to any findings of the Ministry includes a reference to any decision of the Ministry as to the person to whom any compensation under this Part is payable.

**F36** rep. with saving by [2001 c. 2 \(NI\)](#)

**24** <sup>F38</sup> <sup>F37</sup> **Recovery of compensation on subsequent development.**

- (1) Where compensation exceeding fifty pounds becomes payable under this Part in respect of a compensatable estate subsisting in land which is the subject of a planning decision—
- (a) the Ministry shall serve on any person making a claim in relation to the compensation and on the planning authority to whom the application for planning permission was made a notice in the prescribed form containing particulars of the payment and, if an apportionment has been made under section 21, of that apportionment;
  - (b) the following condition shall be observed with respect to the relevant land and to every part of that land, namely, no relevant development shall be initiated thereon or therein until such amount, if any, of the compensation as is repayable under this section has been paid to or secured to the Ministry under this section.

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- (2) The condition specified in subsection (1) and any notice served under that subsection shall be included amongst the matters which are required to be registered in the Statutory Charges Register ...<sup>F39</sup>.
- (3) Where any relevant development is to be carried out on any relevant land, the amount repayable under this section in respect of the compensation—
  - (a) if the land on which the relevant development is to be carried out (in this section referred to as “the development area” ) is identical with or includes (with other land) the whole of the relevant land, shall be the amount of that compensation;
  - (b) if the development area forms part of the relevant land, or includes part of that land together with other land, shall be so much of the compensation as is attributable to the development area in accordance with subsection (4).
- (4) In subsection (3)( b) the reference to so much of the compensation as is attributable to the development area is a reference—
  - (a) where the compensation is not apportioned under section 21, to the amount of the compensation distributed rateably according to area over the relevant land;
  - (b) where the compensation is so apportioned, to the amount of the compensation distributed in accordance with the apportionment between the different parts of the land by reference to which the apportionment is made, and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part.
- (5) If any person initiates any relevant development on any relevant land without complying with the condition attached to that land by virtue of subsection (1)( b), the Ministry may serve a notice on him—
  - (a) specifying the amount appearing to it to be the amount repayable under this section in respect of the compensation in question; and
  - (b) requiring him to pay that amount within such period, not being less than three months after the service of the notice, as may be specified in the notice.
- (6) Where the Ministry is satisfied having regard to the probable value of any proper development of any relevant land, that such development is unlikely to be carried out unless the condition attached thereto by virtue of subsection (1)( b) is modified, it may in relation to any particular development remit the whole or part of any amount otherwise repayable to it under this section.
- (7) Where, in connection with the development of any land, an amount becomes repayable under this section, then, except where, and to the extent that, payment of that amount has been remitted under subsection (6), no amount shall be repayable under this section in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.
- (8) No amount shall become repayable under this section in respect of any compensation by reference to which a sum has become recoverable by the Ministry under section 38.
- (9) Where any of the following events occurs in relation to any relevant land, or any part thereof, that is to say—
  - (a) an amount repayable under this section is repaid to the Ministry or secured to the Ministry under this section; or

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- (b) an amount repayable under this section is remitted in part under subsection (6);  
or
- (c) an amount which, but for subsection (8), would otherwise be repayable under this section becomes recoverable by the Ministry under section 38;

the Ministry shall notify the Registrar of Titles of that event, describing the land to which it relates and giving such further information as appears to the Ministry to be necessary for the purpose, and the Registrar shall note the information so provided in the entry relating to that land in the Statutory Charges Register.

- (10) An amount repayable under this section shall be paid as a single capital payment, without interest, except that where the person seeking to initiate the relevant development makes representations to the Ministry in that behalf, the Ministry may direct that the amount shall be paid—

- (a) as a single capital payment, with interest, at such time as the Ministry may direct; or
- (b) as a series of instalments of capital and interest combined, or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Ministry may direct.

- (11) An amount repayable under this section—

- (a) shall be payable to the Ministry;
- (b) shall be recoverable by the Ministry as a civil debt; and
- (c) shall, unless it is payable as a single capital payment without interest, be secured by the person by whom the development is to be carried out in such a manner (whether by mortgage, charge, bond or otherwise) as the Ministry may direct.

- (12) Where any person makes default in paying an amount repayable under this section as a single capital payment without interest, the Ministry may recover that amount, together with interest thereon at such rate as may for the time being be prescribed by an order under section 14 of the Administrative and Financial Provisions Act (Northern Ireland) 1956, as a civil debt due to the Ministry.

- (13) Any interest payable by virtue of subsection (10) shall be at such rate as is prescribed by an order under section 14 of the Administrative and Financial Provisions Act (Northern Ireland) 1956.

- (14) In this section—

“proper development” means any development which the Ministry, ...<sup>F40</sup> considers to be desirable for securing the most appropriate planning of the area in question;

“relevant development” means, subject to subsections (15) and (16), any new development—

- (a) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof; or
- (b) which, having regard to the probable value of the development, the Ministry determines should constitute relevant development for the purposes of this section;

“relevant land” means any land in respect of which a notice has been served under subsection (1); and



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any reference to a sum which becomes recoverable under section 38 includes a reference to a sum which would be so recoverable but for subsection (4) of that section.

- (15) The Ministry shall not have power to make a determination under paragraph (b) of the definition of relevant development in relation to any development if, on an application made to the Ministry for the purpose, the Ministry has certified that, having regard to the probable value of the development, it is not reasonable that the development should constitute relevant development for the purposes of this section.
- (16) Where any person is aggrieved by the refusal of the Ministry to issue a certificate under subsection (15), he may apply to the Lands Tribunal for a certificate for the purposes of that subsection, and any certificate issued by that Tribunal shall have the like effect as a certificate of the Ministry under that subsection.
- (17) Where any such compensation as is referred to in subsection (1) became payable in respect of the imposition of conditions on the granting of planning permission to develop any land, “relevant development” does not include the development for which that permission was granted.

F37 rep. with saving by 2001 c. 2 (NI)  
F38 1972 NI 17  
F39 1970 c. 18 (NI)  
F40 1972 NI 17

## 25 <sup>F41</sup> Amounts repayable in relation to balances of development value.

- (1) Where an amount has become repayable under section 24 in respect of any compensation paid under this Part, subsection (2) shall have effect for the purpose of determining any question as to the balance of development value of any land at any subsequent time.
- (2) Except where, and to the extent that, payment of the amount mentioned in subsection (1) has been remitted under section 24(6), so much, if any, of the compensation paid under this Part as is attributable to the land in question shall, for the purpose mentioned in subsection (1), be treated as not having become payable, and accordingly (notwithstanding anything in section 9) shall not be deducted from the balance of development value of that land.

F41 rep. with saving by 2001 c. 2 (NI)

## PART III

### COMPENSATION FOR OTHER PLANNING RESTRICTIONS

## 26 <sup>F42</sup> Compensation where planning permission is revoked or modified.

- (1) <sup>F43</sup> Where any planning permission is revoked or modified by an order under <sup>F44</sup> Article 38 of the Planning Order] then, if on a claim duly made to the Ministry in accordance with this section, it is shown that a person interested in the land to which the permission related—

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- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification;
- the Ministry shall pay to him compensation in respect of that expenditure, loss or damage unless compensation under the Act of 1944 has been paid or is payable in respect of the order in question.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2), compensation shall not be paid under this section in respect of—
- (a) any work carried out before the grant of the permission which is revoked or modified; or
  - (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of a compensatable estate in any land) arising out of anything done or omitted to be done before the grant of that permission.
- (4) Where an order under<sup>F44</sup> Article 38 of the Planning Order] revokes or modifies any planning permission granted for the carrying out of any new development, then in calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of a compensatable estate in any land, it shall be assumed that planning permission would not be granted for any new development of the land but would be granted for any development other than new development.
- (5) Where an order under<sup>F44</sup> Article 38 of the Planning Order] revokes or modifies any planning permission granted for the carrying out of any development other than new development, the amount of compensation for depreciation payable under this section shall be the amount of compensation which would be payable under section 29 if subsections (3) and (7) of that section were omitted and the order were such a planning decision as is mentioned in section 29(1) which, in the case of an order revoking any permission, refused planning permission to carry out the development in question, or, in the case of an order modifying any permission, granted planning permission to carry out the development in question subject to the like conditions as are specified in the order.
- (6) Section 20(2) shall have effect in relation to a claim for compensation under this section as it has effect in relation to a claim for compensation under Part II and section 22 shall have effect in relation to a claim for compensation for depreciation (within the meaning of section 27) as it has effect in relation to a claim for compensation under Part II, and in particular those provisions shall have effect as if for any reference to the date of a planning decision there were substituted a reference to the date of an order under<sup>F44</sup> Article 38 of the Planning Order] made after 25th February 1963.
- (7) The Ministry may make regulations under this section as to the manner in which any claims for compensation under this section must be made.

**F42** 1978 NI 18; Mod., 1972 NI 17

**F43** 1972 NI 17

**F44** 1991 NI 11

*Status: Point in time view as at 01/01/2006.*

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## 27<sup>F45</sup> Registration and apportionment of compensation for depreciation.

- (1) Where compensation payable under section 26 includes compensation for depreciation of an amount exceeding fifty pounds, the Ministry may, if it appears to it to be practicable to do so—
  - (a) apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates; and
  - (b) give particulars of any such apportionment to the claimant and to every other person, if any, entitled to an estate in the land which appears to the Ministry to be substantially affected by the apportionment.
- (2) In making an apportionment under subsection (1) the Ministry—
  - (a) shall divide the land into parts; and
  - (b) shall distribute the compensation between those parts, according to the manner in which the different parts appear to the Ministry to be differently affected by the order in respect of which the compensation for depreciation is payable.
- (3) Section 23, and any regulations made by virtue thereof, shall have effect with respect to any apportionment under subsection (1)<sup>F46</sup> . . . .
- (4) On a reference to the Lands Tribunal by virtue of subsection (3), subsections (1) and (2), so far as they relate to the making of an apportionment, shall apply as if for the references in those subsections to the Ministry there were substituted references to the Lands Tribunal.
- (5) Section 24 shall, subject to subsection (6), have effect with respect to compensation for depreciation payable under section 26 as it has effect with respect to compensation payable under Part II, with the substitution for references to a planning decision, of references to the order under<sup>F47</sup> Article 38 of the Planning Order] in consequence of which the compensation for depreciation is payable.
- (6) Where any compensation for depreciation under section 26 specified in a notice registered under section 24(2) (as applied by subsection (5)) became payable in respect of an order modifying planning permission, any development carried out in accordance with that permission as so modified shall not be deemed to constitute relevant development within the meaning of section 24.
- (7) In this section<sup>F46</sup> . . . “compensation for depreciation” means so much of any compensation payable under section 26 as is payable in respect of loss or damage consisting of depreciation of the value of a compensatable estate in land attributable to an order revoking or modifying any planning permission granted for the carrying out of any new development.

**F45** 1972 NI 17

**F46** 2001 c. 2 (NI)

**F47** 1991 NI 11

*S. 28 rep. by 2001 c. 2 (NI)*

## 29<sup>F49</sup> <sup>F48</sup> Compensation for planning decisions restricting development other than new development.

- (1) This section shall, subject to<sup>F50</sup> subsections (2A), (3) and (3A)], have effect in relation to any planning decision given in pursuance of an application made after 25th

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February 1963 whereby permission to carry out any development of a class specified in Schedule 1 is refused or is granted subject to conditions.

- (2) If on a claim duly made to the Ministry, it is shown that the value of a compensatable estate in the land which is the subject of the planning decision in question, is less than it would have been if the permission had been granted, or had been granted unconditionally, as the case may be, compensation of an amount equal to the difference shall be payable under this section unless compensation under the Act of 1944 has been paid or is payable in respect of the planning decision in question.
- [<sup>F50</sup>(2A) Compensation shall not be payable under this section in relation to such a planning decision as is mentioned in subsection (1) whereby permission to carry out any development of a class specified in paragraphs 1 to 3 of Schedule 1 in relation to a building is refused if by virtue of any other previous planning permission it remains a condition of such planning permission (however expressed) that the building be demolished or cease to be used as a dwelling house.]
- (3) Compensation shall not be payable under this section in relation to such a planning decision as is mentioned in subsection (1) whereby permission to use as two or more separate dwelling houses a building which at a material date (as defined in Schedule 1) was used as a single dwelling house is refused or granted subject to conditions unless it appears that the lower value of the compensatable estate in the land to which the planning decision relates (as calculated for the purposes of subsection (2)), is not reasonable having regard to the value of any other comparable dwelling houses situated in the area in which the building in question is situated.
- [<sup>F50</sup>(3A) Compensation shall not be payable under this section on more than one occasion in relation to any estate in land.]
- (4) Any dispute under subsection (3) as to whether a vendor would receive a reasonable price for a building in the circumstances mentioned in that subsection shall be referred to the Lands Tribunal for determination.
- (5) In determining, for the purposes of subsection (2), whether or to what extent the value of a compensatable estate in land is less than it would have been if the permission had been granted, or had been granted unconditionally—
- (a) it shall be assumed that any subsequent application for the like planning permission would be determined in the same way; but
  - (b) if, in the case of a refusal of planning permission, the Ministry undertook to grant planning permission for some other development of the land in the event of an application being made in that behalf, regard shall be had to that undertaking.
- (6) Where planning permission to carry out any such development as is mentioned in subsection (1) is granted subject to conditions for regulating the design or external appearance of buildings, or the size or height of buildings, those conditions shall be disregarded in assessing the compensation, if any, payable under this section.
- [<sup>F51</sup>(6A) Section 24 shall have effect with respect to compensation payable under this section as it has effect with respect to compensation payable under Part II, except that the definition of “relevant development” shall have effect as if for the words “any new development” there were substituted the words “any development of a class specified in Schedule 1” .]

*Subs. (7)(8) rep. by 1972 NI 17*

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(9) Sections 20(2) and 22 shall have effect for the purposes of a claim for compensation under this section as they have effect for the purposes of a claim under Part II.

(10) The Ministry may make regulations under this section as to the manner in which any claims for compensation under this section must be made.

**F48** rep. with saving by 2001 c. 2 (NI)

**F49** 1972 NI 17

**F50** 1982 NI 20

**F51** 1972 NI 17

### [<sup>F52</sup>30 Public bodies in relation to compensation under section 26.

Where a public body are entitled to a compensatable estate in any land, compensation under section 26 shall not be payable to that body in respect of an order under Article 38 of the Planning Order whereby any planning permission is revoked or modified unless the order is in respect of any land specified in any regulations under section 4 or land of a class or description so specified.]

**F52** 2001 c. 2 (NI)

### 31 <sup>F53</sup> Reference of disputes under Part III to the Lands Tribunal.

Any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.

**F53** 1969 c. 48; 1972 c. 5 (NI); 1972 NI 17

## PART IV

### MISCELLANEOUS PROVISIONS

*S. 32 rep. by 2001 c. 2 (NI)*

### 33 <sup>F54</sup> Calculation of value.

(1 <sup>F55</sup> In calculating the value of a compensatable estate in and for<sup>F56</sup> the purposes of section 26]

- (a) subject to subsection (2), rules (2) to (4) of the rules set out in<sup>F57</sup> Article 6(1) of the Land Compensation (Northern Ireland) Order 1982] shall, so far as applicable have effect as they have effect for the purpose of assessing compensation for the compulsory purchase of land; and
- (b) if a compensatable estate to be valued is mortgaged, it shall be treated as if the mortgage had been discharged.

*Subs. (2) rep. by 2001 c. 2 (NI)*

(3) Where, for the purposes of<sup>F56</sup> section 26]

- (a) value falls to be calculated by reference to the duration of a tenancy; and

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- (b) by reason of any option or other contractual right with respect to the determination, renewal or continuance of the tenancy the date of expiry of the tenancy is not ascertainable with certainty;

that date shall be taken to be such as appears reasonable and probable having regard to the interests of the party by whom the option is exercisable, or in whose favour the right operates, and to any other material considerations subsisting at the time when the calculation of value falls to be made.

**F54** 1972 NI 17

**F55** 1972 c. 5 (NI)

**F56** 2001 c. 2 (NI)

**F57** 1982 NI 9

*Ss. 34#36 rep. by 1972 NI 17*

### **37<sup>F58</sup> Application of s.24 to compensation payable otherwise than under Part II.**

- (1) Section 24 shall have effect in relation to any compensation to which this section applies in like manner as it has effect in relation to compensation payable under Part II with the substitution for the reference in subsection (1)( a) to any person who claims any part of compensation exceeding fifty pounds which becomes payable under Part II of a reference to any person who is entitled to an estate in the land in question, being a person who appears to the Ministry to be substantially affected by the registration of a notice under that section as applied by this section.
- (2) This section applies to any compensation which has been paid or is payable under section 6(4) of the Act of 1944 after 25th February 1963 in relation to the refusal or grant subject to conditions of planning permission for any new development or the revocation or modification by an order under section 3 of the Act of 1944 of planning permission for any new development.
- (3) Where section 24 has effect in relation to any compensation to which this section applies, any person who is entitled to an estate in any relevant land may, if he has acquired that estate in the land after the date of the decision or order in respect of which the compensation in question has been paid or is payable but before the date of passing of this Act, make an application to the Ministry claiming—
  - (a) that the consideration which he furnished in order to acquire his estate or the obligations which he has incurred by virtue of acquiring the estate, are greater than they might reasonably be expected to have been if the notice had been registered in the Statutory Charges Register before the date on which he entered into the contract to acquire that estate; or
  - (b) if he has not furnished any consideration in order to acquire his estate, that any consideration furnished after the date of that decision or order by any person from whom he derived his estate is greater than it might reasonably be expected to have been if the notice had been registered in the Statutory Charges Register before the date on which the person from whom his estate is derived entered into the contract to acquire the estate from which the claimant derives his estate.
- (4) Where a person makes an application to the Ministry under subsection (3), the Ministry shall consider the matters referred to in the application, and may if it thinks fit either cancel the notice or serve on him a notice specifying therein such lesser amount as the

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Ministry considers to be appropriate in lieu of the amount specified in the first notice, and section 24 shall, subject to any necessary modifications, have effect in relation to any notice served under this subsection as it has effect in relation to a notice served under that section.

- (5) Where any dispute arises under subsection (4) as to the cancellation or service of a notice, it shall be referred to the Lands Tribunal for determination.

*Subs. (6) rep. by 2001 c. 2 (NI)*

- (7) In this section “relevant land” means any land in respect of which a notice is served under section 24 as applied by this section.

**F58** 1972 NI 17

*Ss. 38, 39 rep. by 2001 c. 2 (NI)*

#### **40 Powers of entry.**

- (1) Any person duly authorised in writing by the Ministry may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with a claim<sup>F59</sup> . . . for compensation under this Act.
- (2)<sup>F60</sup> Subject to subsections (3) to (8), the power conferred by subsection (1) to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein.
- (3)<sup>F60</sup> A person authorised under subsection (1) to enter upon any land—
- shall, if so required, produce evidence of his authority before so entering; and
  - shall not demand admission as of right to any land which is occupied unless three days' notice of the intended entry has been given to the occupier.
- (4)<sup>F60</sup> Any person who wilfully obstructs a person acting in the exercise of his powers under subsection (1) shall be liable on summary conviction to a fine not exceeding<sup>F61</sup> level 2 on the standard scale].
- (5)<sup>F60</sup> If any person who, in compliance with subsection (1), is admitted into a factory, workshop or workplace discloses to any person any information obtained by him therein as to any manufacturing process or trade secret, he shall, unless the disclosure is made in the course of performing his duty in connection with the survey or estimate for which he was authorised to enter the premises, be liable on summary conviction to a fine not exceeding<sup>F61</sup> level 3 on the standard scale] or to imprisonment for a term not exceeding three months.
- (6) Where any land is damaged in the exercise of a right of entry conferred under subsection (1), or in the making of any survey for the purpose of which any such right of entry has been so conferred, compensation in respect of that damage may be recovered by any person interested in the land from the Ministry.
- (7) Any question of disputed compensation recoverable under subsection (6) shall be referred to and determined by the Lands Tribunal.
- (8)<sup>F60</sup> Where, under subsection (1) a person proposes to carry out any works authorised by virtue of subsection (2), he shall not carry out those works unless notice of his intention to do so was included in the notice required by subsection (3)( b).



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**F59** 2001 c. 2 (NI)

**F60** 1969 c. 48

**F61** 1984 NI 3

#### **41 Regulations, etc.**

- (1) The Ministry may make regulations for prescribing anything which, under this Act is authorised or required to be prescribed.
- (2) Any regulations made under this Act shall be subject to negative resolution.

#### **42 Expenses.**

- (1) Any expenses incurred by the Ministry under this Act shall, subject to subsection (2), be defrayed either out of moneys provided by Parliament or, if the Ministry of Finance so directs, by means of sums charged on and issued out of the Consolidated Fund.
- (2) The aggregate of the sums charged on and issued out of the Consolidated Fund under subsection (1) shall not, unless and until Parliament otherwise determines, exceed [<sup>F62</sup> four million six hundred thousand pounds].
- (3) The Ministry of Finance may borrow money for the purpose of providing money for issues out of the Consolidated Fund under subsection (1).
- (4) Any money borrowed under subsection (3) shall be repaid within any period or periods not exceeding twenty-five years from the date of borrowing, and provision for such repayment may be made out of moneys provided by Parliament.

**F62** 1974 c. 2 (NI)

#### **43 Interpretation.**

- (1) In this Act—

*Definition rep. by 1972 NI 17*

“the Act of 1944” means the Planning (Interim Development) Act (Northern Ireland) 1944 ;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

*Definitions rep. by 2001 c. 2 (NI)*

“clearing”, in relation to land, means the removal of buildings or materials from the land or the levelling of the surface of the land;

“compensatable estate” means—

- a legal fee simple absolute; or
- a tenancy;

but does not include a legal fee simple absolute to which a person is entitled as a mortgagee, and section 45(2) of the Interpretation Act (Northern Ireland) 1954 shall not apply for the purposes of this Act;

“erection” in relation to buildings includes extension, alteration and re-erection;

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“estate” means—

- a legal or equitable life estate;
- a legal or equitable fee tail;
- a legal or equitable fee simple absolute;
- a tenancy; or
- an equity of redemption in relation to a mortgage of any of the above estates;

but does not include a legal or equitable life estate, fee tail or fee simple absolute to which a person is entitled as a mortgagee;

“land” means any corporeal hereditament, including a building, and accordingly section 45(1) of the Interpretation Act (Northern Ireland) 1954 shall not apply for the purposes of this Act;

“the Lands Tribunal” means the Lands Tribunal for Northern Ireland;

[<sup>F63</sup> “local authority” means a district council;]

“minerals” includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include turf cut for purposes other than sale;

“the Ministry” means the Ministry of Development<sup>F64</sup>;

“mortgage” includes (without prejudice to subsection (8)) any charge or lien on any property for securing money or money's worth;

“new development” means development which is not of a class specified in Schedule 1;

[<sup>F65</sup> “the Order of 1972” means the Planning (Northern Ireland) Order 1972 ;]

“Part II compensation” means any compensation payable under Part II;

“Part III compensation” means any compensation payable under section 26<sup>F66</sup> . . . ;

*Definition rep. by 1972 NI 17*

“planning decision” means a decision given on an interim development application [<sup>F65</sup> or an application under Part IV of the<sup>F67</sup> Planning Order];

[<sup>F67</sup> “the Planning Order” means the Planning (Northern Ireland) Order 1991;]

“possession” includes the receipt of rents and profits, or the right to receive them;

“prescribed” means prescribed by regulations under this Act;

“public body” means one of the following, that is to say:—

- an authority all the members of which are appointed or elected by one or more local authorities;
- a department of the Government of Northern Ireland;
- an industrial training board established under section 1 of the Industrial Training Act (Northern Ireland) 1964 ;
- a local authority;

...

<sup>F68</sup>[<sup>F69</sup> a new town commission established under the New Towns Act (Northern Ireland) 1965 ;]

the Northern Ireland Fire Authority<sup>F70</sup>;

the Northern Ireland General Health Services Board<sup>F71</sup>;

the Northern Ireland Hospitals Authority<sup>F71</sup>;

[<sup>F69</sup> the Northern Ireland Housing Executive;]

the Northern Ireland Housing Trust<sup>F72</sup>;

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the Northern Ireland Training Executive;  
 the Northern Ireland Youth Employment Service Board<sup>F73</sup>;  
 [<sup>F69</sup> the Police Authority for Northern Ireland;]  
 the Trustees of the Ulster Folk Museum<sup>F74</sup>;  
 the Trustees of the Ulster Museum;

“settlement” has the same meaning as in the Settled Land Acts 1882 to 1890 and accordingly section 2(2) of the Settled Land Act 1882 has effect for the purposes of this Act as it has effect for the purposes of that Act;

“statutory provision” has the same meaning as in the Interpretation Act (Northern Ireland) 1954 ;

“tenancy” includes a tenancy created by an agreement for a lease and a tenancy created under any enactment but does not include—

- (a) a mortgage term; or
- (b) a tenancy for a year (or any shorter term) or from year to year (or any other periodic tenancy having reference to any period less than a year); or
- (c) a tenancy at will;

“trustee” includes an implied or constructive trustee and a personal representative;

“trustees of the settlement” means the trustees of a settlement for the purposes of the Settled Land Acts 1882 to 1890;

“war damage” has the same meaning as in the War Damage Act 1943 ;

<sup>F75</sup>  
 ...

- (2) Where under this Act any statutory provision (including any section or other division of this Act) is applied for any of the purposes of this Act, that statutory provision shall be construed so that its application for those purposes is grammatical and effective.
- (3) For the purposes of this Act—
  - (a) where a compensatable estate in any land is mortgaged; and
  - (b) but for this subsection, any person entitled to an equity of redemption in relation to that compensatable estate would not be entitled to a compensatable estate in that land;

that person shall be taken to be entitled to the compensatable estate in the land to which he would be entitled if he redeemed the mortgage.
- (4) For the purposes of this Act, where a compensatable estate in land is vested in any beneficiaries under a settlement, the interests vested in the beneficiaries shall be taken to constitute the compensatable estate which would exist if those interests were vested in one person and constituted one interest; and the beneficiaries shall<sup>F66</sup> . . . be taken to be entitled to that interest.
- (5) Any reference in this Act to a contract is a reference to a contract in writing, or a contract of which a memorandum or note thereof in writing has been made and signed by the parties thereto or by some other person or persons authorised by them in that behalf, and, in relation to a compensatable estate in land conveyed or assigned without a preliminary contract, is a reference to the conveyance or assignment; and any reference to the making of a contract is a reference to the signing thereof or (if it was not in writing) to the signing of the memorandum or note thereof.
- (6) Where—

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- (a) under any provision of this Act, a document or notice is required to be served on a person entitled to an estate in any land; and
- (b) it is not practicable, after reasonable inquiry, to ascertain the name or address of any such person;

that document or notice shall be taken to have been duly served if it is addressed to that person by his name, if known to the Ministry, or if his name is not so known, if it is addressed to “all persons entitled to an estate” in the land (describing it) and in either case by delivering the document or notice to some responsible person on the land or, if there is no such person on the land to whom it may be delivered, by affixing the document or notice or a copy thereof so addressed to a conspicuous object on the land.

- (7) Where under any provision of this Act the value of an estate in any land is required to be assessed on the assumption that planning permission would be granted for development other than new development that assumption shall be made on the footing that any such development must comply with the provisions of any statutory provision, other than the Planning Acts (Northern Ireland) 1931<sup>F76</sup> and 1944<sup>F76</sup>, which would be applicable thereto.
- (8) In the application of this Act to registered land in respect of which a charge for the payment of a principal sum has been created under section 40<sup>F77</sup> of the Local Registration of Title (Ireland) Act 1891
  - (a) any reference to a mortgage shall be construed as a reference to the charge;
  - (b) any reference to a mortgagee shall be construed as a reference to the registered owner of the charge.

<b>F63</b>	1978 NI 18
<b>F64</b>	Functions transf.SRO (NI) 1973/504; 1976 NI 6
<b>F65</b>	1972 NI 17
<b>F66</b>	2001 c. 2 (NI)
<b>F67</b>	1991 NI 11
<b>F68</b>	1966 c. 28 (NI)
<b>F69</b>	1971 c. 23 (NI)
<b>F70</b>	1973 NI 9
<b>F71</b>	1972 NI 14
<b>F72</b>	SR 1971/307
<b>F73</b>	1974 NI 7
<b>F74</b>	1973 NI 7; 1981 NI 14
<b>F75</b>	1972 NI 17
<b>F76</b>	1972 NI 17
<b>F77</b>	1970 c. 18 (NI)

*S. 44 spent*

*S. 45, with Schedule 5, effects repeals*

#### **46 Short title.**

- (1) This Act may be cited as the Land Development Values (Compensation) Act (Northern Ireland) 1965.

*Subs.(2) rep. by 1972 NI 17*

*Status: Point in time view as at 01/01/2006.*

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## SCHEDULES

### SCHEDULE 1

Section 2.

#### DEVELOPMENT NOT CONSTITUTING NEW DEVELOPMENT

- 1 (1) The carrying out of any of the following works, that is to say—
- (a) the rebuilding, as often as occasion may require, of any building which was in existence at the date of the passing of this Act, or of any building which was in existence before that date but was destroyed or demolished within the period of five years ending with that date;
  - (b) the rebuilding, as often as occasion may require, of any building erected after the passing of this Act which was in existence at a material date;
  - (c) the rebuilding as often as occasion may require of any building destroyed or demolished by war damage, not being a building existing at the date of the passing of this Act;
  - (d) the making good of war damage sustained by any building;
- so long as the cubic content of the building does not exceed the cubic content of the original building—
- (i) (where the original building is a dwelling house)—by more than ten per cent. or seventeen hundred and fifty cubic feet, whichever is the greater;
  - (ii) (where the original building is not a dwelling house)—by more than ten per cent.
- (2) Any reference in sub-paragraph (1) to the original building is a reference to the building which existed at a time before any rebuilding mentioned in that paragraph was first executed and not to the building resulting from the execution of any such rebuilding.
- 2 The use as two or more separate dwelling houses of any building which at a material date was used as a single dwelling house.
- 3 (1) Subject to sub-paragraph (2), the enlargement, improvement or other alteration, as often as occasion may require, of any such building as is mentioned in paragraph 1(1)(a), (b) or (c), or any building substituted for such a building by the carrying out of any such operations as are mentioned in that paragraph so long as the cubic content of the original building is not exceeded or increased by more than the amount specified in paragraph 1(1)(i) or (ii), as the case may require.
- (2) Sub-paragraph (1) shall not extend to works involving an increase in the cubic content of a building erected after the passing of this Act (including a building resulting from the carrying out of such works as are described in paragraph 1).
- Para. 4 rep. by 1972 NI 17*
- 5 The getting, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for those purposes.

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- 6 In the case of a building or other land which, at a material date, was used for a purpose falling within any general class specified in any paragraph of Part II of Schedule 2, or which, being unoccupied on the date of the passing of this Act, was last used (otherwise than before the day beginning the period of five years ending with that date) for any such purposes, the use of that building or land for any other purpose falling within the same paragraph.
- 7 In the case of any building or other land which, at a material date, was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose on the date of the passing of this Act, or on the day thereafter when the building began to be so used, or, as the case may be, one-tenth of the area of the land so used on that day.
- 8 The deposit of waste materials or refuse in connection with the working of minerals, on any land comprised in a site which at a material date was being used for that purpose, so far as may be reasonably required in connection with the working of those minerals.
- 9 For the purposes of this Schedule cubic content shall be ascertained by external measurement.
- 10 Where, after the passing of this Act—
- (a) any building or works have been erected or constructed, or any use of land has been instituted; and
  - (b) a condition has been imposed under<sup>F78</sup> the Planning Order], limiting the period for which the building or works may be retained, or the use continued;
- this Schedule shall only apply in relation to the period specified in the condition.
- F78** 1991 NI 11
- 11 For the purposes of paragraph 3—
- (a) the erection, on land within the curtilage of any such building as is mentioned in that paragraph, of an additional building to be used in connection with the original building shall be treated as the enlargement of the original building; and
  - (b) where any two or more buildings comprised in the same curtilage are used as one unit for the purposes of any institution or undertaking, the reference in that paragraph to the cubic content of the original building shall be construed as a reference to the aggregate cubic content of those buildings.
- 12 (1) In this Schedule “at a material date” means at either of the following dates—
- (a) the date of the passing of this Act; and
  - (b) (subject to sub-paragraphs (2) and (3)) the date by reference to which this Schedule falls to be applied to the particular case in question.
- (2) Sub-paragraph (1)( b) shall not apply in relation to any use of land in respect of which before the date mentioned in that sub-paragraph, the planning authority have made an order under section 4(1)( b) of the Act of 1944 prohibiting that use <sup>F79</sup> or an enforcement notice under<sup>F80</sup> Article 68 of the Planning Order] served before that date has become or becomes effective].



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- (3) Sub-paragraph (1)( *b*) shall not apply in relation to any buildings or works in respect of which, whether before or after the date mentioned in that sub-paragraph, the planning authority [<sup>F79</sup> or the Ministry] have become, or become, entitled, under a notice served under the Schedule to the Act of 1944 [<sup>F79</sup> or under the [<sup>F80</sup> Planning Order]] before that date, to take any action under section 4(1)( *a*) of that Act in accordance with that section and that Schedule [<sup>F79</sup> or that Order].

**F79** 1972 NI 17

**F80** 1991 NI 11

## SCHEDULE 2

Section 2.

### USE CLASSES FOR PURPOSES OF PARAGRAPH 6 OF SCHEDULE 1

#### PART I

##### GENERAL

- 1 (1) In this Schedule—

- “article” means an article of any description, including a ship or vessel;
- “betting office” means any premises in respect of which there is in force a bookmaking office licence under the Betting and Lotteries Act (Northern Ireland) 1957 ;
- “funfair” includes an amusement arcade or pin-table saloon;
- “general industrial building” means an industrial building other than a light industrial building or a special industrial building;
- “hotel” has the same meaning as in the Hotel Proprietors Act (Northern Ireland) 1958 ;
- “industrial building” means a building (other than a building in or adjacent to and belonging to a quarry or mine and other than a shop) used for the carrying on of any process for or incidental to any of the following purposes, that is to say:—
- (a) the making of any article or part of any article; or
  - (b) the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or
  - (c) without prejudice to paragraphs ( *a*) and ( *b*), the getting, dressing or treatment of minerals;

being a process carried on in the course of a trade or business other than agriculture;

“light industrial building” means an industrial building (not being a special industrial building) in which the machinery installed or the processes carried on are such as could be installed or carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

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“motor vehicle” has the same meaning as in the Road Traffic [<sup>F81</sup> (Northern Ireland) Order 1981 ];

“office” includes a bank, but does not include a betting office or post office;

“shop” means a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods by retail, and includes a building used for the purposes of a hairdresser or undertaker or for the reception of goods to be washed, cleaned, or repaired, or for any other purpose appropriate to a shopping area, but does not include a building used as a funfair, garage, petrol filling station, office, betting office, or hotel or premises (other than a restaurant) licensed for the sale of intoxicating liquor for sale on the premises;

“special industrial building” means an industrial building used for one or more of the purposes specified in paragraphs 5 to 9 of Part II.

- (2) In this Schedule any reference to a building includes a reference to land occupied therewith which is used for the same purposes.

**F81** 1981 NI 1

- 2 (1) Where a group of contiguous or adjacent buildings used as parts of a single undertaking includes industrial buildings used for purposes falling within two or more of the classes specified in paragraphs 3 to 9 of Part II, the particular classes in question may, in relation to that group of buildings, be treated as a single class for the purposes of this Schedule if the area occupied in the group by general or special industrial buildings is not substantially increased by reason of being so treated.
- (2) A use which is ordinarily incidental to and included in any use specified in Part II is not excluded from that use as an incident thereto merely because it is also specified in that Part as a separate use.

## PART II

### USE CLASSES

- 1 Use as a shop for any purpose except as—  
(a) a fish and chip shop;  
(b) a shop for the sale of pet animals or birds;  
(c) a shop for the sale of pets' meat otherwise than in sealed containers; or  
(d) a shop for the sale of motor vehicles.
- 2 Use as an office for any purpose.
- 3 Use as a light industrial building for any purpose.
- 4 Use as a general industrial building for any purpose.
- 5 <sup>F82</sup>(1) Use for any work which is registrable under the Alkali, & co. Works Regulation Act 1906, except a process ancillary to the getting, dressing or treatment of minerals, carried on in or adjacent to a quarry or mine.
- <sup>F82</sup>(2) Use for any of the following processes, except as mentioned in sub-paragraph (1), so far as not registrable under the Act referred to in that sub-paragraph:—

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- (a) converting, re-heating, annealing, hardening, melting, carburising, forging or casting of iron or other metals or alloys;
- (b) recovering of metal from scrap or drosses or ashes;
- (c) galvanising;
- (d) pickling or treatment of metal in acid; or
- (e) chromium plating.

- [<sup>F83</sup>(3) Use for any of the following processes (except a process ancillary to the getting, dressing or treatment of minerals, carried on in or adjacent to a quarry or mine)—
- (a) converting, re-heating, annealing, hardening, melting, carburising, forging or casting of iron or other metals or alloys;
  - (b) recovering of metal from scrap or drosses or ashes;
  - (c) galvanising;
  - (d) pickling or treatment of metal in acid; or
  - (e) chromium plating.]

**F82** prosp. rep. by [1997 NI 18](#)

**F83** [1997 NI 18](#); [2002 NI 7](#)

- 6 Use for any of the following processes so far as not included in paragraph 5 and except a process ancillary to the getting, dressing or treatment of minerals, carried on in or adjacent to a quarry or mine:—
- (a) burning of building bricks;
  - (b) lime or dolomite burning;
  - (c) production of calcium carbide;
  - (d) foaming, crushing or screening of stone or slag.
- 7 Use, so far as not included in paragraph 5, for the production or employment of cyanogen or its compounds.
- 8 Use for any of the following purposes, so far as not included in paragraph 5:—
- the distilling, refining or blending of oils;
  - the production or employment of cellulose lacquers (except their employment in garages in connection with minor repairs), hot pitch or bitumen;
  - the stoving of enamelled ware;
  - the manufacture of paint and varnish (excluding mixing, milling and grinding);
  - the production of rubber from scrap; or
  - the manufacture of acetylene from calcium carbide, for sale or for use in a further chemical process.
- 9 Use for carrying on any of following industries, businesses or trades so far as not included in paragraph 5:—
- animal charcoal manufacturer;
  - animal hair cleanser, adapter or treater;
  - blood albumen maker;
  - blood boiler;
  - bone boiler or steamer;
  - bone burner;
  - bone grinder;
  - breeder of maggots from putrescible animal matter;

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- candle maker;
  - dealer in rags or bones (including receiving, storing, sorting or manipulating rags in or likely to become in an offensive condition, or any bones, rabbit-skins, fat or putrescible animal products of a like nature);
  - fat melter or fat extractor;
  - fell monger;
  - fish curer;
  - fish oil manufacturer;
  - fish skin dresser or scraper;
  - glue maker;
  - gut scraper or gut cleaner;
  - leather dresser;
  - maker of meal for feeding poultry, dogs, cattle, or other animals from any fish, blood, bone, fat or animal offal, either in an offensive condition or subjected to any process causing noxious or injurious effluvia;
  - manufacturer of manure from bones, fish, fish offal, blood, spent hops, beans or other putrescible animal or vegetable matter;
  - skin drier;
  - tanner; or
  - tripe boiler or cleaner.
- 10 Use as a wholesale warehouse or repository for any purpose.
- 11 Use as a boarding or guest house, a residential club, or a hotel providing sleeping accommodation.
- 12 Use as a residential or boarding school or a residential college.
- 13 Use as a building for public worship or religious instruction or for the social or recreational activities of the religious body using the building.
- 14 Use as a home or institution providing for the boarding, care and maintenance of children, old people or persons under disability, a convalescent home, a nursing home, a sanatorium or a hospital.
- 15 Use (other than residentially) as a health centre, a school treatment centre, a clinic, a creche, a day nursery or a dispensary, or use as a consulting room or surgery unattached to the residence of the consultant or practitioner.
- 16 Use as an art gallery (other than for business purposes), a museum, a public library or reading room, a public hall, a concert hall, an exhibition hall, a social centre, a community centre or a non-residential club.
- 17 Use as a theatre, a cinema, a music hall, a dance hall, a skating rink, a swimming bath, a Turkish or other vapour or foam bath or a gymnasium, or for indoor games.

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*Schedule 4 spent*

*Schedule 5 Part I rep. by SLR 1973; Part II—Repeals*

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

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