



Land Compensation (Scotland) Act 1973

1973 CHAPTER 56

PART IV

COMPULSORY PURCHASE

Assessment of compensation

41 Compensation for injurious affection

- (1) Where land is acquired or taken from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, compensation for injurious affection of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land acquired or taken from him.
- (2) In this section " compensation for injurious affection " means compensation for injurious affection under section 61 or 114 of the Lands Clauses Consolidation (Scotland) Act 1845, and subsection (1) above shall apply with the necessary modifications to such compensation under the said section 61 as substituted by paragraph 26 of Schedule 2 to the Gas Act 1972 (compulsory acquisition of rights over land) or any corresponding enactment extending to Scotland, including (except where otherwise provided) an enactment passed after 23rd May 1973.

42 Compensation for acquisition of dwelling specially adapted for disabled person

- (1) This section applies to the assessment of compensation in respect of the compulsory acquisition of an interest in a dwelling which—
 - (a) has been constructed or substantially modified to meet the special needs of a disabled person; and
 - (b) is occupied by such a person as his residence immediately before the date when the acquiring authority take possession of the dwelling or was last so occupied before that date.

- (2) The compensation shall, if the person whose interest is acquired so elects, be assessed as if the dwelling were land which is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose.

43 Compensation for disturbance where business carried on by person over sixty

- (1) Where a person is carrying on a trade or business on any land and, in consequence of the compulsory acquisition of the whole of that land, is required to give up possession thereof to the acquiring authority, then if—
- (a) on the date on which he gives up possession as aforesaid he has attained the age of sixty; and
 - (b) on that date the land is or forms part of a hereditament the annual value of which does not exceed the prescribed amount; and
 - (c) that person has not disposed of the goodwill of the whole of the trade or business and gives to the acquiring authority the undertakings mentioned in subsection (3) below,

the compensation payable to that person in respect of the compulsory acquisition of his interest in the land or, as the case may be, under section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (tenants from year to year etc.) shall, so far as attributable to disturbance, be assessed on the assumption that it is not reasonably practicable for that person to carry on the trade or business or, as the case may be, the part thereof the goodwill of which he has retained, elsewhere than on that land.

- (2) In subsection (1) above " the prescribed amount" means the amount which on the date mentioned in that subsection is the amount prescribed for the purposes of section 181(4)(a) of the Town and Country (Scotland) Planning Act 1972 (interests qualifying for protection under planning blight provisions) and " annual value " and " hereditament" have the meanings given in section 196 of that Act taking references to the date of service of a notice under section 182 of that Act as references to the date mentioned in subsection (1) above.
- (3) The undertakings to be given by the person claiming compensation are—
- (a) an undertaking that he will not dispose of the goodwill of the trade or business, or, as the case may be, of the part thereof the goodwill of which he has retained ; and
 - (b) an undertaking that he will not, within such area and for such time as the acquiring authority may require, directly or indirectly engage in or have any interest in any other trade or business of the same or substantially the same kind as that carried on by him on the land acquired.
- (4) If an undertaking given by a person for the purposes of this section is broken the acquiring authority may recover from him an amount equal to the difference between the compensation paid and the compensation that would have been payable if it had been assessed without regard to the provisions of this section.
- (5) This section shall apply to a trade or business carried on by two or more persons in partnership as if references to the person by whom it is carried on were references to all the partners and as if the undertakings mentioned in subsection (3) above were required to be given by all the partners.
- (6) This section shall apply to a trade or business carried on by a company—
- (a) as if subsection (1)(a) above required—

- (i) each shareholder, other than a minority shareholder, to be an individual who has attained the age of sixty on the date there mentioned; and
 - (ii) each minority shareholder to be an individual who either has attained that age on that date or is the spouse of a shareholder who has attained that age on that date; and
- (b) as if the undertakings mentioned in subsection (3)(b) above were required to be given both by the company and by each shareholder.

In this subsection "shareholder" means a person who is beneficially entitled to a share or shares in the company carrying voting rights and "minority shareholder" means a person who is so entitled to less than 50 per cent, of those shares.

- (7) This section shall apply in relation to any disturbance payment assessed in accordance with section 35(1)(b) above as it applies in relation to the compensation mentioned in subsection (1) above, and shall so apply subject to the necessary modifications and as if references to the giving up of possession of land to the acquiring authority in consequence of its compulsory acquisition were references to displacement as mentioned in section 34 above.

44 Compensation in respect of agricultural holdings

- (1) This section has effect where in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—
- (a) acquire the interest of the landlord in an agricultural holding or any part of it; or
 - (b) acquire the interest of the tenant in, or take possession of, an agricultural holding or any part of it.
- (2) In assessing the compensation payable by the acquiring authority to the landlord in connection with any such acquisition of an interest as is mentioned in subsection (1) (a) above—
- (a) there shall be disregarded any right of the landlord to serve a notice to quit, and any notice to quit already served by the landlord, which would not be or would not have been effective if—
 - (i) in section 25(2)(c) of the Agricultural Holdings (Scotland) Act 1949 (land required for non-agricultural use for which planning permission has been granted etc.) the reference to the land being required did not include a reference to its being required by an acquiring authority ; and
 - (ii) in section 26(1)(e) of that Act (proposed termination of tenancy for purpose of land's being used for non-agricultural use not falling within section 25(2)(c)) the reference to the land's being used did not include a reference to its being used by an acquiring authority; and
 - (b) there shall be disregarded any entitlement of the landlord to resume land comprised in the holding by virtue of a stipulation in the lease, and any notice already given in pursuance of such a stipulation which would not be or would not have been effective if the stipulation were construed as not including authority to resume the land for the purpose of its being required by the acquiring authority; and

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- (c) if the tenant has quitted the holding or any part of it by reason of a notice to quit which is to be so disregarded, it shall be assumed that he has not done so ; and
 - (d) if land comprised in the holding has been resumed by reason of such an entitlement or notice which is to be so disregarded that land shall be assumed not to have been so resumed.
- (3) In assessing the compensation payable by the acquiring authority to the tenant in connection with any such acquisition of an interest or taking of possession of land as is mentioned in subsection (1)(b) above (hereafter referred to as " the tenant's compensation "), there shall be disregarded—
- (a) any right of the landlord to serve a notice to quit, and any notice to quit already served by the landlord, which would not be or would not have been effective if the said sections 25(2)(c) and 26(1)(e) were construed in accordance with subsection (2)(a)(i) and (ii) above; and
 - (b) any entitlement of the landlord to resume land comprised in the holding by virtue of a stipulation in the lease, and any notice already given in pursuance of such a stipulation which would not be or would not have been effective if the stipulation were construed in accordance with subsection (2)(b) above.
- (4) The tenant's compensation shall be reduced by an amount equal to any payment which the acquiring authority are liable to make to him, in respect of the acquisition or taking of possession in question, under section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 (additional payments by acquiring authority in circumstances described in subsection (1)(b) above).
- (5) If the tenant's compensation as determined in accordance with subsections (3) and (4) above is less than it would have been if those subsections had not been enacted, it shall be increased by the amount of the deficiency.
- (6) This section shall not apply to an agricultural holding which is a croft or the holding of a landholder or a statutory small tenant.

45 Compensation in respect of crofts, etc.

- (1) This section has effect where in pursuance of any enactment providing for the acquisition or taking of possession of land compulsorily an acquiring authority—
- (a) acquire the interest of the landlord in an agricultural holding which is a croft; or
 - (b) take possession of a croft.
- (2) In assessing the compensation payable by the acquiring authority to the landlord of a croft in connection with any such acquisition of an interest as is mentioned in subsection (1)(a) above—
- (a) there shall be disregarded any right of the landlord to apply to the Scottish Land Court under section 12 of the Crofters (Scotland) Act 1955 for authority to resume the croft and any such authority already granted which would not be or would not have been effective if in that section the reference to resuming the croft did not include a reference to its being resumed for die purpose of its being required by the acquiring authority; and
 - (b) if the crofter has surrendered his croft under the said section 12 by reason of an authority which is to be so disregarded it shall be assumed that he has not done so.

- (3) In assessing the compensation payable by the acquiring authority to the crofter in connection with any such taking of possession of a croft as is mentioned in subsection (1)(b) above, there shall be disregarded any right of the landlord to apply to the Scottish Land Court under the said section 12 for authority to resume the croft or any such authority already granted which would not be or would not have been effective if the said section 12 were construed in accordance with subsection (2)(a) above.
- (4) If the compensation payable to the crofter as determined in accordance with subsection (3) above is less than it would have been if that subsection had not been enacted, it shall be increased by the amount of the deficiency.
- (5) This section shall apply to part of a croft as it applies to an entire croft.
- (6) This section shall apply to the holding or part of the holding of a landholder as it applies to a croft or part of a croft except that for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, landholder or section 2 of the Crofters Holdings (Scotland) Act 1886.
- (7) This section shall apply to the holding or part of the holding of a statutory small tenant as it applies to a croft or part of a croft except that—
 - (a) for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, statutory small tenant or section 32(15) of the Small Landholders (Scotland) Act 1911;
 - (b) in subsection (2) (b), for the words " crofter has surrendered his croft under the said section 12 " there shall be substituted the words " landlord has resumed the holding under the said section 32(15) ";
 - (c) after subsection (3) there shall be inserted the following subsection—

“(3A) The compensation payable to the statutory small tenant shall be reduced by an amount equal to any payment which the acquiring authority are liable to make to him, in respect of the taking of possession in question, under section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 (additional payments by acquiring authority in circumstances described in subsection (1)(b) above).”;
 - (d) in subsection (4), for the words " subsection (3)" there shall be substituted the words " subsections (3) and (3A) ".

46 Compensation where occupier is rehoused

- (1) The amount of compensation payable in respect of the compulsory acquisition of an interest in land shall not be subject to any reduction on account of the fact that the acquiring authority have provided, or undertake to provide or arrange for the provision of, or another authority will provide, residential accommodation under any enactment for the person entitled to the compensation.
- (2) In assessing the compensation payable in respect of the compulsory acquisition of an interest in land which on the date of service of the notice to treat is subject to a tenancy, there shall be left out of account any part of the value of that interest which is attributable to, or to the prospect of, the tenant giving up possession after that date in consequence of being provided with other accommodation by virtue of section 36(1) (a) above; and for the purpose of determining the date by reference to which that

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compensation is to be assessed the acquiring authority shall be deemed, where the tenant gives up possession as aforesaid, to have taken possession on the date on which it is given up by the tenant.

- (3) Subsection (1) above shall apply in relation to any payment to which a person is entitled under Part III of this Act as it applies in relation to the compensation mentioned in that subsection taking references to the acquiring authority as references to the authority responsible for making that payment.
- (4) Subsection (2) above shall apply in relation to a case where a notice to treat is deemed to have been served by virtue of Schedule 24 to the Town and Country Planning (Scotland) Act 1972 (general vesting declarations) as it applies in relation to a case where a notice to treat is actually served.

47 Compensation where land is in area designated as site of new town for purpose of public development

- (1) Where the Secretary of State proposes to make an order under section 1 of the New Towns (Scotland) Act 1968 designating any area as—
 - (a) the site of new town ; or
 - (b) an extension of the site of a new town,
 and the purpose or main purpose, or one of the main purposes, for which the order is proposed to be made is the provision of housing or other facilities required in connection with or in consequence of the carrying out of any public development, he may, before making the order, give a direction specifying that development for the purposes of this section in relation to that area.
- (2) Where the area mentioned in paragraph 3 or 3A in the first column of Schedule 1 to the Land Compensation (Scotland) Act 1963 (cases where land acquired forms part of site of new town or extension of site of new town) is an area to which a direction under this section relates, then, in the circumstances described in that paragraph—
 - (a) the increase or diminution in value to be left out of account by virtue of section 13 of that Act (compensation to be assessed without regard to development attributable to designation of new town) or any rule of law relating to the assessment of compensation in respect of compulsory acquisition ; and
 - (b) the increase in value to be taken into account by virtue of section 14 of that Act (reduction of compensation where other land benefited by such development),
 shall respectively include any increase or diminution in value, and any increase in value, which is attributable to the carrying out or the prospect of the public development specified in the direction.
- (3) No direction shall be given under this section in relation to any area until the Secretary of State has prepared a draft of the order under section 1 of the said Act of 1968 in respect of that area and has published the notice required by paragraph 2 of Schedule 1 to that Act.
- (4) Any direction under this section shall be given by order; and any order containing such a direction may be varied or revoked by a subsequent order.
- (5) The power to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

- (6) In this section " public development" means development (whether or not in the area designated under section 1 of the said Act of 1968) in the exercise of statutory powers by—
- (a) a government department;
 - (b) any statutory undertakers within the meaning of the Town and Country Planning (Scotland) Act 1972 or any body deemed by virtue of any enactment to be statutory undertakers for the purposes of, or of any provision of, that Act; or
 - (c) without prejudice to paragraph (b) above, any body having power to borrow money with the consent of a Minister,
- and includes such development which has already been carried out when the direction in respect of it is given as well as such development which is then proposed.

Advance payment of compensation

48 Right to advance payment of compensation

- (1) Where an acquiring authority have taken possession of any land the authority shall, if a request in that behalf is made in accordance with subsection (2) below, make an advance payment on account of any compensation payable by them for the compulsory acquisition of any interest in that land.
- (2) Any request under this section shall be made by the person entitled to the compensation (hereafter referred to as " the claimant"), shall be in writing, shall give particulars of the claimant's interest in the land (so far as not already given pursuant to a notice to treat) and shall be accompanied or supplemented by such other particulars as the acquiring authority may reasonably require to enable them to estimate the amount of the compensation in respect of which the advance payment is to be made.
- (3) Subject to subsection (6) below, the amount of any advance payment under this section shall be equal to 90 per cent, of the following amount, that is to say—
 - (a) if the acquiring authority and the claimant have agreed on the amount of the compensation, the agreed amount;
 - (b) in any other case, an amount equal to the compensation as estimated by the acquiring authority.
- (4) Any advance payment under this section shall be made not later than three months after the date on which a request for the payment is made in accordance with subsection (2) above or, if those three months end before the date on which the acquiring authority take possession of the land to which the compensation relates, on the date on which they take possession as aforesaid.
- (5) Where an advance payment is made on the basis of an estimate under subsection (3)(b) above and the amount of that payment exceeds the compensation as finally determined or agreed, the excess shall be repaid; and if after an advance payment has been made to any person it is discovered that he was not entitled to it the amount of the payment shall be recoverable by the acquiring authority.
- (6) No advance payment shall be made on account of compensation payable in respect of any land which is subject to a heritable security the principal of which exceeds 90 per cent, of the amount mentioned in subsection (3) above; and where the land is subject to a heritable security the principal of which does not exceed 90 per cent, of that amount,

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the advance payment shall be reduced by such sum as the acquiring authority consider will be required by them for securing the release of the interest of the heritable creditor.

- (7) Where an acquiring authority make an advance payment under this section on account of compensation in respect of any interest in land, the authority shall cause notice of that fact, specifying particulars of the payment, the compensation and the interest in land to which it relates, to be recorded in the Register of Sasines and shall send a copy of the notice to the local planning authority.
- (8) Where after particulars of the advance payment made to any claimant have been recorded as aforesaid the claimant disposes of the interest in the land to, or creates an interest in the land in favour of, a person other than the acquiring authority, the amount of the advance payment shall be set off against any sum payable by the authority to that other person in respect of the compulsory acquisition of the interest disposed of or the compulsory acquisition or release of the interest created.
- (9) Where an advance payment has been made under this section on account of any compensation—
 - (a) section 75 of the Lands Clauses Consolidation (Scotland) Act 1845 (refusal of owner to convey on tender of compensation) shall have effect as if references to the compensation were references to the balance thereof remaining unpaid; and
 - (b) no bond under section 84 of die said Act of 1845 (interest on compensation where possession is taken before payment) shall require the acquiring authority to pay interest, in respect of any time after die date of the advance payment, on so much of the compensation as corresponds to that payment.
- (10) This section shall apply to compensation for the compulsory acquisition of a right in or over land as it applies to compensation for the compulsory acquisition of an interest in land, and shall so apply with the necessary modifications and as if references to taking possession of the land were references to first entering it for the purpose of exercising the right.

Severance of land

49 Notice to treat in respect of part of agricultural land

- (1) Where an acquiring authority serve notice to treat in respect of any agricultural land on a person (whether in occupation or not) having a greater interest in the land than as tenant for a year or from year to year, and that person has such an interest in other agricultural land comprised in the same agricultural unit as that to which die notice relates, the person on whom the notice is served (hereafter referred to as " the claimant") may, within the period of two months beginning with the date of service of the notice to treat, serve on the acquiring authority a counter-notice—
 - (a) claiming that the other land is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
 - (b) requiring the acquiring authority to purchase his interest in the whole of the other land.
- (2) Where a counter-notice is served under subsection (1) above die claimant shall also, within the period mentioned in that subsection, serve a copy thereof on any other person who has an interest in the land to which the requirement in the counter-notice

relates, but failure to comply with this subsection shall not invalidate the counter-notice.

- (3) Subject to subsection (4) below, " other relevant land " in subsection (1) above means—
- (a) land comprised in the same agricultural unit as the land to which the notice to treat relates, being land in which the claimant does not have such an interest as is mentioned in that subsection ; and
 - (b) land comprised in any other agricultural unit occupied by him on the date of service of the notice to treat, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where an acquiring authority have served a notice to treat in respect of any of the other agricultural land mentioned in subsection (1) above or in respect of other relevant land as defined in subsection (3) above, then, unless and until that notice to treat is withdrawn, this section and section 50 below shall have effect as if that land did not form part of that other agricultural land or did not constitute other relevant land, as the case may be.
- (5) This section shall have effect in relation to a case where a notice to treat is deemed to have been served by virtue of any of the provisions of sections 169 to 177 of the Town and Country Planning (Scotland) Act 1972 (purchase notices) or Schedule 24 to the said Act of 1972 (general vesting declarations) as it has effect in relation to a case where a notice to treat is actually served, and section 50 below shall have effect accordingly.
- (6) This section is without prejudice to the rights conferred by sections 91 and 92 of the Lands Clauses Consolidation (Scotland) Act 1845 (provisions as to divided land).

50 Effect of counter-notice under section 49

- (1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 49 above agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal; and on any such reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid in accordance with its determination of that question.
- (2) Where a counter-notice is accepted as, or declared to be, valid under subsection (1) above the acquiring authority shall be deemed—
- (a) to be authorised to acquire compulsorily, under the enactment by virtue of which they are empowered to acquire the land in respect of which the notice to treat was served, the claimant's interest in the land to which the requirement in the counter-notice relates; and
 - (b) to have served a notice to treat in respect of that land on the date on which the first-mentioned notice to treat was served.
- (3) A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which the compensation is so determined; and where a counter-notice is withdrawn by virtue of this subsection any notice to treat deemed to have been served in consequence thereof shall be deemed to have been withdrawn.

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- (4) Without prejudice to subsection (3) above, the power conferred by section 39 of the Land Compensation (Scotland) Act 1963 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section.
- (5) The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of this section shall be assessed on the assumptions mentioned in section 5(2), (3) and (4) above.
- (6) Where by virtue of this section the acquiring authority become, or will become, entitled to a lease of any land but not to the interest of the lessor—
- (a) the authority shall offer to renounce the lease to the lessor on such terms as the authority consider reasonable ;
 - (b) the question of what terms are reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of three months after the date of the offer mentioned in paragraph (a) above, the authority and the lessor have not agreed on that question and that question has not been referred to the Tribunal by the lessor, it shall be so referred by the authority;
 - (c) if that question is referred to the Tribunal the lessor shall be deemed to have accepted the renunciation of the lease at the expiration of one month after the date of the determination of the Tribunal or on such other date as the Tribunal may direct and to have agreed with the authority on the terms of renunciation which the Tribunal has held to be reasonable.

For the purposes of this subsection any terms as to renunciation contained in the lease shall be disregarded.

- (7) Where the lessor refuses to accept any sum payable to him by virtue of subsection (6) above, or refuses or fails to make out his title to the satisfaction of the acquiring authority, they may pay into the Bank within the meaning of section 3 of the Lands Clauses Consolidation (Scotland) Act 1845 any sum payable to the lessor by virtue of that subsection; and the following provisions of the said Act of 1845 shall apply to that sum with the necessary modifications—
- (a) section 75 so far as it relates to the opening of an account,
 - (b) section 76 so far as it relates to the giving of a receipt,
 - (c) section 77,
 - (d) section 79.
- (8) Where an acquiring authority who become entitled to the lease of any land as mentioned in subsection (6) above are a body incorporated by or under any enactment the corporate powers of the authority shall, if they would not otherwise do so, include power to farm that land.

51 Notice of entry in respect of part of agricultural holding

- (1) Where an acquiring authority serve notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or paragraph 8 of Schedule 24 to the Town and Country Planning (Scotland) Act 1972 on the person in occupation of an agricultural holding, being a person having no greater interest therein than as tenant for a year or from year to year, and the notice relates to part only of that holding, the person on whom the notice is served (hereafter referred to as " the

- claimant ") may, within the period of two months beginning with the date of service of the notice of entry, serve on the acquiring authority a counter-notice—
- (a) claiming that the remainder of the holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit; and
 - (b) electing to treat the notice of entry as a notice relating to the entire holding.
- (2) Where a counter-notice is served under subsection (1) above the claimant shall also, within the period mentioned in that subsection, serve a copy thereof on the landlord of the holding, but failure to comply with this subsection shall not invalidate the counter-notice.
- (3) Subject to subsection (4) below, "other relevant land" in subsection (1) above means—
- (a) land comprised in the same agricultural unit as the agricultural holding; and
 - (b) land comprised in any other agricultural unit occupied by the claimant on the date of service of the notice of entry, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year.
- (4) Where an acquiring authority have served a notice to treat in respect of land in the agricultural holding other than that to which the notice of entry relates or in respect of other relevant land as defined in subsection (3) above, then, unless and until that notice to treat is withdrawn, this section and section 52 below shall have effect as if that land did not form part of the holding or did not constitute other relevant land, as the case may be.

52 Effect of counter-notice under section 51

- (1) If the acquiring authority do not within the period of two months beginning with the date of service of a counter-notice under section 51 above agree in writing to accept the counter-notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal; and on any such reference the Tribunal shall determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid in accordance with its determination of that question.
- (2) Where a counter-notice is accepted as, or declared to be, valid under subsection (1) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up possession of every part of the agricultural holding to the acquiring authority—
- (a) the notice of entry shall be deemed to have extended to the part of the holding to which it did not relate; and
 - (b) the acquiring authority shall be deemed to have taken possession of that part in pursuance of that notice on the day before the expiration of the year of the tenancy which is current when the counter-notice is so accepted or declared.
- (3) Where the claimant gives up possession of an agricultural holding to the acquiring authority as aforesaid but the authority have not been authorised to acquire the landlord's interest in, or in any of, the part of the holding to which the notice of entry did not relate (" the land not- subject to compulsory purchase ")—
- (a) neither the claimant nor the authority shall be under any liability to the landlord by reason of the claimant giving up possession of the land not subject to compulsory purchase or the authority taking or being in possession of it;

- (b) immediately after the date on which the authority take possession of the land not subject to compulsory purchase they shall give up to the landlord, and he shall take, possession of that land ;
 - (c) the tenancy shall be treated as terminated on the date on which the claimant gives up possession of the holding to the acquiring authority or (if he gives up possession of different parts at different times) gives up possession as aforesaid of the last part, but without prejudice to any rights or liabilities of the landlord or the claimant which have accrued before that date;
 - (d) any rights of the claimant against, or liabilities of the claimant to, the landlord which arise on or out of the termination of the tenancy by virtue of paragraph (c) above (whether under the lease, the Agricultural Holdings (Scotland) Act 1949, the Crofters (Scotland) Acts 1955 and 1961, the Small Landholders (Scotland) Acts 1886 to 1931 or otherwise) shall be rights and liabilities of the authority, and any question as to the payment to be made in respect of any such right or liability shall be referred to and determined by the Lands Tribunal;
 - (e) any increase in the value of the land not subject to compulsory purchase which is attributable to the landlord's taking possession of it under paragraph (b) above shall be deducted from the compensation payable in respect of the acquisition of his interest in the remainder of the holding.
- (4) Where a tenancy is terminated by virtue of subsection (3)(c) above, section 59(1) of the Agricultural Holdings (Scotland) Act 1949 (landlord's right to compensation for deterioration of holding) shall have effect as if the said section 59(1) required the landlord's notice of intention to claim compensation to be served on the acquiring authority and to be so served within three months after the termination of the tenancy.

53 Other procedures for taking possession of part of agricultural holding

- (1) Before taking possession of part only of an agricultural holding under section 84 or 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (alternative procedures for taking possession of land) the acquiring authority shall serve notice of their intention to do so on the person in occupation of the holding, and sections 51 and 52 above shall have effect, subject to any necessary modifications, as if possession were being obtained pursuant to a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (2) Sections 51 and 52 above shall have effect, subject to any necessary modifications, in relation to a notice of entry under paragraph 4 of Schedule 6 to the New Towns (Scotland) Act 1968 (provisions applicable to compulsory acquisitions under that Act) as they have effect in relation to a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.
- (3) Sections 51 and 52(1) and (2) above shall have effect, subject to any necessary modifications, in relation to a notice under section 114 of the Housing (Scotland) Act 1966 (dispossession of tenant where local authority have agreed to purchase or have appropriated land for purposes of Part VII of that Act) as they have effect in relation to a notice of entry under paragraph 3 of Schedule 2 to the said Act of 1947.

54 Determination of material detriment where part of house etc. proposed for compulsory acquisition

- (1) In determining under paragraph 4 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or section 191(2) of, or paragraph 26 of Schedule 24 to, the Town and Country Planning (Scotland) Act 1972 whether—
- (a) part of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory ; or
 - (b) part of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,
- the Lands Tribunal shall take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.
- (2) Subsection (1) above shall apply with the necessary modifications to any determination—
- (a) under the said paragraph 4 as substituted by paragraph 24 of Schedule 2 to the Gas Act 1972 (compulsory acquisition of rights over land); or
 - (b) under any provision corresponding to or substituted for the said paragraph 4 which is contained in, or in an instrument made under, any other enactment including (except where otherwise provided) an enactment passed after 23rd May 1973.

Miscellaneous

55 Notice to quit agricultural holding: right to opt for notice of entry compensation

- (1) This section has effect where the person in occupation of an agricultural holding, being a person having no greater interest therein than as tenant for a year or from year to year, is served with a notice to quit the holding, and—
- (a) the notice is served after an acquiring authority have served notice to treat on the landlord of the holding or, being an authority possessing compulsory purchase powers, have agreed to acquire his interest in the holding; and
 - (b) either—
 - (i) subsection (1) of section 25 of the Agricultural Holdings (Scotland) Act 1949 does not apply to the notice by virtue of subsection (2)(c) of that section (land required for non-agricultural use for which planning permission has been granted, etc.); or
 - (ii) the Scottish Land Court have consented to the operation of the notice and stated in the reasons for their decision that they are satisfied as to the matter mentioned in section 26(1)(e) of that Act (land required for non-agricultural use not falling within section 25(2)(c)).
- (2) If the person served with the notice to quit elects that this subsection shall apply to the notice and gives up possession of the holding to the acquiring authority on or before the date on which his tenancy terminates in accordance with the notice—
- (a) section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (compensation for tenants from year to year, etc.) and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 shall have effect as if the notice to quit had not been served and the acquiring authority had taken

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possession of the holding in pursuance of a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on the day before that on which the tenancy terminates in accordance with the notice to quit; and

- (b) the provisions of the Agricultural Holdings (Scotland) Act 1949 relating to compensation to a tenant on the termination of his tenancy and sections 9 and 15(3) of the Agriculture (Miscellaneous Provisions) Act 1968 (additional payment and compensation in cases of notice to quit) shall not have effect in relation to the termination of the tenancy by reason of the notice to quit.
- (3) No election under subsection (2) above shall be made or, if already made, continue to have effect in relation to any land (whether the whole or part of the land to which the notice to quit relates) if, before the expiration of that notice, an acquiring authority take possession of that land in pursuance of an enactment providing for the taking of possession of land compulsorily.
 - (4) Any election under subsection (2) above shall be made by notice in writing served on the acquiring authority not later than the date on which possession of the holding is given up.
 - (5) This section shall have effect in relation to a notice to quit part of an agricultural holding as it has effect in relation to a notice to quit an entire holding and references to a holding and the termination of the tenancy shall be construed accordingly.
 - (6) A person served with a notice to quit part of an agricultural holding shall not be entitled, in relation to that notice, both to make an election under this section and to give a counter-notice under section 33 of the Agricultural Holdings (Scotland) Act 1949 (tenant's right to treat notice to quit part of holding as notice to quit entire holding).
 - (7) The reference in subsection (1)(a) above to a notice to treat served by an acquiring authority includes a reference to a notice to treat deemed to have been so served under any of the provisions mentioned in section 49(5) above.
 - (8) This section and section 57 below shall have effect in relation to a notice given in pursuance of a stipulation in a lease entitling the landlord to resume land for building, planting, feuing or other purposes (not being agricultural purposes) as it has effect in relation to a notice to quit as if, in this section, subsections (1)(b) and (6) were omitted; and references in this section to the termination of the tenancy shall be construed accordingly.
 - (9) This section shall not apply where the person in occupation of an agricultural holding is a crofter, landholder or statutory small tenant.

56 Requirement to surrender croft, etc.: right to opt for notice of entry compensation

- (1) This section has effect where—
 - (a) the person in occupation of an agricultural holding is a crofter and is required by an order of the Scottish Land Court under section 12 of the Crofters (Scotland) Act 1955 to surrender his croft; and
 - (b) the crofter is so required—

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- (i) after an acquiring authority have served notice to treat on the landlord of the croft or, being an authority possessing compulsory purchase powers, have agreed to acquire his interest in the croft, and
 - (ii) where the Court have been satisfied under the said section 12 that the landlord desires to resume the croft for a reasonable purpose which is a purpose other than an agricultural purpose.
- (2) If the crofter required by such an order to surrender his croft elects that this subsection shall apply to the order and gives up possession of the croft to the acquiring authority on or before the date on which the croft is required to be surrendered in accordance with the order—
 - (a) section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (compensation for tenants from year to year, etc.) shall have effect as if the crofter had not been so required to surrender his croft and the acquiring authority had taken possession of the croft in pursuance of a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on the day before that on which the croft is required to be surrendered in accordance with the order ; and
 - (b) any provision of an order under section 12 of the Crofters (Scotland) Act 1955 relating to the compensation to a crofter shall not have effect in relation to the surrender of the croft by reason of the order.
- (3) No election under subsection (2) above shall be made or, if already made, continue to have effect in relation to any land to which such an order relates if, before the date on which the croft is required to be surrendered in accordance with the order, an acquiring authority take possession of that land in pursuance of an enactment providing for the taking of possession of land compulsorily.
- (4) Any election under subsection (2) above shall be made by notice in writing served on the acquiring authority not later than the date on which possession of the croft is given up.
- (5) This section shall have effect in relation to an order to surrender part of a croft as it has effect in relation to an order to surrender an entire croft and references to a croft shall be construed accordingly.
- (6) The reference in subsection (1)(b)(i) above to a notice to treat served by an acquiring authority includes a reference to a notice to treat deemed to have been so served under any of the provisions mentioned in section 49(5) above.
- (7) This section shall apply to a landholder as it applies to a crofter except that for any reference to a croft, crofter or section 12 of the Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, landholder or section 2 of the Crofters Holdings (Scotland) Act 1886.
- (8) This section shall apply to a statutory small tenant subject to the modifications set out in Part I of Schedule 1 to this Act; and in accordance with this subsection this section shall have effect in relation to a statutory small tenant as set out in Part II of that Schedule.

57 Notice to quit part of agricultural holding: right to claim notice of entry compensation for remainder of holding

- (1) Where a notice to quit in respect of which a person is entitled to make an election under section 55 above relates to part only of an agricultural holding and that person makes such an election within the period of two months beginning with the date of service of that notice, or, if later, the decision of the Scottish Land Court, he may also within that period serve a notice on the acquiring authority claiming that the remainder of the holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit
- (2) If the acquiring authority do not within the period of two months beginning with the date of service of a notice under subsection (1) above agree in writing to accept the notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal, and on any such reference the Tribunal shall determine whether the claim in the notice is justified and declare the notice valid or invalid in accordance with its determination of that question.
- (3) Where a notice under subsection (1) above is accepted as, or declared to be, valid under subsection (2) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up to the acquiring authority possession of the part of the holding to which the notice relates, section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 shall have effect as if the acquiring authority had taken possession of that part in pursuance of a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on the day before the expiration of the year of the tenancy which is current when the notice is so accepted or declared.
- (4) Subsections (2) to (4) of section 51 and subsection (3) of section 52 above shall apply in relation to subsections (1) to (3) above and to a notice under subsection (1) above as they apply in relation to those sections and a counter-notice under subsection (1) of section 51, and shall so apply with the necessary modifications and as if any reference to the notice of entry were a reference to the notice to quit
- (5) Where an election under section 55 above ceases to have effect in relation to any land by virtue of subsection (3) of that section any notice served by virtue of this section shall also cease to have effect in relation thereto.

58 Requirement to surrender part of croft, etc.: right to claim notice of entry compensation for remainder

- (1) Where an order of the Scottish Land Court in respect of which a person is entitled to make an election under section 56 above relates to part only of a croft or holding and that person makes such an election within the period of two months beginning with the date of the making of the order, he may also within that period serve a notice on the acquiring authority claiming that the remainder of the croft or holding is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit.
- (2) If the acquiring authority do not within the period of two months beginning with the date of service of a notice under subsection (1) above agree in writing to accept the notice as valid, the claimant or the authority may, within two months after the end of that period, refer it to the Lands Tribunal, and on any such reference the Tribunal shall

determine whether the claim in the notice is justified and declare the notice valid or invalid in accordance with its determination of that question.

- (3) Where a notice under subsection (1) above is accepted as, or declared to be valid under subsection (2) above then, if before the end of twelve months after it has been so accepted or declared the claimant has given up to the acquiring authority possession of the part of the croft or holding to which the notice relates, section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 shall have effect as if the acquiring authority had taken possession of that part in pursuance of a notice of entry under paragraph 3 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 on the day before the expiration of the year of the tenancy which is current when the notice is so accepted or declared.
- (4) Subsections (2) to (4) of section 51 and subsection (3) of section 52 above shall apply in relation to subsections (1) to (3) above and to a notice under subsection (1) above as they apply in relation to those sections and a counter-notice under subsection (1) of section 51, and shall so apply with the necessary modifications and as if in section 51(3)(b) for the words " service of the notice of entry " and in section 52(3) for the words " the notice of entry " there were substituted the words " the order of the Scottish Land Court ".
- (5) Where an election under section 56 above ceases to have effect in relation to any land by virtue of subsection (3) of that section any notice served by virtue of this section shall cease to have effect in relation thereto.
- (6) Subsection (3) above shall apply in the case of the holding of a statutory small tenant as if after the word " 1845 " there were inserted the words " and section 12 of the Agriculture (Miscellaneous Provisions) Act 1968 ".

59 Interest on compensation for injurious affection where no land taken

Compensation under section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (compensation for injurious affection where no land taken) shall carry interest, at the rate for the time being prescribed under section 40 of the Land Compensation (Scotland) Act 1963, from the date of the claim until payment.

60 Extension of grounds for challenging validity of compulsory purchase order

In paragraph 15 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (which enables an aggrieved person to challenge the validity of a compulsory purchase order on the ground that certain requirements have not been complied with) references to those requirements shall include references to any requirements of the Tribunals and Inquiries Act 1971 or of any rules made, or having effect as if made, under that Act.

61 Construction of section 6 of Railways Clauses Consolidation (Scotland) Act 1845

At the end of section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (construction of railway to be subject to that Act and Lands Clauses Consolidation (Scotland) Act 1845) there shall be added the following subsection—

- “(2) For the avoidance of doubt it is hereby declared that in this section the reference to the construction of the railway includes a reference to the execution of works in connection therewith.”

62 Amendment of section 35 of Roads (Scotland) Act 1970

Section 35 of the Roads (Scotland) Act 1970 (general provisions as to acquisition of land) shall have effect as if—

(a) after subsection (1) there were inserted the following subsection—

“(1A) Any power to acquire land compulsorily conferred by any of the said sections or by section 20 of the Land Compensation (Scotland) Act 1973 shall include power to acquire a servitude or other right in or over land by the creation of a new right.”;

(b) at the end there were added the following subsection—

“(5) Where under section 29, 30, 31, 32 or 33 of this Act or section 20 of the Land Compensation (Scotland) Act 1973 a highway authority are authorised to acquire land by agreement, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923, shall be incorporated with this Act, and in construing those Acts for the purposes of this subsection this Act shall be deemed to be the special Act, and the highway authority to be the promoters of the undertaking or company, as the case may require, and the word 'land' shall have the meaning assigned to it by section 50(1) of this Act”.

63 Provisions relating to acquisition of new rights

(1) Subject to the provisions of this section, the Lands Clauses Consolidation (Scotland) Act 1845 and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply subject to any necessary modifications to the compulsory acquisition under any enactment of a right in or over land by the creation of a new right as they apply to the compulsory acquisition of land under the enactment in question.

(2) Section 61 of the said Act of 1845 (estimation of purchase money and compensation) shall apply to the compulsory acquisition of such a right as if for the words from "value" to "undertaking" there were substituted the words "extent (if any) to which the value of the land in or over which the right is to be acquired is depreciated by the acquisition of the right".

(3) Paragraph 4 of Schedule 2 to the said Act of 1947 (protection for vendor against severance of house, garden, etc.) shall apply to the compulsory acquisition of such a right as if at the end there were added the following sub-paragraph—

“(2) In considering the extent of any material detriment to a house, building or manufactory or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired in or over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”

(4) Nothing in this section shall affect the operation of any enactment which makes specific provision to the like effect as the provisions of this section.