

SCHEDULE 2

Regulation 22(4)

Compensation for Grant of Rights

Interpretation

1. In this Schedule—

“the 1982 Order” means the Land Compensation (Northern Ireland) Order 1982(1);

“compensation” means compensation to which a person is entitled under regulation 22(4);

“grantor” means a person who has granted or joined in granting any rights pursuant to regulation 22(1);

“grantee” means the person on whom a notice is served under regulation 20(2) or, in a case to which regulation 22(6) applies, the Department; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to regulation 22(1).

Period for making an application

2. An application for compensation shall be made to the grantee within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the later of the following dates—

- (a) 12 months after the date of the grant of those rights; or
- (b) six months after the date on which the rights were first exercised.

Form of application

3.—(1) An application for compensation shall be made in writing and served on the grantee.

(2) The application shall contain, or be accompanied by—

- (a) a description of the grant of rights in respect of which the grantor is applying for compensation, and any relevant plans;
- (b) a description of the relevant interest in respect of which the grantor is applying for compensation and any relevant plans; and
- (c) a statement containing—
 - (i) the total amount of compensation sought;
 - (ii) the individual amounts sought for each description of loss and damage referred to in sub-paragraphs (a) to (e) of paragraph 4; and
 - (iii) details of how those amounts are calculated.

Loss and damage for which compensation payable

4. Compensation shall be payable for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights or the exercise of them;
- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) results from the grant of the rights or the exercise of them;
 - (ii) does not consist of depreciation in the value of that interest; and

(1) S.I. 1982/712 (NI 9)

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- (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Local Government Act (Northern Ireland) 1972(2) in pursuance of a notice of intention to vest served on the date on which the rights were granted;
- (c) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, and which results from the grant of the rights or the exercise of them; and
- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the rights and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal under paragraph 6).

Basis on which compensation assessed

5.—(1) The rules set out in Article 6 of the 1982 Order shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of assessing compensation payable under regulation 22(4) as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which compensation is to be assessed is subject to a mortgage—

- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
- (b) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (c) any compensation which is payable in respect of the interest which is subject to a mortgage shall be paid (subject to the maximum sum due thereunder) to the mortgagee or, if there is more than one mortgagee, to the first ranking mortgagee and shall, in either case, be applied by that person as if it were proceeds of sale.

Payment of compensation and determination of disputes

6.—(1) Compensation shall be payable—

- (a) where the grantee, the grantor and (if relevant) the mortgagee agree that a single payment is to be made on a specified date, on that date;
- (b) where the grantee, the grantor and (if relevant) the mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; or
- (c) in any other case, subject to any direction of the Lands Tribunal as soon as reasonably practicable after the amount of the compensation has been finally determined.

(2) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(3) In relation to the determination of any such questions, Articles 4 and 5 of the 1982 Order (procedure on reference to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in Article 4(1) of that Order to Article 3 of that Order were a reference to sub-paragraph (2) of this paragraph; and

(2) 1972 c.9 (NI)

- (b) references in Article 5 of that Order to the acquiring authority were references to the grantee.

Interest and payment on account

7.—(1) Compensation shall carry interest at the rate determined for the time being under paragraph 18 of Schedule 6 to the Local Government Act (Northern Ireland) 1972 from the date specified in sub- paragraph (2) until payment.

(2) The date specified in this sub-paragraph is—

- (a) in the case of compensation for loss and damage as described in paragraph 4(a), the date of depreciation ;
- (b) in the case of compensation for loss and damage as described in paragraph 4(b), (c) or (d), the date on which the loss is sustained or the damage done or, where injurious affection is sustained, the date of the injurious affection;
- (c) in the case of compensation for loss and damage as described in paragraph 4(e), the date on which the expenses become payable.

(3) If it appears to any person that he may become liable to pay to another compensation he may, if the other person requests him in writing to do so, make one or more payments on account of such compensation.

(4) If, after a payment has been made by any person under sub-paragraph (3)—

- (a) it is agreed or determined that he is not liable to pay compensation; or
- (b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,

the payment or, as the case may be, excess shall be recoverable by that person.