



# Land Compensation (Scotland) Act 1963

## 1963 CHAPTER 51

### PART VI

#### MISCELLANEOUS AND GENERAL

#### **38 Power to pay allowances to persons displaced**

- (1) Where any interest in land is compulsorily acquired or is sold by agreement to an authority possessing compulsory purchase powers, the acquiring authority—
  - (a) may pay to any person displaced from a house or other building on that land such reasonable allowance as they think fit towards his expenses in removing therefrom ; and
  - (b) may pay to any person carrying on any trade or business in any such house or other building such reasonable allowance as they think fit towards the loss which, in their opinion, he will sustain by reason of the disturbance of his trade or business consequent upon his having to quit the house or building.
- (2) Where any interest in land is acquired or sold as aforesaid and the land is used for the purposes of agriculture (within the meaning of section 113(1) of the Town and Country Planning (Scotland) Act 1947) by way of a trade or business, the acquiring authority may pay to any person carrying on that trade or business who is displaced from the land such reasonable allowance as they think fit towards his removal expenses and the loss which, in their opinion, he will sustain by reason of the resulting disturbance of his trade or business.
- (3) In estimating the loss of any person for the purposes of subsection (1)(b) or subsection (2) of this section, the authority shall have regard to the period for which the premises or, as the case may be, land occupied by him might reasonably have been expected to be available for the purpose of his trade or business, and to the availability of other premises or, as the case may be, land suitable for that purpose.
- (4) The operation of any provision of this section enabling an allowance to be paid shall not prejudice the operation of—
  - (a) any other such provision of this section, or

- (b) any enactment authorising the making of payments to or in respect of persons displaced or otherwise affected by acquisitions by authorities possessing compulsory purchase powers or persons otherwise displaced from any land.

### **39 Withdrawal of notices to treat**

- (1) Where a claimant has delivered such a notice as is mentioned in section 5(1)(b) or section 11(1)(b) of this Act, the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on him or on any other person interested in the land authorised to be acquired.
- (2) Where a claimant has failed to deliver a notice as required by the said section 5(1)(b) or the said section 11(1)(b), the acquiring authority may, at any time after the decision of the official arbiter on his claim but not later than six weeks after the claim has been finally determined, withdraw any notice to treat which has been served on him or on any other person interested in the land authorised to be acquired, unless the authority have entered into possession of the land by virtue of the notice.
- (3) Where the acquiring authority withdraw a notice to treat under this section, the authority shall be liable to pay compensation to the person to whom it was given for any loss or expenses occasioned to him by the giving and withdrawal of the notice, but, if the notice is withdrawn under subsection (2) of this section, not for any loss or expenses incurred by the claimant mentioned therein after the time when, in the opinion of the official arbiter, a proper notice of claim should have been delivered by him.
- (4) The amount of any compensation payable under subsection (3) of this section shall, in default of agreement, be determined by the official arbiter.
- (5) So long as the acquiring authority are entitled to withdraw a notice to treat under subsection (2) of this section, the authority shall not be compellable to take the land to which the notice relates or to pay any compensation awarded in respect of the taking.
- (6) For the purposes of this section, a claim shall not be deemed to be finally determined so long as the time for requiring the official arbiter to state a case with respect thereto, or for appealing from any decision on the points raised by a case so stated, has not expired.

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

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

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

This Act applies in relation to the acquisition of interests in land (whether compulsorily or by agreement) by government departments, being authorities

possessing compulsory purchase powers, as it applies in relation to the acquisition of interests in land by such authorities which are not government departments.

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

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

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

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

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

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

#### **45 Interpretation**

- (1) In this Act, except where the context otherwise requires.—

"acquiring authority", in relation to an interest in land, means the person or body of persons by whom the interest is, or is proposed to be, acquired;

"authority possessing compulsory purchase powers", where it occurs otherwise than in relation to a transaction, means any person or body of persons who could be or have been authorised to acquire an interest in land compulsorily, and, in relation to any transaction, means any person or body of persons who could be or have been so authorised for the purposes for which the transaction is or was effected:

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

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

"the current development plan", in relation to any land, means a development plan comprising that land, in the form in which (whether as originally approved or made by the Secretary of State or as for the time being amended) that plan is in force on the date of service of the notice to treat;

"development" has the meaning assigned to it by section 10 of the Town and Country Planning (Scotland) Act 1947, and "develop" shall be construed accordingly;

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

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

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

" enactment " includes an enactment in any local or private Act of Parliament and an order, rule, regulation, bye-law or scheme made under an Act of Parliament, including an order or scheme confirmed by Parliament;

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

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

" local planning authority " has the meaning assigned to it by section 2 of the Town and Country Planning (Scotland) Act 1947;

" outline application " means an application for planning permission subject to subsequent approval on any matters :

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

" planning decision " means a decision made on an application under Part II of the Town and Country Planning (Scotland) Act 1947;

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

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

- (2) In this Act, in relation to a compulsory acquisition in pursuance of a notice to treat, " the relevant interest " means the interest acquired in pursuance of that notice, " the relevant land " means the land in which the relevant interest subsists, and " the notice to treat " means the notice to treat in pursuance of which the relevant interest is acquired.

- (3) As respects references in this Act to planning decisions—

- (a) in relation to a decision altered on appeal by the reversal or variation of the whole or any part thereof, such references shall be construed as references to the decision as so altered.
- (b) in relation to a decision upheld on appeal, such references shall be construed as references to the decision of the local planning authority and not to the decision of the Secretary of State on the appeal;
- (c) in relation to a decision given on an appeal made by virtue of section 14(3) of the Town and Country Planning (Scotland) Act 1947 in default of a decision by the local planning authority, such references shall be construed as references to the decision so given ;
- (d) the time of a planning decision, in a case where there is or was an appeal, shall be taken to be or have been the time of the decision as made by the local planning authority, whether or not that decision is or was altered as aforesaid on that appeal, or, in the case of such a decision as is mentioned in paragraph (c) of this subsection, the time when by virtue of section 14(3) of the Town and Country Planning (Scotland) Act 1947 the notification of a decision by the local planning authority is deemed to have been given.

- (4) References in this Act to the local planning authority in relation to any land are references to the local planning authority for the district in which the land is situated.
- (5) For the purposes of this Act, a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled—
  - (a) to both of them beneficially, or
  - (b) to both of them as trustee of one particular trust, or
  - (c) to both of them as personal representative of one particular person ;
 and in this subsection " trustee " has the same meaning as in the Trusts (Scotland) Act 1921.
- (6) For the purposes of this Act development of land shall be taken to be initiated—
  - (a) if the development consists of the carrying out of operations, at the time when those operations are begun;
  - (b) if the development consists of a change in use, at the time when the new use is instituted;
  - (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in the preceding paragraphs.
- (7) References in this Act to a notice to treat include references to a notice to treat which, under any enactment, is deemed to have been served, and references to the service of such a notice and to the date of service shall be construed accordingly.
- (8) Any reference in this Act to the *dominium utile* in relation to land which is not held on feudal tenure shall be construed as a reference to the interest in the land of the owner thereof.
- (9) In this Act any reference to a sale or purchase includes a reference to a sale or purchase by way of feu, and any reference to the price in relation to a sale or purchase includes a reference to grassum, feu-duty and ground annual.
- (10) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment.

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

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

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

- (1) Any enactment or document referring to an enactment repealed by this Act shall be construed as referring to the corresponding enactment in this Act.
- (2) Without prejudice to the generality of subsection (1) of this section, any enactment excluding the power conferred by section 5(2) of the Acquisition of Land (Assessment of Compensation) Act 1919 to withdraw notices to treat shall be construed as excluding any such power conferred by section 39 of this Act.
- (3) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

- (4) The mention of particular matters in this section shall not be taken to affect the general application to this Act of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).
- (5) Any regulations made under section 54(2) of the Town and Country Planning (Scotland) Act 1947 or made under section 52 of the Town and Country Planning (Scotland) Act 1959 for the purposes of section 20 or section 21 of that Act shall have effect respectively as if made under section 40 or section 36 of this Act.

#### **48 Saving for transactions before commencement**

This Act (including the amendments and repeals made by it) shall not have effect in relation to any compulsory acquisition in pursuance of a notice to treat served before the commencement of this Act or served in the exercise of powers conferred by Part II of the Requisitioned Land and War Works Act 1945 ; nor in relation to any sale of an interest in land by agreement in pursuance of a contract made before the commencement of this Act.

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

- (1) This Act may be cited as the Land Compensation (Scotland) Act 1963.
- (2) This Act (except Part II thereof) shall come into operation on 1st January, 1964; and Part II of this Act shall come into operation on the day appointed by Her Majesty by Order in Council under section 10(2) of the Lands Tribunal Act 1949 for the coming into force in Scotland of sections 1 to 4 of that Act. Any reference in this Act to the commencement of this Act shall be construed as a reference to the date on which this Act (except Part II thereof) comes into operation.
- (3) As from the coming into operation of Part II of this Act—
  - (a) Part I of this Act shall cease to have effect without prejudice however to the operation of the said Part I in cases where a decision has been given before the coming into operation of the said Part II, so far as relates to appeals, cases stated, expenses or fees; and
  - (b) for any reference in this Act to an official arbiter there shall be substituted a reference to the Lands Tribunal for Scotland or, as the case may require, a member of that Tribunal.
- (4) This Act shall extend to Scotland only.