



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

### PART VII

#### COMPENSATION FOR PLANNING DECISIONS RESTRICTING NEW DEVELOPMENT

##### *Subsequent recovery of compensation*

#### **147 Apportionment of, and recording of notice relating to, compensation**

- (1) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, the Secretary of State determines that compensation is payable and that the amount of the compensation exceeds £20, the Secretary of State shall (if it appears to him to be practicable to do so) apportion the amount of the compensation between different parts of the land to which the claim for compensation relates, and shall include particulars of the apportionment in the notice of his determination under section 145 of this Act.
- (2) In carrying out an apportionment under subsection (1) of this section the Secretary of State shall divide the land into parts, and shall distribute the compensation between those parts, according to the way in which the different parts of the land appear to him to be differently affected by the planning decision.
- (3) On a reference to the Lands Tribunal under section 145 of this Act, unless the decision of the Tribunal will not affect the amount of the compensation or any apportionment thereof by the Secretary of State, the preceding provisions of this section shall apply with the substitution, for references to the Secretary of State, of references to the Lands Tribunal.
- (4) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, compensation has become payable of an amount exceeding £20, the Secretary of State shall cause notice of that fact, specifying the planning decision and the land to which the claim for compensation relates, and the amount of the

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compensation and any apportionment thereof under this section and referring to the provisions of sections 148 to 150 of this Act, to be recorded in the appropriate Register of Sasines, and shall send a copy of the notice to the local planning authority.

- (5) In relation to compensation specified in a notice recorded under this section, references in this Part of this Act to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed in accordance with the following provisions, that is to say—
- (a) if the notice does not include an apportionment under the preceding provisions of this section, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;
  - (b) if the notice includes such an apportionment, the compensation shall be treated as distributed in accordance with that apportionment as 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 of the land.

#### **148 Recovery of compensation on subsequent development**

- (1) No person shall carry out any new development to which this section applies, on land in respect of which a notice (hereafter in this Part of this Act referred to as a "compensation notice") is recorded under section 147 of this Act, until such amount (if any) as is recoverable under this section in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State.
- (2) Subject to the following provisions of this section, this section applies to 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 consists in the winning and working of minerals; or
  - (c) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State reasonable that this section should apply.
- (3) This section shall not apply to any development by virtue of subsection (2)(c) of this section if, on an application made to him for the purpose, the Secretary of State has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply thereto.
- (4) Where the compensation specified in the compensation notice became payable in respect of the imposition of conditions on the granting of permission to develop land, this section shall not apply to the development for which that permission was granted.

#### **149 Amount recoverable, and provisions for payment or remission thereof**

- (1) Subject to the following provisions of this section, the amount recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice—
  - (a) if the land on which the development is to be carried out (in this subsection referred to as "the development area ") is identical with, or includes (with

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- other land) the whole of, the land comprised in the compensation notice, shall be the amount of compensation specified in that notice;
- (b) if the development area forms part of the land comprised in the compensation notice, or includes part of that land together with other land not comprised in that notice, shall be so much of the amount of the compensation specified in that notice as is attributable to land comprised in that notice and falling within the development area.
- (2) Where, in the case of any land in respect of which a compensation notice has been recorded, the Secretary of State is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or part of any amount otherwise recoverable under section 148 of this Act.
- (3) Where, in connection with the development of any land, an amount becomes recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice, then, except where, and to the extent that, payment of that amount has been remitted under subsection (2) of this section, no amount shall be recoverable under section 148 of this Act in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.
- (4) No amount shall be recoverable under section 148 of this Act in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 244 of this Act.
- (5) An amount recoverable under section 148 of this Act in respect of any compensation shall be payable to the Secretary of State, and—
- (a) shall be so payable either as a single capital payment or 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 Secretary of State may direct, after taking into account any representations made by the person by whom the development is to be carried out; and
- (b) except where the amount is payable as a single capital payment, shall be secured by that person to the satisfaction of the Secretary of State (whether by heritable or other security, personal bond or otherwise).
- (6) If any person initiates any new development to which section 148 of this Act applies in contravention of subsection (1) of that section, the Secretary of State may serve a notice on him specifying the amount appearing to the Secretary of State to be the amount recoverable under that section in respect of the compensation in question, and requiring him to pay that amount to the Secretary of State within such period, not being less than three months after the service of the notice, as may be specified in the notice.
- (7) Where, after a compensation notice in respect of any land has been recorded, any amount recoverable under this section in respect of the compensation specified in the notice, or any part of such amount, has been paid to the Secretary of State, or circumstances arise under which by virtue of any provision of this Act no amount is so recoverable in respect of the land specified in the notice or any part of that land, the Secretary of State shall cause to be recorded in the appropriate Register of Sasines a notice of that fact, specifying the land to which such fact relates, and, in the case of any notice of the fact that part only of any such amount has been so paid, stating whether the balance has been secured to the satisfaction of the Secretary of State or

has been remitted by him under subsection (2) of this section, and shall send a copy thereof to the local planning authority.

**150 Amount recovered not to be deducted from unexpended balance**

- (1) Where an amount has become recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice, the following provisions of this section shall have effect for the purpose of determining any question as to the unexpended balance of established development value of any land at any subsequent time.
- (2) Except where, and to the extent that, payment of that amount has been remitted under section 149 of this Act, so much (if any) of that compensation as is attributable to that land shall, for the purpose mentioned in subsection (1) of this section, be treated as not having become payable, and accordingly (notwithstanding anything in section 129 of this Act) shall not be deducted from that balance.