



# 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 <sup>M1</sup>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 <sup>F1</sup>paragraph 22 of Schedule 3 to the Gas Act 1986 (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.

#### **Textual Amendments**

**F1** Words substituted by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67, [Sch. 7 para. 16\(1\)](#)

#### **Marginal Citations**

**M1** [1845 c. 19](#).

#### **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—

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- (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 <sup>M2</sup>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 [F2section 100(3)(a) of the Town and Country (Scotland) Planning Act 1997] (interests qualifying for protection under planning blight provisions) and “annual value” and “hereditament” have the meanings given in [F2section 122] of that Act taking references to the date of service of a notice under [F2section 101] 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

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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.

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**Textual Amendments**

**F2** Words in s. 43(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 21(5)**

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**Marginal Citations**

**M2** 1845 c. 19.

#### **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 [F3section 22(2)(b) of the Agricultural Holdings (Scotland) Act 1991] (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

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- (ii) in [F<sup>4</sup>section 24(1)(e)] of that Act (proposed termination of tenancy for purpose of land's being used for non-agricultural use not falling within [F<sup>5</sup>section 22(2)(b)] the reference to the land's being used did not include a reference to its being used by an acquiring authority; and
- [F<sup>6</sup>(aa) there shall be disregarded any right of the landlord to serve a notice of intention to resume land which would not be or have been effective if in section 17(1)(a) of the [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#) (resumption of land by landlord) the reference to the resumption being for a non-agricultural purpose did not include a reference to its being required 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
- (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 [F<sup>7</sup>sections 22(2)(b) and 24(1)(e)] [F<sup>8</sup>of the [Agricultural Holdings \(Scotland\) Act 1991](#) or section 17(1)(a) of the [Agricultural Holdings \(Scotland\) Act 2003](#)] 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 [F<sup>9</sup>section 56 of the [Agricultural Holdings \(Scotland\) Act 1991](#)] (additional payments by acquiring authority in circumstances described in subsection (1)(b) above) [F<sup>10</sup>or, as the case may be, under section 54(1) to (3) of the [Agricultural Holdings Act \(Scotland\) 2003](#) (compensation where compulsory acquisition of land)] .
- (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.

*Changes to legislation:* There are currently no known outstanding effects for the Land Compensation (Scotland) Act 1973, Cross Heading: Assessment of compensation. (See end of Document for details)

#### Textual Amendments

- F3** Words in s. 44(2)(a)(i) substituted (25.09.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 34\(a\)](#) (with s. 45(3), Sch. 12 para. 3).
- F4** Words in s. 44(2)(a)(ii) substituted (25.09.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 34\(b\)\(i\)](#) (with s. 45(3), Sch. 12 para. 3).
- F5** Words in s. 44(2)(a)(ii) substituted (25.09.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 34\(b\)\(ii\)](#) (with s. 45(3), Sch. 12 para. 3).
- F6** S. 44(2)(aa) inserted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [sch. para. 8\(b\)\(i\)](#)
- F7** Words in s. 44(3)(a) substituted (25.09.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 34\(c\)](#) (with s. 45(3), Sch. 12 para. 3).
- F8** Words in s. 44(3)(a) inserted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [sch. para. 8\(b\)\(ii\)](#)
- F9** Words in s. 44(4) substituted (25.09.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 34\(d\)](#) (with s. 45(3), Sch. 12 para. 3).
- F10** Words in s. 44(4) inserted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [sch. para. 8\(b\)\(iii\)](#)

#### 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—
- acquire the interest of the landlord in an agricultural holding which is a croft; or
  - 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—
- there shall be disregarded any right of the landlord to apply to the Scottish Land Court under section 12 of the <sup>M3</sup>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 the purpose of its being required by the acquiring authority; and
  - 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.

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- (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 <sup>M4</sup>Crofters (Scotland) Act 1955 there shall be substituted respectively a reference to a holding, landholder or section 2 of the <sup>M5</sup>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 <sup>M6</sup>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)”.

#### Marginal Citations

- M3** 1955 c. 21.  
**M4** 1955 c. 21.  
**M5** 1886 c. 29.  
**M6** 1911 c. 49.

## 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 undertaken 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 compensation is to be assessed the acquiring authority shall be deemed, where the

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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 [F11 Schedule 15 to the Town and Country Planning (Scotland) Act 1997] (general vesting declarations) as it applies in relation to a case where a notice to treat is actually served.

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**Textual Amendments**

**F11** Words in s. 46(4) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 21(6)

**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 <sup>M7</sup>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 <sup>M8</sup>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.

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- (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 [<sup>F12</sup>the Town and Country Planning (Scotland) Act 1997] 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.

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#### Textual Amendments

**F12** Words in s. 47(6)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 21(7)**

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#### Modifications etc. (not altering text)

- C1** S. 47 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxviii), **Sch. 8 para. 33**
- C2** S. 47 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(1)(xxvi), Sch. 17 paras. 33, **35(1)**
- C3** S. 47 extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(1)(xxi)**; S.I. 1996/218, **art. 2**
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#### Marginal Citations

- M7** 1968 c. 16.
- M8** 1963 c. 51.



**Changes to legislation:**

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