



Town and Country Planning (Scotland) Act 1947

1947 CHAPTER 53

PART IV

AMENDMENTS OF LAW RELATING TO COMPENSATION ON COMPULSORY ACQUISITION OF LAND.

- 47 Abolition of the 1939 standard of compensation on compulsory acquisition;.**
- (1) Section fifty-three of the Act of 1945 (which provides for the assessment by reference to the prices current in 1939 of the value of interests in land which are compulsorily acquired) shall not apply to compensation in respect of a compulsory acquisition of land in pursuance of a notice to treat served after the passing of this Act.
 - (2) The provisions of the Seventh Schedule to this Act shall have effect and shall be deemed always to have had effect in relation to land compulsorily acquired in pursuance of a notice to treat served after the seventeenth day of November nineteen hundred and forty-four and before the passing of this Act, and in relation to land acquired by agreement during that period by an authority authorised to acquire it compulsorily.
- 48 Compensation for compulsory acquisition after appointed day.**
- (1) Any compensation payable in respect of the compulsory acquisition of an interest in land by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919, in pursuance of a notice to treat served on or after the appointed day (not being compensation which falls to be assessed in accordance with Rule (5) of the rules set out in section two of that Act) shall be assessed in accordance with the provisions of that Act as modified by the provisions of this and the three next, following sections.

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- (2) The value of any such interest shall be ascertained on the assumption that planning permission would be granted for development of any class specified in the Third Schedule to this Act, but would not be so granted for any other development :

Provided that—

- (a) where at any time before the date of the notice to treat permission for development of the land of any class specified in Part II of the said Third Schedule has been refused or granted subject to conditions, or, having been granted, has been revoked or modified by the imposition of conditions, and compensation has become payable in respect of the refusal, revocation, or conditions, as the case may be, under section eighteen of this Act, it shall be assumed for the purposes of the ascertainment of the value of the interest in question that such permission would not be granted, or, as the case may be, would not be granted otherwise than subject to those conditions;
 - (b) where at any time before the said date an order has been made under section twenty-four of this Act requiring the removal of any building or the discontinuance of any use, and compensation has become payable in respect of that order under section twenty-five of this Act, it shall be assumed for the purposes aforesaid that planning permission would not be granted for the rebuilding of that building or the resumption of that use.
- (3) Without prejudice to any rule of law affecting the assessment of compensation in respect of the compulsory acquisition of land in pursuance of any enactment, no account shall be taken in calculating the value of an interest in land designated by a development plan under this Act as subject to compulsory acquisition of any depreciation in the value of that interest which is attributable to the designation.
- (4) Where, at any time before the date of the notice to treat, planning permission has been granted for any development of the land, other than development of any class specified in the Third Schedule to this Act, or is deemed to have been so granted, then except where either—
- (a) any sum has been paid under Part VI of this Act by way of development charge in respect of that development; or
 - (b) no such charge is payable in respect of that development by virtue of any of the provisions of Part VII of this Act;

the value of the interest to which the notice to treat relates shall be calculated as if that permission had not been granted.

- (5) Where the interest is acquired in pursuance of a purchase notice served under section seventeen of this Act, and it is certified by the Secretary of State, on confirming the notice, that any building comprised in the land has become incapable of reasonably beneficial use, then, if the purchase notice was served in consequence of the refusal of permission for development which would have involved the demolition of the whole or substantially the whole of the building, or in consequence of the revocation or modification of such permission, no account shall be taken for the purposes of this section of the value of the building except in so far as the value of any materials therein would exceed the cost of demolition.
- (6) Where the interest is acquired in pursuance of a purchase notice served under the said section seventeen, and directions have been given under paragraph (b) of subsection (2) of that section requiring that planning permission shall be granted for any development of other land to which the purchase notice relates-, no account shall be taken for the purposes of this section of any increase or diminution in the value

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of the said interest which is attributable to the direction or to any permission granted in pursuance thereof.

49 Temporary provisions for eliminating special value attributable to vacant possession.

- (1) Where the notice to treat giving rise to the claim for compensation is served at any time before the first day of January, nineteen hundred and fifty-four, and the interest in land in respect of which the compensation is payable carries the right to vacant possession of the land or any part thereof, or the right to obtain such possession at any time before that date, then, unless the land is agricultural property (that is to say, agricultural land or agricultural buildings or a farmhouse as defined in this section) the value of that interest shall be calculated as if the land, or that part thereof, as the case may be, were subject to a lease for the term, subject to the conditions and at the rent specified in this section.
- (2) The term of any such lease as aforesaid shall be deemed to be a term beginning on the date of the "notice to treat and ending on the first day of January, nineteen hundred and fifty-four:
Provided that—
 - (a) where the interest in question is subject to an actual lease on the date of the service of the notice to treat, the said term shall be deemed to begin on the first date thereafter on which the owner of the said interest would be lawfully entitled to obtain vacant possession of the land; and
 - (b) where the interest in question is the interest of a tenant under a lease which is limited to expire at any time before the first day of January, nineteen hundred and fifty-four, the said term shall be deemed to end on the day before the expiration of that interest.
- (3) The conditions of (any such lease as aforesaid shall be deemed to be conditions by virtue of which the tenant would be liable to pay all usual tenant's rates and taxes and to bear the cost of repairs and insurance and other expenses, if any, necessary to maintain the land in the state in which it was on the date of the notice to treat, and the rent payable thereunder shall be deemed to be either a sum equal to five per cent. of the capital value of the premises together with such additional sum as might reasonably be expected to be payable annually by way of owner's rates during the term of such lease, or a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the premises, under a lease for the term and subject to the conditions aforesaid, whichever is the less.
- (4) In this section the following expressions have the meanings hereby assigned to them respectively, that is to say—

" agricultural land " means any land used for agricultural or pastoral purposes only, or as woodlands, market gardens, orchards, allotments, or allotment gardens, any garden exceeding one-quarter acre occupied together with a house and used mainly or wholly as an allotment garden, and any land exceeding one-quarter acre used for the purpose of poultry farming, but does not include any land occupied together with a house as a park, garden or pleasure ground, or any land kept or preserved mainly or exclusively for sporting purposes; and the expression " agricultural purposes " shall be construed accordingly;

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" agricultural buildings " means buildings (other than dwelling-houses) occupied together with agricultural land, or being or forming part of a market garden, and in either case used solely in connection with agricultural operations thereon;

" farmhouse " means a house used as the dwelling-house of a person who is primarily engaged in carrying out or directing agricultural operations on land in the neighbourhood of the house;

and for the purposes of this section the capital value of any premises shall be deemed to be the value of the interest of the proprietor of the *dominium utile*, free from incumbrances but subject to any servitude or other restrictions affecting the land on the date of the notice to treat, or, in the case of land other than feudal land, of the owner thereof, calculated in accordance with the provisions of any enactment other than this section which would apply to the assessment of compensation on a compulsory acquisition thereof by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919.

- (5) For the purposes of this section, an interest in land shall not be deemed to carry the right to obtain vacant possession of the land or any part thereof if at the time of the service of the notice to treat the land or that part thereof consists of a dwelling-house which is subject to the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, or any future enactment amending or extending those Acts, and any person other than the person entitled to that interest is for the time being in possession thereof either by virtue of a tenancy or by virtue of the provisions of the said Acts.
- (6) Compensation for disturbance in respect of an interest in land the value of which is calculated in accordance with the provisions of this section shall not be assessed at any greater or less amount than that at which it would have been assessed apart from the provisions of this section.

50 Compensation for compulsory acquisition of land attracting converted value payments.

- (1) Where an interest in land the value of which is to be ascertained in accordance with the provisions of section forty-eight of this Act is an interest in a hereditament or part of a hereditament which has sustained war damage, and any of that damage has not been made good at the date of the notice to treat, then if the appropriate payment under the War Damage Act, 1943, would, apart from the compulsory purchase or apart from any direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act, be a payment of cost of works—
- (a) the value of the interest for the purposes of the compensation payable in respect of the compulsory purchase shall, subject to the provisions of this section, be taken to be the value which it would have if the whole of the damage had been made good before the date of the notice to treat; and
 - (b) the right to receive any value payment or share of a value payment which, under the War Damage Act, 1943, is payable in respect of the interest which is compulsorily acquired (including any interest payable thereon) shall, notwithstanding anything in that Act, vest in the person by whom the interest is so acquired.
- (2) Where, under subsection (1) of this section, the value of any interest in land comprised in a hereditament is required to be taken to be the value which that interest would have if war damage sustained by that hereditament had been made good before the date of the notice to treat, and any works, other than works for making good the war

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damage, have been carried out on the land since the occurrence of the war damage, then, if the making good of the war damage would involve the removal of those works, the value of the said interest shall be taken to be—

- (a) the value which it would have if the war damage had been made good and those works had been removed, or
- (b) the value which it would have if the war damage had not been made good so far as the making good would have involved the removal of those works,

whichever is the higher.

- (3) Where an interest in land is acquired by agreement in pursuance of a contract made after the appointed day by a person authorised by virtue of any enactment to acquire it compulsorily, being an interest in a hereditament or part of a hereditament which has sustained war damage any of which has not been made good before the date of the contract, then, if the appropriate payment under the War Damage Act, 1943, would, apart from the acquisition or apart from any "direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act, be a payment of cost of works, the right to receive any value payment or share of the value payment which, under that Act, is payable in respect of the interest so acquired (including any interest payable thereon) shall, notwithstanding anything in that Act, vest in the person by whom the interest is acquired as aforesaid.
- (4) Where, by virtue of paragraph (b) of subsection (1) of this section or of the last foregoing subsection, the right to receive a value payment or share of a value payment becomes vested in the person by whom an interest in land is acquired, whether Compulsorily or by agreement, the amount of that payment or share (including any interest thereon) shall not exceed the sum paid by that person by way of compensation or consideration in respect of the interest so acquired.
- (5) Subsection (4) of section sixty-nine of the War Damage Act, 1943 (which makes special provision with respect to payments under that Act in respect of war damage sustained by hereditaments held for charitable purposes) shall not apply to any payment which, by virtue of this section, vests in the person by whom an interest in the land is acquired.

51 Compensation for compulsory acquisition of requisitioned land.

- (1) Except as otherwise provided by this section and Part VIII of the Requisitioned Land and War Works Act, 1945, the value of any interest in requisitioned land shall be assessed in accordance with the foregoing provisions of this Part of this Act as if the land were not requisitioned land; and in particular an interest in such land shall be deemed for the purposes of section forty-nine of this Act to carry the right to vacant possession of the land or the right to obtain such possession before the first day of January, nineteen hundred and fifty-four, if it would carry that right if the land were not requisitioned land.
- (2) Where an interest in land the value of which falls to be ascertained in accordance with the foregoing provisions of this Part of this Act is acquired compulsorily in such circumstances that Part VIII of the Requisitioned Land and War Works Act, 1945, applies to the acquisition, then,—
 - (a) if the land is requisitioned land and the period of requisition had begun before, the appointed day, subsection (2) of section forty-eight of this Act shall have effect as if for any reference to the appointed day in the Third Schedule to

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this Act there were substituted a reference to the beginning of the period of requisition;

- (b) where section fifty applies, the provisions of that section shall have effect in substitution for the provisions of section forty-one of the Requisitioned Land and War Works Act, 1945, so far as it relates to the war damage and to any work done for the making good of the war damage:

Provided that for the purposes of subsection (2) of the said section fifty no account shall be taken of any such works as are mentioned in paragraph (b) of subsection (1) of the said section forty-one.

- (3) Where, by virtue of paragraph (a) of the last foregoing subsection, the Third Schedule to this Act applies in relation to the assessment of compensation for the compulsory acquisition of an interest in land being requisitioned land as if the beginning of the period of requisition were substituted therein for the appointed day, then, if any buildings or Works have been erected or constructed on the land during the period of requisition, and either—
 - (a) a payment in respect of the value of those buildings or work-s has been made by any person interested in the land to a Minister under Part II of the Requisitioned Land and War Works Act, 1945, in pursuance of a report of the War Works Commission thereunder, or
 - (b) any such payment or other consideration has been or is required to be made or given by any such person to a Minister in pursuance of an agreement between them, or
 - (c) the buildings or works were otherwise erected or constructed wholly or partly at the expense of any such person,

those buildings or works shall be treated for the purposes of the said Third Schedule as having been erected or constructed immediately before the beginning of the period of requisition.

52 Compensation for compulsory acquisition after passing of this Act and before the appointed day.

- (1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act shall apply in relation to land compulsorily acquired in pursuance of a notice to treat served after the passing of this Act and before the appointed day as they apply in relation to land compulsorily acquired in pursuance of a notice to treat served after the appointed day; and subsections (3) and (4) of section fifty of this Act shall apply in relation to land acquired by agreement in pursuance of a contract made after the passing of this Act as they apply in relation to land acquired by agreement in pursuance of a contract made after the appointed day.
- (2) The value of any interest in land which is compulsorily acquired as aforesaid shall be ascertained by reference to prices current immediately before the seventh day of January, nineteen hundred and forty-seven, and for that purpose the interest shall be deemed to have been subsisting immediately before that day subject to all incidents to which it is subject on the date of the notice to treat, and the land shall be deemed to have been immediately before the said seventh day of January in the same state as it is at the date of the notice to treat.
- (3) Subsections (2) to (6) of section forty-eight of this Act shall not apply to any interest in land which is compulsorily acquired as aforesaid, but in calculating the value of any such interest it shall be assumed that the land was, at the time of the notice to

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treat, subject to a permanent restriction prohibiting the carrying out thereon of any development other than development of the classes specified in the Third Schedule to this Act; and for the purposes of this provision, section ten of this Act and the said Third Schedule shall have effect as if for the references therein to the appointed day there were substituted references to the date of the notice to treat.

- (4) Nothing in subsection (2) of this section shall be construed as affecting the operation of Part VIII of the Requisitioned Land and War Works Act, 1945, in any case to which that Part applies; and where any land the value of an interest in which falls to be ascertained in accordance with the provisions of subsection (3) of this section is requisitioned land—
- (a) the Third Schedule to this Act, as applied for the purposes of the said subsection (3), shall have effect as if for references therein to the appointed day there were substituted references to the beginning of the period of requisition instead of references to the date of the notice to treat; and
 - (b) subsection (3) of section fifty-one of this Act shall apply as it applies in relation to the assessment of compensation in accordance with paragraph (a) of subsection (2) of that section.

53 Special provisions as to war-damaged land where compensation assessed by reference to cost of equivalent reinstatement.

- (1) Where an interest in land which is compulsorily acquired in pursuance of a notice to treat served after the passing of this Act is an interest in a hereditament or part of a hereditament which has sustained war damage, any of which has not been made good at the date of the notice to treat then if—
- (a) the appropriate payment under the War Damage Act, 1943, would, apart from the compulsory acquisition or apart from any direction given by the Treasury under paragraph (b) of subsection (2) of section twenty of that Act, be a payment of cost of works; and
 - (b) the land would, but for the occurrence of the war damage, be devoted to any such purpose as is mentioned in Rule (5) of the rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, the provisions of the said Rule (5) shall have effect for the purposes of the assessment of compensation payable in respect of the compulsory acquisition as if the land were so devoted as aforesaid.
- (2) Where any such interest in land as is mentioned in the foregoing subsection is compulsorily acquired as therein mentioned, then, if the conditions specified in paragraph (a) of that subsection are satisfied, and the compensation payable in respect of the acquisition falls (whether by virtue of that subsection or otherwise) to be assessed in accordance with the said Rule (5), the reasonable cost of equivalent reinstatement shall be ascertained for the purposes of the said Rule (5) by reference to the state of the land immediately before the occurrence of the war damage, and the right to receive any value payment or share of a value payment which, under the War Damage Act, 1943, is payable in respect of the interest which is compulsorily acquired (including interest thereon) shall, notwithstanding anything in that Act, vest in the person by whom the interest is so acquired.
- (3) Where any such interest in land as aforesaid is acquired by agreement in pursuance of a contract made after the passing of this Act by a person authorised by virtue of any enactment to acquire it compulsorily, then if the conditions specified in paragraph (a) of subsection (1) of this section are satisfied in relation to the land,

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and the compensation which would be payable in respect of the acquisition, if the acquisition were compulsory, would fall (whether by virtue of the said subsection (1) or otherwise) to be assessed in accordance with the said Rule (5), the right to receive any value payment or share of a value payment which, under the War Damage Act, 1943, is payable in respect of the interest acquired (including interest thereon) shall vest in the person by whom the interest is so acquired.

- (4) Subsection (4) of section sixty-nine of the War Damage Act, 1943 (which makes special provision with respect to payments under that Act in respect of war damage sustained by hereditaments held for charitable purposes) shall not apply to any - payment which by virtue of this section vests in the person by whom an interest in land is acquired.

54 Amendments of 9 & 10 Geo. 5. c. 57, etc.

- (1) The Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply in relation to the compulsory acquisition of land under this or any other Act by the Central Land Board or any statutory undertakers as it applies in relation to the compulsory acquisition of land by a government department or a local or public authority, and references in this Act to any such department or authority shall be construed accordingly.
- (2) The rate of interest for any period after the passing of this Act on compensation which fell or falls, in default of agreement, to be ascertained in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919 (whether as originally enacted or as amended by any subsequent enactment including this Act), in respect of land compulsorily purchased on which entry has been made before the payment of the compensation shall, in lieu of being the rate of five per cent. specified under section eighty-four of the Lands Clauses Consolidation (Scotland) Act, 1845, be such other rate as may from time to time be prescribed by regulations made by the Treasury under this Act.
- (3) Any regulations made by the Treasury under section fifty-eight of the Act of 1945 which are in force at the date of the passing of this Act shall continue in force and have effect as if they had been made under this Act and shall accordingly apply to any compensation which falls, in default of agreement, to be ascertained in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by this Act.