



Lands Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 19 8 and 9 Vict

Application of compensation

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

67 Purchase money payable to parties under disability, amounting to 200*l*, to be deposited in the Bank.

The purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, heir of entail, life-renter, married woman seised in her own right or entitled to terce or dower or any other right or interest, husband, tutors, curators, or other guardians for any infant, minor [^{F1}person suffering from mental disorder within the meaning of the ^{M1}Mental Health (Scotland) Act, 1960], or for any person under any other disability or incapacity, judicial factor, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, shall, if it amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, to the intent that such monies shall be applied, under the authority of the Court of Session, to some one or more of the following purposes; (that is to say,)

In . . . ^{F2} the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith on the same heirs, or for the same trusts or purposes, or affecting succeeding heirs of entail in any such lands, whether imposed and constituted by the entailer, or in virtue of powers given by the entail, or in virtue of powers conferred by any Act of Parliament;

In the purchase of other lands to be conveyed, limited, and settled upon the same heirs, and the like trust and purposes and in the same manner, as the lands, in respect of which such money shall have been paid, stood settled; or

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If such monies shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, or in removing or replacing such buildings, or substituting others in their stead, in such manner as the said court shall direct; or

In payment to any party becoming absolutely entitled to such money.

Textual Amendments

- F1** Words substituted by [Mental Health \(Scotland\) Act 1960 \(c. 61\), Sch. 4](#)
F2 Words repealed by [Finance Act 1963 \(c. 25\), Sch. 14 Pt. VI](#)

Modifications etc. (not altering text)

- C1** [S. 67](#) modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\), Sch. 4 paras. 4, 5](#)
C2 [S. 67](#) extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\), s. 10\(2\)](#)

Marginal Citations

- M1** [1960 c. 61.](#)

68 Order for application, and investment meanwhile.

Such money may be so applied as aforesaid upon an order of the Court of Session, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it shall be retained in the Bank at interest, or shall be laid out and invested in the public funds or in heritable securities, and the interest, dividends, and annual proceeds thereof shall from time to time, under the like order, be paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Modifications etc. (not altering text)

- C3** [S. 68](#) modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\), Sch. 4 paras. 4, 5](#)
C4 [Ss. 68, 69](#) extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\), s. 10\(2\)](#)

69 Sums from 20*l.* to 200*l.* to be deposited, or paid to trustees.

If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner herein-before directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the parties so entitled; and in case of the coverture, infancy, [^{F3}incapacity by reason of mental disorder within the meaning of the [Mental Health \(Scotland\) Act, 1960](#)], or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, tutors, curators, judicial factors, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof, and of the trustees, named for the purpose; and the money so paid to such trustees and the produce arising therefrom, shall, at the expense of the promoters of the undertaking, be by such

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trustees applied in the manner herein-before directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of court for that purpose.

Textual Amendments

F3 Words substituted by [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), [Sch. 4](#)

Modifications etc. (not altering text)

C5 [S. 69](#) modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), [Sch. 4](#) paras. 4, 5

C6 [S. 69](#) extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. 10(2)

70 Sums not exceeding 20*l.* to be paid to parties.

If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit; or in case of the coverture, infancy, [^{F4}incapacity by reason of mental disorder within the meaning of the [Mental Health \(Scotland\) Act, 1960](#)], or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, tutors, curators, judicial factors, or trustees of such persons.

Textual Amendments

F4 Words substituted by [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), [Sch. 4](#)

Modifications etc. (not altering text)

C7 [S. 70](#) modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), [Sch. 4](#) paras. 4, 5

71 All sums payable under contract with persons not absolutely entitled to be paid into the Bank.

All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or for assenting to or not opposing the passing of the Bill authorizing the taking of such lands, or in lieu of bridges, tunnels, or other accommodation works, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in succession or expectancy: Provided always, that it shall be in the discretion of the Court of Session, or the said trustees, as the case may be, to allot to any life-renter or person holding for any other partial or qualified right or interest, for his own use, a portion of the sum so paid into the Bank or to such trustees as aforesaid as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

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Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for lives or years, or any right or interest in lands less than the fee thereof, or of any reversion dependent on any such lease or right or interest, it shall be lawful for the Court of Session, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, right, interest, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Modifications etc. (not altering text)**C9** S. 72 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5**C10** S.72 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), **s. 10(2)****73 On the purchase of lands to be entailed, not necessary to insert the provisions verbatim.**

If such money shall be laid out and invested in the purchase of lands to be held under entail, or under uses, trusts, intents, and purposes, it shall not be necessary to ingross verbatim in the titles to such new lands the provisions of the entail or other investiture of the said old lands, or to mention specifically the uses, trusts, intents and purposes for and upon which the said new lands are to be held, but it shall be sufficient to state the dates of executing and recording the deed or deeds containing the provisions and conditions subject to which, or the uses, trusts, intents, and purposes to, for, and upon which, the said old lands were held, and to declare that the said new lands shall be held subject to the same provisions and conditions, and to, for, and upon the like uses, trusts, intents, and purposes, and to record the title deed containing such general reference in the register of tailzies, sasines, or other proper record, according to the nature of such title deed, which the keepers of the said registers are hereby authorized and required to do without a special order to that effect: Provided always, that upon the first occasion of completing titles to the said entailed estates the lands acquired to the estate may be introduced into the titles then completed, after which they shall descend regularly as part and portion of the entailed estates.

Modifications etc. (not altering text)**C11** S.73 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), **s. 10(2)**

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74 Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking, upon a notarial instrument being executed.

Upon deposit in the Bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands, it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by the sheriff, by a jury, or by arbiters, or by a valuation appointed by the sheriff, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands; and such instrument, being registered in the register of sasines in manner herein-after provided in regard to conveyances of lands, shall have the same effect as a conveyance so registered.

Modifications etc. (not altering text)

- C12** S. 74 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\), Sch. 4 paras. 4, 5](#)
- C13** S. 74 modified by [Gas Act 1972 \(c. 60\), SIF 44:2\), s. 6\(5\), Sch. 2 para. 27](#)
- C14** S. 74 modified by [Gas Act 1986 \(c. 44, SIF 44:2\), s. 9\(3\), Sch. 3 Pt. III para. 25](#)
- C15** S. 74 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\), s. 10\(2\)](#)

75 Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse or is unable validly to convey such lands as directed by the promoters of the undertaking, or to discharge or obtain a discharge of any burden or incumbrance thereon which was not specially excepted from discharge, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest

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therein, in the Bank, to be placed, except in the cases herein otherwise provided for, to an account to be opened in the name of the parties interested in such lands, (describing them, so far as the promoters of the undertaking can do,) subject to the control and disposition of the Court of Session.

Modifications etc. (not altering text)

- C16** S. 75 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C17** S. 75 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **10(2)**
- C18** S. 75 modified by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **48(9)(a)**
- C19** S. 75 applied with modifications by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **50(7)**

76 Upon deposit being made, a receipt to be given, and the lands to vest upon a notarial instrument being executed.

Upon any such deposit of money as last aforesaid being made the cashier or other proper officer of such Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands; and such instrument, being registered in the register of sasines in manner herein-after directed in regard to conveyances of land, shall have the same effect as a conveyance so registered.

Modifications etc. (not altering text)

- C20** S. 76 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), **Sch. 4**, paras. 4, 5
- C21** S. 76 modified by [Gas Act 1972 \(c. 60\)](#), s. 6(5), **Sch. 2 para. 27** and by [Land Compensation \(Scotland\) Act 1973 \(c.56, SIF 28:2\)](#), s. **48(9)(a)**
- C22** S. 76 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **10(2)**
- C23** S. 76 applied with modifications by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **50(7)**
- C24** S. 76 modified by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 9(3), **Sch. 3 Pt. III para. 25**

77 Application of monies so deposited.

Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Session may, in a summary way, as to such court shall seem fit, order

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such money to be laid out or invested in the public funds, or on heritable securities, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Modifications etc. (not altering text)

- C25** S. 77 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C26** S. 77 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. 10(2)
- C27** S. 77 applied with modifications by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. 50(7)

78 Party in possession to be deemed to be the owner.

If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Modifications etc. (not altering text)

- C28** S. 78 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4, paras. 4, 5
- C29** S. 78 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. 10(2)

79 Expences in cases of money deposited.

In all cases of monies deposited in the Bank under the provisions of this or the special Act, or any Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to feu or convey the lands in respect whereof the same shall be payable, or by reason of his refusal or inability to discharge or obtain a discharge of any burden on such lands which was not specially excepted from discharge, or by reason of the failure or neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Session to order the expenses of the following matters, including therein all reasonable charges and expences incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the expence of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such expences as are herein otherwise provided for, and the expence of the investment of such monies in government or real securities, and of the re-investment thereof in the purchase of other lands, and of re-entailing any of such lands, and incident thereto, and also the expence of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants:

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Provided always, that the expence of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Session that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the expences of any such investments to be paid by the promoters of the undertaking.

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Modifications etc. (not altering text)

- C30** S. 79 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C31** S. 79 extended by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **10(2)**
- C32** S. 79 applied with modifications by [Land Compensation \(Scotland\) Act 1973 \(c. 56, SIF 28:2\)](#), s. **50(7)**

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