



# Land Compensation (Scotland) Act 1973

## 1973 CHAPTER 56

### PART IV

#### COMPULSORY PURCHASE

##### *Advance payment of compensation*

#### **48 Right to advance payment of compensation.**

- (1) Where an acquiring authority have taken possession of any land the authority shall, if a request in that behalf is made in accordance with subsection (2) below, make an advance payment on account of any compensation payable by them for the compulsory acquisition of any interest in that land.
- (2) Any request under this section shall be made by the person entitled to the compensation (hereafter referred to as “the claimant”), shall be in writing, shall give particulars of the claimant’s interest in the land (so far as not already given pursuant to a notice to treat) and shall be accompanied or supplemented by such other particulars as the acquiring authority may reasonably require to enable them to estimate the amount of the compensation in respect of which the advance payment is to be made.
- (3) Subject to subsection (6) below, the amount of any advance payment under this section shall be equal to 90 per cent. of the following amount, that is to say—
  - (a) if the acquiring authority and the claimant have agreed on the amount of the compensation, the agreed amount;
  - (b) in any other case, an amount equal to the compensation as estimated by the acquiring authority.
- (4) Any advance payment under this section shall be made not later than three months after the date on which a request for the payment is made in accordance with subsection (2) above or, if those three months end before the date on which the acquiring authority take possession of the land to which the compensation relates, on the date on which they take possession as aforesaid.

*Changes to legislation: There are currently no known outstanding effects for the Land Compensation (Scotland) Act 1973, Section 48. (See end of Document for details)*

[<sup>F1</sup>(4A) Where, at any time after an advance payment has been made on the basis of the acquiring authority’s estimate of the compensation, it appears to the acquiring authority that their estimate was too low, they shall, if a request in that behalf is made in accordance with subsection (2) above, pay to the claimant the balance of the amount of the advance payment calculated as at that time.

(5) Where the amount, or aggregate amount, of any payment under this section made on the basis of the acquiring authority’s estimate of the compensation exceeds the compensation as finally determined or agreed, the excess shall be repaid; and if after any payment under this section has been made to any person it is discovered that he was not entitled to it, the amount of the payment shall be recoverable by the acquiring authority]

(6) No advance payment shall be made on account of compensation payable in respect of any land which is subject to a heritable security the principal of which exceeds 90 per cent. of the amount mentioned in subsection (3) above; and where the land is subject to a heritable security the principal of which does not exceed 90 per cent. of that amount, the advance payment shall be reduced by such sum as the acquiring authority consider will be required by them for securing the release of the interest of the heritable creditor.

(7) Where an acquiring authority make an advance payment under this section on account of compensation in respect of any interest in land, the authority shall cause notice of that fact, specifying particulars of the payment, the compensation and the interest in land to which it relates, to be recorded in the Register of Sasines and shall send a copy of the notice to the local planning authority.

(8) Where after particulars of the advance payment made to any claimant have been recorded as aforesaid the claimant disposes of the interest in the land to, or creates an interest in the land in favour of, a person other than the acquiring authority, the amount of the advance payment [<sup>F2</sup>together with any amount paid under section 48A] shall be set off against any sum payable by the authority to that other person in respect of the compulsory acquisition of the interest disposed of or the compulsory acquisition or release of the interest created.

(9) Where an advance payment has been made under this section on account of any compensation—

(a) section 75 of the <sup>M1</sup>Lands Clauses Consolidation (Scotland) Act 1845 (refusal of owner to convey on tender of compensation) shall have effect as if references to the compensation were references to the balance thereof remaining unpaid; <sup>F3</sup> . . .

<sup>F3</sup>(b) . . . . .

(10) This section shall apply to compensation for the compulsory acquisition of a right in or over land as it applies to compensation for the compulsory acquisition of an interest in land, and shall so apply with the necessary modifications and as if references to taking possession of the land were references to first entering it for the purpose of exercising the right.

**Textual Amendments**

**F1** S. 48(4A)(5) substituted (25.9.1991) for s. 48(5) (subject to limitation referred to in S.I. 1991/ 2092, art. 4(1), Sch. 2 Pt.I) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), **s. 73(1)** (with s. 84(5)); S.I. 1991/2092, **art.3**

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- F2** Words in s. 48(8) inserted (25.9.1991) (subject to limitation referred to in S.I. 1991/2092, art. 4(1), **Sch. 2 Pt.I**) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 79, **Sch. 17**, Pt. II, para. 21(a) (with s. 84(5)); S.I. 1991/2092, **art.3**
- F3** S. 48(9)(b) repealed (25.9.1991) and preceding word omitted (25.9.1991) (subject to limitation referred to in S.I. 1991/2092, art. 4(1), **Sch. 2**, Pt. I) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), ss. 79, 84(6), Sch. 17, Pt. II, para. 21(b), **Sch. 19 Pt.IV** (with s. 84(5)); S.I. 1991/2092, **art. 3**

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**Marginal Citations**

- M1** 1845 c. 19.

**Changes to legislation:**

There are currently no known outstanding effects for the Land Compensation (Scotland) Act 1973, Section 48.