



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART VII

COMPENSATION FOR PLANNING DECISIONS RESTRICTING NEW DEVELOPMENT

Unexpended balance of established development value

123 Scope of Part VII

- (1) The provisions of this Part of this Act shall have effect for enabling compensation to be claimed in respect of planning decisions whereby permission for the carrying out of new development of land to which this section applies is refused or is granted subject to conditions.
- (2) This section applies to any land in respect of which planning permission is refused or is granted subject to conditions, by a planning decision if, at the time of the planning decision, that land, or part of that land, has an unexpended balance of established development value.
- (3) In accordance with the proviso to subsection (2) of section 29 of this Act, that subsection does not apply for the purposes of this Part of this Act.

124 Derivation of unexpended balance from claims under Part V of Act of 1947

- (1) In determining, for the purposes of this Part of this Act, whether land has an unexpended balance of established development value, regard shall be had to claims made, in pursuance of Part V of the Act of 1947, for payments under the scheme provided for by section 55 of that Act (that is to say, the scheme which, but for the provisions of section 2 of the Town and Country Planning Act 1953, would have fallen to be made under the said section 55, providing for payments in respect of interests in land depreciated in value by virtue of the provisions of the Act of 1947).

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- (2) Where such a claim was made in respect of an interest in land, that claim shall for the purposes of this Part of this Act be taken to have been established in respect of that land under Part V of the Act of 1947 if an amount was determined under the said Part V as being the development value of the interest to which the claim related, and payment in respect of that interest would not have been excluded—
- (a) by section 60 of the Act of 1947 (which excluded claims where the development value was small in proportion to the area, or to the restricted value, of the land); or
 - (b) by any of sections 79 to 82 of that Act (which related to certain land belonging to local authorities, development corporations and statutory undertakers, and to land held on charitable trusts); or
 - (c) by section 81 of that Act as applied by regulations under section 86 of that Act (which related to the National Coal Board).
- (3) In this Part of this Act " established claim " means a claim which by virtue of subsection (2) of this section is to be taken to have been established as therein mentioned, and references to the establishment of a claim shall be construed accordingly; and " the claim area ", in relation to an established claim, means the land in respect of which the claim is by virtue of that subsection to be taken to have been established.
- (4) References in this Part of this Act to the benefit of an established claim—
- (a) in relation to any time before the passing of the Town and Country Planning Act 1953, whether before or after the making of the claim, or before or after the establishment thereof, shall be construed as references to the prospective right, under and subject to the provisions of the scheme referred to in subsection (1) of this section, to receive a payment in respect of the interest in land to which the claim related; and
 - (b) in relation to any time after the passing of the said Act of 1953, shall be construed as references to such prospective right to the satisfaction of the claim as subsisted by virtue of section 2 of that Act immediately before 1st January 1955 (being the date of the commencement of the Act of 1954);
- and references to part of the benefit of an established claim shall be construed accordingly.
- (5) References in this Part of this Act to the amount of an established claim are references to the amount determined under Part V of the Act of 1947 as being the development value of the interest in land to which the claim related.
- (6) In this section any reference to Part V of the Act of 1947 includes a reference to the provisions of the said Part V as modified by Schedule 1 to the Act of 1954.

125 Original unexpended balance of established development value

- (1) In this Part of this Act "original unexpended balance of established development value in relation to any land, means the unexpended balance of established development value which that land had immediately after the time when, in accordance with section 127 of this Act, the adjustment of claim holdings is deemed to have been completed.
- (2) For the purposes of this Part of this Act land shall be taken to have had such a balance if, immediately after the time referred to in subsection (1) of this section—

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- (a) there were subsisting one or more claim holdings whose area consisted of that land, or included that land together with other land; and
 - (b) there was not subsisting any claim holding whose area consisted of part only of that land, whether with or without other land.
- (3) Where subsection (2) of this section applies, there shall be attributed to the land referred to in that subsection—
- (a) the value of any claim holding having an area consisting of that land ; and
 - (b) such fraction of the value of any claim holding whose area included that land as attached to that land,
- and the original unexpended balance of established development value of that land shall be taken to have been an amount equal to eight-sevenths of the amount or aggregate amount so attributed.

126 Claim holdings, their areas and values

- (1) Subject to the provisions of this section and of section 127 of this Act, in this Part of this Act—
- (a) "claim holding" means the benefit of an established claim, references to the area of a claim holding are references to the land which, in relation to the established claim constituting that holding, is the claim area, and references to the value of a claim holding are references to the amount of the established claim constituting that holding; and
 - (b) references to the fraction of the value of a claim holding which attached to a part of the area of the holding are references to so much of the amount of the established claim of which that holding represents the benefit or part of the benefit (in this section referred to as "the relevant established claim") as was properly attributable to that part of the area of the holding.
- (2) In the case of a claim holding where—
- (a) the area of the holding is the same as the claim area of the relevant established claim ; but
 - (b) the value of the claim holding is, by virtue of the adjustment of claim holdings, less than the amount of the relevant established claim,
- the amount of any such fraction as is referred to in subsection (1)(b) of this section shall be treated as reduced proportionately.
- (3) In the case of a claim holding where—
- (a) the area of the holding consists of part only of the claim area of the relevant established claim; and
 - (b) the value of the holding is, by virtue of the adjustment of claim holdings, less or greater than so much of the amount of the relevant established claim as was properly attributable to the area of the holding.
- the amount of any such fraction as is referred to in subsection (1)(b) of this section shall be treated as reduced, or (as the case may be) increased, proportionately.
- (4) For the purposes of this section, the part of the amount of the relevant established claim which was properly attributable to any land forming part of the claim area shall be taken to have been so much of the amount of that claim as might reasonably be expected to have been attributed to that land if the authority determining that amount had been required to apportion it, in accordance with the same principles as applied to its determination, between that land and the residue of the claim area.

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127 Adjustment of claim holdings

- (1) The provisions of Schedule 13 to this Act shall have effect for the purposes of this Part of this Act; and any reference in this Part of this Act to the adjustment of claim holdings is a reference to the operation of those provisions.
- (2) For the purposes of this Part of this Act the adjustment of claim holdings shall be deemed to have been completed on 1st January 1955.

128 General provision for continuance of original unexpended balance

Where in accordance with section 125 of this Act land had an original unexpended balance of established development value, then, subject to the following provisions of this Part of this Act, that land shall be taken—

- (a) to have continued to have that balance until the commencement of this Act; and
- (b) to continue to have that balance at all times thereafter.

129 Reduction or extinguishment of balance in consequence of compensation

- (1) Where at any time compensation becomes payable under this Part of this Act, or became payable under Part II of the Act of 1954, in respect of depreciation of the value of an interest in land by a planning decision, then, for the purpose of determining whether that land or any part thereof has or had an unexpended balance of established development value at any subsequent time, the amount of the compensation shall be deducted from the original unexpended balance of established development value of that land, and the original unexpended balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) Subsection "(1) of this section shall have effect subject to the provisions of this Part of this Act relating to the recovery of compensation on subsequent development.

130 Reduction or extinguishment of balance on initiation of new development

- (1) Where in accordance with section 125 of this Act land had an original unexpended balance of established development value, and at any time on or after 1st July 1948 (whether before or after the commencement of this Act) any new development of that land is or was initiated, then (subject to the following provisions of this section) for the purpose of determining whether that land or any part thereof has or had an unexpended balance of established development value at any subsequent time—
 - (a) if the development relates or related only to that land, the value of that development (ascertained, with reference to that subsequent time, in accordance with the provisions of Schedule 14 to this Act); or
 - (b) if the development relates or related to that land together with other land, so much of the value of that development (so ascertained) as is or was attributable to that land,

shall be deducted from the original unexpended balance of established development value of that land, and the original unexpended balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.

- (2) Subsection (1) of this section shall not apply to any land if, in respect of any interest therein, a payment has become or becomes payable under section 56 of the Act of 1947 (which provided for payments in respect of certain war-damaged land).
- (3) For the purposes of subsection (1) of this section no account shall be taken of any development initiated before 1st January 1955, if a development charge under Part VI of the Act of 1947 was determined to be payable in respect thereof, or would have fallen to be so determined but for any exemption conferred by regulations under that Part of that Act, or by any provisions of Part VII of that Act.

131 Reduction or extinguishment of balance on acquisition of land under compulsory powers

- (1) Where in the case of—
 - (a) a compulsory acquisition to which this section applies; or
 - (b) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,any of the land in which the interest acquired or sold subsists or subsisted has or had an unexpended balance of established development value immediately before the relevant date (in this section referred to as " the relevant balance ") the following provisions of this section shall have effect for the purpose of determining whether that land or any part thereof has or had an unexpended balance of established development value at any subsequent time.
- (2) This section applies—
 - (a) to every compulsory acquisition of an interest in land in pursuance of a notice to treat served on or after 30th October 1958, whether before or after the commencement of this Act; and
 - (b) to every compulsory acquisition of an interest in land, in pursuance of a notice to treat served on or after 1st January 1955 but before the said 30th October, by an authority possessing compulsory purchase powers, being at that time a government department or local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act 1919, or a person or body of persons to whom that Act applied as it applied to such a department or authority.
- (3) Unless, immediately after the acquisition or sale, there is or was outstanding some interest (other than an excepted interest) in the land to which some person other than the acquiring authority is or was entitled, the original unexpended balance of established development of that land shall be treated as having been extinguished immediately before the subsequent time referred to in subsection (1) of this section.
- (4) If, immediately after the acquisition or sale, there is or was such an outstanding interest (other than an excepted interest) as is mentioned in subsection (3) of this section, there shall be deducted from the said original balance an amount equal to any part of the relevant balance which is or was not attributable to any such outstanding interest, and the original unexpended balance of established development value of the land or the part thereof in question shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (5) For the purposes of this section any question as to the portion of the relevant balance which is or was attributable to an interest in land—

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- (a) in relation to a compulsory acquisition to which this section applies, shall be determined in accordance with the provisions of Schedule 1S to this Act; and
 - (b) in relation to a sale of an interest in land by agreement in circumstances corresponding to such an acquisition, shall be determined in accordance with the provisions of that Schedule as those provisions would apply if the sale had been a compulsory acquisition in pursuance of a notice to treat served on the relevant date.
- (6) Any reference in this section or in section 132 of this Act to a sale of an interest in land by agreement in circumstances corresponding to a compulsory acquisition to which this section applies is a reference to a sale thereof—
- (a) to an authority possessing compulsory purchase powers, in pursuance of a contract made on or after 30th October 1958, whether before or after the commencement of this Act; or
 - (b) to such an authority possessing compulsory purchase powers as is mentioned in subsection (2)(b) of this section, in pursuance of a contract made on or after 1st January 1955 but before the said 30th October.
- (7) In this section " the relevant date " means the date of service of the notice to treat or the date of the contract in pursuance of which the interest was sold, as the case may be, and " excepted interest " means the interest of any such person as is mentioned in section 114 of the Lands Clauses Consolidation (Scotland) Act 1845 (which relates to persons having no greater interest than as tenant for a year or from year to year).

132 Reduction or extinguishment of balance in consequence of severance or injurious affection

- (1) Where in connection with—
- (a) a compulsory acquisition to which section 131 of this Act applies; or
 - (b) a sale of an interest in land by agreement in circumstances corresponding to such an acquisition,
- compensation is or was payable, or an amount is or was included in the purchase price, in respect of an interest in land other than the relevant land (in this section referred to as "the interest affected "), for damage sustained by reason that the relevant land is or was severed from other land held therewith, or that any other land (whether held with the relevant land or not) is or was injuriously affected, then (subject to the following provisions of this section) for the purpose of determining whether that other land or any part thereof has or had an unexpended balance of established development value at any subsequent time, there shall be deducted from the original unexpended balance of established development value of that other land an amount calculated in accordance with the following provisions of this section, and the original unexpended balance of that land, or of the part thereof in question, as the case may be, shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.
- (2) In the case of an acquisition or sale in pursuance of a notice to treat served, or contract made, on or after 30th October 1958, the amount to be deducted, as mentioned in subsection (1) of this section, shall be the amount (if any) by which the compensation payable, or amount included in the purchase price, as therein mentioned exceeds or exceeded the compensation which would have been so payable, or the amount which would have been so included, if the extent of the damage sustained in respect of the other land in question had fallen to be ascertained on the assumption that planning

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permission would not be granted for any new development of that land, but would be granted for any development thereof other than new development.

- (3) The following provisions of this section shall have effect with respect to any such acquisition or sale as is mentioned in subsection (1) of this section, being an acquisition or sale in pursuance of a notice to treat served, or contract made, before 30th October 1958; and any such acquisition or sale is hereinafter referred to as an acquisition or sale to which this subsection applies.
- (4) No such deduction as is mentioned in subsection (1) of this section shall be made in the case of an acquisition or sale to which subsection (3) of this section applies unless—
 - (a) where it was a compulsory acquisition, an amount was paid by way of compensation as mentioned in the said subsection (1);
 - (b) the amount which was so paid, or, in the case of a sale by agreement, was included in the purchase price as mentioned in the said subsection (1) (hereafter in this section referred to as "the sum paid for severance or injurious affection") exceeded the loss of immediate value of the interest affected; and
 - (c) where it was a sale by agreement, the other land in question was held with the relevant land,
- (5) Subject to subsection (4) of this section, the amount to be deducted as mentioned in subsection (1) of this section, in the case of an acquisition or sale to which subsection (3) of this section applies, shall be the amount by which the sum paid for severance or injurious affection exceeded the loss of immediate value of the interest affected.
- (6) The following provisions of this subsection shall have effect, in the case of an acquisition or sale to which subsection (3) of this section applies, where so much (if any) of the sum paid for severance or injurious affection as was attributable to the loss of immediate value of the interest affected was less than the depreciation in restricted value of that interest, that is to say—
 - (a) the amount of the difference shall be ascertained; and
 - (b) for the purpose of determining whether, at any time after the acquisition or sale, the land in which the interest affected subsisted or any part thereof had or has an unexpended balance of established development value (whether or not that land or any part thereof would apart from this subsection have had an original unexpended balance of established development value) a claim holding with an area consisting of that land and a value equal to seven-eighths of the amount of the difference shall be deemed to have subsisted immediately after the time when the adjustment of claim holdings was completed.
- (7) In this section—

"the loss of immediate value" means the amount (if any) by which the difference in the value of the interest affected, immediately before and immediately after the acquisition or sale, exceeded the loss of development value;

"the loss of development value" means the amount (if any) by which the value of the interest affected immediately before the acquisition or sale, if calculated on the assumption that, until such time as the land in which that interest subsisted might reasonably be expected to become ripe for new development, no use whatever could be made of that land, would have exceeded the value of that interest immediately after the acquisition or sale if calculated on the like assumption;

" the depreciation in restricted value " means the amount (if any) by which the value of the interest affected, immediately after the acquisition or sale, would have been less than the value of that interest immediately before the acquisition or sale, if both values were calculated on the assumption that planning permission would not be granted for any new development of that land, but would be granted for any development thereof other than new development;

" the relevant land ", in relation to an acquisition or sale, means the land in which the interest acquired or sold subsisted.

133 Supplementary provisions as to deductions from original balance

- (1) Where, immediately after the time when the adjustment of claim holdings was completed, any land taken as a whole had an original unexpended balance of established development value, and at any time thereafter (whether before or after the commencement of this Act) an act or event occurs or has occurred in relation to part of that land such that, in accordance with any of the preceding provisions of this Part of this Act, an amount is required to be deducted from the original unexpended balance of that part of that land for the purpose of determining whether it has or had an unexpended balance of established development value at any subsequent time, then (without prejudice to the operation of any of the preceding provisions of this Part of this Act with respect to any part of the land taken separately) the land taken as a whole shall be treated as not having (or as not having had) any such balance at that subsequent time.
- (2) Where in accordance with any of the preceding provisions of this Part of this Act an amount is required to be deducted from the original unexpended balance of established development value of any land, there shall be attributed to the various parts of that land so much of that amount as might reasonably be expected to have been attributed thereto if the authority determining the amount had been required to apportion it between those parts in accordance with the same principles as applied to its determination.
- (3) Where two or more acts or events occur or have occurred in relation to the same land (whether before or after the commencement of this Act) such that, in accordance with any of the preceding provisions of this Part of this Act, an amount is required to be deducted from the original unexpended balance of established development value of that land or any part thereof, those provisions shall apply cumulatively, and the requisite deduction from the original unexpended balance of established development value of that land shall be made by reference to each of those acts or events.

134 Provision of information relating to unexpended balance

- (1) Subject to the provisions of this section, the Secretary of State shall, on application being made to him by any person, and may if he thinks fit without any such application, issue a certificate in the prescribed form with respect to any land stating whether any of that land had an original unexpended balance of established development value, and, if so—
 - (a) giving a general statement of what was taken by the Central Land Board, for the purposes of Part V of the Act of 1947, to be the state of that land on 1st July 1948; and
 - (b) specifying (subject to any outstanding claims under Part I or Part V of the Act of 1954) the amount of that original balance.

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- (2) Any such certificate issued with respect to any land may, if the Secretary of State thinks fit, contain additional information with respect to acts or events in consequence of which, in accordance with any of the preceding provisions of this Part of this Act, an amount is required to be deducted from the original unexpended balance of established development value of any of that land.
- (3) Where, at any time on or after 1st January 1955 (whether before or after the commencement of this Act), a notice to treat has been served with a view to the compulsory acquisition of an interest in land by an authority possessing compulsory purchase powers, that authority may apply to the Secretary of State for, and shall be entitled to the issue of, a certificate showing the unexpended balance of established development value (if any) of any of that land immediately before the service of that notice.
- (4) Where the issue of a certificate under this section with respect to any land involves a new apportionment, or, in the case of a certificate under subsection (3) of this section, involves the calculation of a deduction from the original unexpended balance of established development value by virtue of section 130 of this Act, then—
 - (a) except in the case of a certificate under subsection (3) of this section, or of a certificate which the Secretary of State proposes to issue without any application being made for it, the certificate shall not be issued otherwise than on the application of a person who is for the time being entitled to an interest in that land ;
 - (b) before issuing the certificate, the Secretary of State shall give notice in writing to any person entitled to an interest in land appearing to him to be an interest which will be substantially affected by the apportionment or calculation, giving particulars of the proposed apportionment or calculation, and stating that objections or other representations with respect thereto may be made to the Secretary of State within the period of thirty days from the date of the notice; and
 - (c) the certificate shall not be issued before the end of that period, and if within that period an objection to the proposed apportionment or calculation has been made by any person to whom notice has been given under paragraph (b) of this subsection, or by any other person who establishes that he is entitled to an interest in land which is substantially affected by the apportionment or calculation, and that objection has not been withdrawn, subsection (5) of this section shall have effect.
- (5) Where by virtue of subsection (4)(c) of this section this subsection is to have effect, then—
 - (a) if within a further period of thirty days the person by whom any such objection was made requires the dispute to be referred to the Lands Tribunal, the dispute shall be so referred, and the certificate shall not be issued until either the Tribunal has decided the matter or the reference to the Tribunal has been withdrawn ;
 - (b) the certificate may be issued before the end of the said further period if every such objection has been withdrawn;
 - (c) the certificate shall be issued at the end of that further period, notwithstanding that every such objection has not been withdrawn, if no requirement has within that period been made under paragraph (a) of this subsection.

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- (6) Where, on a reference to the Lands Tribunal under this section, it is shown that a new apportionment relates partly to the same matters as a previous apportionment, and is consistent with that previous apportionment in so far as it relates to those matters, the Tribunal shall not vary the new apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.
- (7) A certificate under subsection (3) of this section shall be conclusive evidence of the unexpended balance shown there in ; and a certificate under subsection (1) of this section shall be sufficient proof of any facts stated therein unless the contrary is shown.
- (8) An application for a certificate under this section shall be made in such form and manner as may be prescribed, and shall be accompanied by sufficient particulars, including a map if necessary, to enable the land to be identified, and, where a new apportionment will be involved, particulars of the nature of the applicant's interest, and such information as to the nature of any other interest in the land, and as to the name and address of the person entitled to that other interest, as may be known to the applicant.
- (9) On any application under subsection (1) of this section the applicant shall pay in the prescribed manner a fee of twenty-five new pence, and, if the application involves a new apportionment, the certificate shall not be issued until the applicant has paid in the prescribed manner a further fee of seventy-five new pence.
- (10) In this section " new apportionment" means an apportionment which relates wholly or partly to any matter to which no previous apportionment related.