



# 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.

*Status: Point in time view as at 25/09/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Land Compensation (Scotland) Act 1973, Cross Heading: Advance payment of compensation. (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**

#### Marginal Citations

- M1** 1845 c. 19.

### [<sup>F4</sup>48A Right to interest where advance payment made.

- (1) This section applies where the compensation to be paid by the acquiring authority for the compulsory acquisition of any interest in land would (apart from this section) carry interest under paragraph 3(1) of the second Schedule to the <sup>M2</sup>Acquisition of Land (Authorisation Procedures) (Scotland) Act 1947 or any bond under section 84 (promoters to be allowed to enter on lands before purchase on giving bond etc.) of the <sup>M3</sup>Lands Clauses Consolidation (Scotland) Act 1845.
- (2) If the authority make a payment under section 48(1) above to any person on account of the compensation—
- they shall at the same time make a payment to that person of accrued interest, for the period beginning with the date of entry, on the amount by reference to which the payment under section 48(1) above was calculated; and
  - the difference between the amount of the payment under section 48(1) above and the amount by reference to which it was calculated is an unpaid balance for the purposes of this section.
- (3) If the authority make a payment under section 48(4A) above to any person on account of the compensation, they shall at the same time make a payment to him of accrued interest, for the period beginning with the date of entry, on—
- the amount by reference to which the payment under section 48(4A) above was calculated; less
  - the amount by reference to which the preceding payment under section 48(1) or (4A) above was calculated.
- (4) Where the authority make a payment under section 48(4A) above on account of the compensation, the difference between—
- the amount of the payment; and
  - the amount by reference to which it was calculated less the amount by reference to which the preceding payment under section 48(1) or (4A) above was calculated,
- is an unpaid balance for the purposes of this section.
- (5) If, on an anniversary of the date on which the authority made a payment to any person under section 48(1) above on account of the compensation—
- the amount of accrued interest on the unpaid balance under subsection (2) above or, as the case may be,
  - the aggregate amount of the accrued interest on any unpaid balances,
- exceeds £1,000, the authority shall make a payment to the claimant of the amount or aggregate amount.

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- (6) The acquiring authority shall, on paying the compensation, pay the amount of the accrued interest on the unpaid balance under subsection (2) above or, as the case may be, the aggregate amount of the accrued interest on any unpaid balances.
- (7) For the purposes of subsections (5) and (6) above, interest accrues on any unpaid balance for the period beginning with—
- (a) the making of the payment under section 48(1) or, as the case may be, 48(4A) above; or
  - (b) if any payment has already been made in respect of that balance under subsection (5) above, the date of the preceding payment under that subsection.
- (8) For the purposes of this section—
- (a) interest accrues at the rate prescribed under section 40 of the <sup>M4</sup>Land Compensation (Scotland) Act 1963 or, in the case of a bond under section 84 of the <sup>M5</sup>Lands Clauses Consolidation (Scotland) Act 1845, at the rate specified in that section; and
  - (b) the amount by reference to which a payment under section 48(1) or (4A) was calculated is the amount referred to in section 48(3)(a) or (b) for the purposes of that calculation.
- (9) Where any payment has been made under section 48(1) above on account of any compensation, the acquiring authority is not required to pay interest under paragraph 3(1) of the second Schedule to the <sup>M6</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 or any bond under section 84 (promoters to be allowed to enter on lands before purchase on giving bond etc.) of the <sup>M7</sup>Lands Clauses Consolidation (Scotland) Act 1845.
- (10) Where the amount, or aggregate amount, of any payment under section 48 above made on the basis of the acquiring authority's estimate of the compensation is greater than the compensation as finally determined or agreed and, accordingly, the interest paid under this section is excessive, the excess shall be repaid.
- (11) If after any interest has been paid to any person under this section on any amount it is discovered that he was not entitled to the amount, the interest shall be recoverable by the acquiring authority.
- (12) The Secretary of State may by order increase the sum specified in subsection (5) above; and the power to make orders under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F4** S. 48A 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. 73(2)** (with s. 84(5)); S.I. 1991/2092, **art. 3**

#### Marginal Citations

- M2** 1947 c. 42.  
**M3** 1845 c. 19.  
**M4** 1963 c. 51.  
**M5** 1845 c. 19.  
**M6** 1947 c. 42.

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**M7** 1845 c. 19.

**Status:**

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**Changes to legislation:**

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