



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART IV

#### COMPENSATION FOR EFFECTS OF CERTAIN ORDERS, NOTICES ETC.

##### **Modifications etc. (not altering text)**

- C1** Pt. IV applied (with modifications) by S.I. 1994/2716, reg. 82D(2) (as inserted (28.12.2007) by Transport and Works (Scotland) Act 2007 (Consequential and Transitional Provisions) Order 2007 (S.S.I. 2007/517), arts. 1(1), **3(4)**)
- C2** Pt. IV applied (with modifications) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), regs. 1(2), **89(1)-(3)**, 93(1)-(3)(with reg. 125)
- C3** Pt. IV applied (with modifications) (1.4.2010) by The Management of Extractive Waste (Scotland) Regulations 2010 (S.S.I. 2010/60), regs. 1(1), **31(3)** (with arts. 4, 5)
- C4** Pt. IV modified (30.11.2017) by The Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), regs. 1(2), **92(1)-(3)**, 96(1)-(3)

#### *Compensation for revocation or modification of planning permission*

### **76 Compensation where planning permission revoked or modified.**

(1) Where planning permission is revoked or modified by an order under section 65, then if, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land—

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

*Status: Point in time view as at 18/11/2020.*

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- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2), no compensation shall be paid under this section in respect of—
  - (a) any work carried out before the grant of the permission which is revoked or modified, or
  - (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).
- (4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted—
  - (a) subject to the condition set out in Schedule 12, for any development of a class specified in paragraph 1 of Schedule 11;
  - (b) for any development of a class specified in paragraph 2 of Schedule 11.
- (5) In this Part any reference to an order under section 65 includes a reference to an order under the provisions of that section as applied by section 71(3) and paragraph 1(2) of Schedule 8.

**77 Compensation for refusal or conditional grant of planning permission formerly granted by development order.**

- (1) Where—
  - (a) planning permission granted by a development order is withdrawn (whether by the revocation or amendment of the order or by the issue of directions under powers conferred by the order), and
  - (b) on an application made under Part III [<sup>F1</sup>or section 242A] planning permission for development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by that order,
 section 76 shall apply as if the planning permission granted by the development order—
  - (i) had been granted by the planning authority under Part III [<sup>F2</sup>or section 242A], and
  - (ii) had been revoked or modified by an order under section 65.
- (2) Where planning permission granted by a development order is withdrawn by revocation or amendment of the order, this section applies only if the application referred to in subsection (1)(b) is made before the end of the period of 12 months beginning with the date on which the revocation or amendment came into operation.
- (3) This section does not apply in relation to planning permission for the development of operational land of statutory undertakers.
- (4) Regulations may provide that subsection (1) shall not apply where planning permission granted by a development order for demolition of buildings or any description of buildings is withdrawn by the issue of directions under powers conferred by the order.

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#### Textual Amendments

- F1** Words in s. 77(1)(b) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), **4(6)(a)**
- F2** Words in s. 77(1)(i) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), **4(6)(b)**

### 78 Apportionment of compensation for depreciation.

- (1) Where compensation which becomes payable under section 76 includes compensation for depreciation of an amount exceeding £20, the planning authority—
- (a) if it appears to them to be practicable to do so, shall apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates, and
  - (b) shall give particulars of any such apportionment to the claimant and to any other person entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.
- (2) In carrying out an apportionment under subsection (1)(a), the planning authority shall—
- (a) divide the land into parts, and
  - (b) distribute the compensation for depreciation between those parts, according to the way in which different parts of the land appear to the authority to be differently affected by the order or, in a case falling within section 77, the relevant planning decision, in consequence of which the compensation is payable.
- (3) Regulations shall make provision—
- (a) for enabling the claimant or any other person to whom notice of the planning authority's apportionment has been given in accordance with subsection (1), or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal,
  - (b) for enabling the claimant and any other person mentioned in paragraph (a) to be heard by the Tribunal on any reference under this section of that apportionment, and
  - (c) for requiring the Tribunal, on any such reference, either to confirm or vary the apportionment and to notify the parties of the decision.
- (4) On a reference to the Lands Tribunal by virtue of subsection (3), subsections (1) and (2), so far as they relate to the making of an apportionment, shall apply with the substitution, for references to the planning authority, of references to the Lands Tribunal.
- (5) In this section—
- “compensation for depreciation” means so much of any compensation payable under section 76 as is payable in respect of loss or damage consisting of depreciation of the value of an interest in land, and

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“relevant planning decision” means the planning decision by which planning permission is refused, or is granted subject to conditions other than those previously imposed by the development order.

## **79 Registration of compensation for depreciation.**

- (1) Where compensation which becomes payable under section 76 includes compensation for depreciation of an amount exceeding £20, the planning authority shall—
  - (a) have a notice in the prescribed form stating that such compensation has become payable, specifying the land to which the compensation relates, the amount of the compensation for depreciation and any apportionment of it under section 78, recorded in the appropriate Register of Sasines or registered in the Land Register of Scotland, and
  - (b) send a copy of the notice to the Secretary of State.
- (2) In relation to compensation for depreciation specified in a notice recorded or, as the case may be, registered under subsection (1), references in this Part to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed in accordance with the following provisions, that is to say—
  - (a) if the notice does not include an apportionment under section 78, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;
  - (b) if the notice includes such an apportionment, the compensation shall be treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part of the land.

## **80 Recovery of compensation on subsequent development.**

- (1) No person shall carry out any development to which this section applies, on land in respect of which a notice (in this Part referred to as a “compensation notice”) is recorded or, as the case may be, registered under section 79(1), until such amount, if any, as is recoverable under this section in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State.
- (2) Subject to the following provisions of this section, this section applies to any development—
  - (a) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof,
  - (b) which consists in the winning and working of minerals, or
  - (c) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State reasonable that this section should apply.
- (3) This section shall not apply to any development by virtue of subsection (2)(c) if, on an application made to him for the purpose, the Secretary of State has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply to it.

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- (4) Where the compensation specified in the compensation notice became payable in respect of the imposition of conditions on the granting of permission to develop land, this section shall not apply to the development for which that permission was granted.
- (5) This section does not apply to any development—
  - (a) of a class specified in paragraph 1 of Schedule 11 which is carried out in accordance with the condition set out in Schedule 12, or
  - (b) of a class specified in paragraph 2 of Schedule 11.
- (6) This section does not apply in a case where the compensation under section 76 specified in a compensation notice became payable in respect of an order modifying planning permission, and the development is in accordance with that permission as modified by that order.

## **81 Amount recoverable, and provisions for payment or remission.**

- (1) Subject to the following provisions of this section, the amount recoverable under section 80 in respect of the compensation specified in a compensation notice—
  - (a) if the land on which the development is to be carried out (in this subsection referred to as “the development area”) is identical with, or includes (with other land) the whole of, the land comprised in the compensation notice, shall be the amount of compensation specified in that notice;
  - (b) if the development area forms part of the land comprised in the compensation notice, or includes part of that land together with other land not comprised in that notice, shall be so much of the amount of the compensation specified in that notice as is attributable to land comprised in that notice and falling within the development area.
- (2) Where, in the case of any land in respect of which a compensation notice has been recorded or registered, the Secretary of State is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or any part of any amount otherwise recoverable under section 80.
- (3) Where, in connection with the development of any land, an amount becomes recoverable under section 80 in respect of the compensation specified in a compensation notice, then, except where, and to the extent that, payment of that amount has been remitted under subsection (2) above, no amount shall be recoverable under section 80 in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.
- (4) No amount shall be recoverable under section 80 in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 257.
- (5) An amount recoverable under section 80 in respect of any compensation—
  - (a) shall be payable to the Secretary of State,
  - (b) shall be so payable either as a single capital payment or as a series of instalments of capital and interest combined, or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Secretary of State may direct, after taking into account any representations made by the person by whom the development is to be carried out, and

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- (c) except where the amount is payable as a single capital payment, shall be secured by that person to the satisfaction of the Secretary of State (whether by heritable or other security, personal bond or otherwise).
- (6) If any person initiates any development to which section 80 applies in contravention of subsection (1) of that section, the Secretary of State may serve a notice on him specifying the amount appearing to the Secretary of State to be the amount recoverable under that section in respect of the compensation in question, and requiring him to pay that amount to the Secretary of State within such period, not being less than 3 months after the service of the notice, as may be specified in the notice.
- (7) Where, after a compensation notice in respect of any land has been recorded or, as the case may be, registered—
  - (a) any amount recoverable under this section in respect of the compensation specified in the notice, or any part of such amount, has been paid to the Secretary of State, or
  - (b) circumstances arise under which by virtue of any provision of this Act no amount is so recoverable in respect of the land specified in the notice or any part of that land,

the Secretary of State shall cause to be recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, a notice of that fact, specifying the land to which such fact relates and, in the case of any notice of the fact that part only of such amount has been so paid, stating whether the balance has been secured to the satisfaction of the Secretary of State or has been remitted by him under subsection (2) of this section, and shall send a copy of it to the planning authority.

## **82 Provisions for payment or remission of amount recoverable under section 80.**

- (1) Subject to subsection (2), any sum recovered by the Secretary of State under section 80 shall be paid to the planning authority who paid the compensation to which that sum relates.
- (2) Subject to subsection (3), in paying any such sum to the planning authority, the Secretary of State shall deduct from it the amount of any grant paid by him under Part XIII in respect of that compensation.
- (3) If the sum recovered by the Secretary of State under section 80—
  - (a) is an instalment of the total sum recoverable, or
  - (b) is recovered by reference to development of part of the land in respect of which the compensation was payable,
 any deduction to be made under subsection (2) shall be a deduction of such amount as the Secretary of State may determine to be the proper proportion of the amount referred to in that subsection.

## **83 Compensation in respect of orders under section 71 etc.**

- (1) This section shall have effect where an order is made under section 71 or paragraph 1 of Schedule 8—
  - (a) requiring a use of land to be discontinued,
  - (b) imposing conditions on the continuance of it, or
  - (c) requiring any buildings or works on land or, in the case of an order under paragraph 1 of Schedule 8, any plant or machinery to be altered or removed.

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- (2) If, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—
- (a) by depreciation of the value of an interest to which he is entitled in the land, or
  - (b) by being disturbed in his enjoyment of the land,
- that authority shall pay to that person compensation in respect of that damage.
- (3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.
- (4) Any compensation payable to a person under this section by virtue of such an order as is mentioned in subsection (1) shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

**Modifications etc. (not altering text)**

- C5 S. 83 modified (conditionally) (25.1.1999) by [S.I. 1998/2914, regs. 1, 5](#)  
S. 83 modified (25.1.1999) by [S.I. 1998/2914, regs. 1, 6](#)

**84 Special basis for compensation in respect of certain orders affecting mineral working.**

Schedule 13 shall have effect for the purpose of making special provision as respects the payment of compensation in certain circumstances where an order under section 65 modifies planning permission for development consisting of the winning and working of minerals or an order is made under paragraph 1, 3, 5 or 6 of Schedule 8.

**85 Power to make provision for determination of claims.**

- (1) Regulations shall make provision—
- (a) for requiring claims for compensation to be determined by the Secretary of State in such manner as may be prescribed;
  - (b) for regulating the practice and procedure to be followed in connection with the determination of such claims;
  - (c) for requiring the Secretary of State on determining any such claim—
    - (i) to give notice of his determination to the claimant and to any other person who has made and not withdrawn a claim for compensation in respect of the same planning decision, and
    - (ii) if his determination includes an apportionment, to give particulars of the apportionment to any other person entitled to an interest in land appearing to the Secretary of State to be an interest substantially affected by the apportionment;
  - (d) for requiring the Secretary of State to pay any compensation determined under this section to the person entitled to it.
- (2) Subject to subsection (3), provision shall be made by such regulations—
- (a) for enabling the claimant or any other person to whom notice of the Secretary of State's determination has been given in accordance with subsection (1), if

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he wishes to dispute the determination, to require it to be referred to the Lands Tribunal;

- (b) for enabling the claimant and any other person to whom particulars of an apportionment included in that determination have been so given, or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal;
- (c) for enabling the claimant and every other person to whom notice of any determination or apportionment has been given as mentioned in paragraph (a) or (b) to be heard by the Tribunal on any reference under this section of that determination or, as the case may be, of that apportionment; and
- (d) for requiring the Tribunal, on any such reference, either to confirm or to vary the Secretary of State's determination or the apportionment, as the case may be, and to notify the parties of the decision of the Tribunal.

(3) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment—

- (a) relates wholly or partly to the same matters as a previous apportionment, and
- (b) is consistent with that previous apportionment in so far as it relates to those matters,

the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

**Modifications etc. (not altering text)**

- C6** S. 85 extended (27.5.1997) by 1997 c. 9, ss. 79(1), 83(2) (with s. 45(4))  
 S. 85 modified (27.5.1997) by 1997 c. 10, ss. 14(1)(5), 31, 40(2) (with ss. 9(3), 10(5), 38(6))  
 S. 85 applied (27.5.1997) by 1997 c. 10, ss. 36, 40(2) (with ss. 9(3), 10(5), 38(6))

**86 Lands Tribunal to determine claims if not otherwise provided.**

- (1) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under this Part shall be referred to and determined by the Lands Tribunal.
- (2) In relation to the determination of any such question, the provisions of sections 9 and 11 of the <sup>M1</sup>Land Compensation (Scotland) Act 1963 shall apply, subject to any necessary modifications and to the provisions of any regulations made under this Act.

**Modifications etc. (not altering text)**

- C7** S. 86 modified (27.5.1997) by 1997 c. 10, ss. 14(1)(5), 31, 40(2) (with ss. 9(3), 10(5), 38(6))  
 S. 86 applied (27.5.1997) by 1997 c. 10, ss. 35(3), 40(2) (with ss. 9(3), 10(5), 38(6))

**Marginal Citations**

- M1** 1963 c. 51.



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### *Supplementary provisions*

#### **87 General provisions as to compensation for depreciation under this Part.**

- (1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 12 of the <sup>M2</sup>Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (2) This section applies to any compensation which, under the provisions of this Part, is payable in respect of depreciation of the value of an interest in land.
- (3) In relation to the assessment of compensation payable under section 76, the value of any interest may be a minus quantity.
- (4) Where an interest in land is subject to a heritable security—
  - (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security;
  - (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security); and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security, or, if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.

#### **Modifications etc. (not altering text)**

**C8** S. 87 modified (27.5.1997) by 1997 c. 10, ss. 14(1),(5), 31, 40(2) (with ss. 9(3), 10(5), 38(6))

#### **Marginal Citations**

**M2** 1963 c. 51.

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