



Land Compensation (Scotland) Act 1963

1963 CHAPTER 51

PART V

COMPENSATION IN CERTAIN CASES OF DEVELOPMENT AFTER ACQUISITION

31 Compensation for new planning permission granted after acquisition of land

(1) Where—

- (a) any interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers and, before the end of the period of five years beginning with the date of completion, a planning decision is made granting permission for the carrying out of additional development of any of the land; and
- (b) the principal amount of the compensation which was payable in respect of the compulsory acquisition or, in the case of a sale by agreement, the amount of the purchase price, was less than the amount specified in subsection (2) of this section,

then, subject to the following provisions of this section, the person to whom the compensation or purchase price was payable shall be entitled, on a claim duly made by him, to compensation from the acquiring authority of an amount equal to the difference.

- (2) The amount referred to in subsection (1)(b) of this section is the principal amount of the compensation which would have been payable in respect of a compulsory acquisition of the said interest by the acquiring authority, in pursuance of a notice to treat served on the relevant date, if the planning decision mentioned in subsection (1)(a) of this section had been made before that date and the permission granted thereby had been in force on that date.
- (3) No compensation shall be payable by virtue of this section in respect of a planning decision in so far as it relates—
 - (a) to land which on the relevant date consisted or formed part of an area defined in a development plan as an area of comprehensive development; or

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- (b) to land acquired by the acquiring authority, whether compulsorily or by agreement, under section 4(1)(a) of the New Towns Act 1946 (which relates to the acquisition by development corporations of land within areas designated as the sites of new towns); or
 - (c) to land acquired by the acquiring authority in consequence of the service of a notice under section 6(4) of the New Towns Act 1946 (whereby a development corporation can be required to purchase an interest in land in a new town); or
 - (d) to land acquired by a local authority, whether compulsorily or by agreement, where on the relevant date the land consisted or formed part of an area to which a town development scheme under Part II of the Housing and Town Development (Scotland) Act 1957 related.
- (4) If in accordance with the preceding provisions of this section the person referred to in subsection (1) of this section would be entitled to compensation under this section, but before the planning decision in question that person has died, or any other act or event has occurred whereby the right to compensation under this section, if vested in him immediately before that act or event, would thereupon have vested in some other person, the right to compensation under this section shall be treated as having devolved as if that right had been vested in him immediately before his death or immediately before that act or event, as the case may be, and the compensation shall be payable to the persons claiming under him accordingly.
- (5) The provisions of Parts I and III of Schedule 3 to this Act shall have effect for the purposes of this section.

32 Consideration in respect of discharge of feu-duty etc., in cases falling under s. 31

- (1) In calculating for the purposes of subsection (1)(a) of section 20 of this Act (which relates to the consideration payable for the discharge of land from feu-duty and incumbrances) the amount of the compensation payable in respect of the acquisition or sale of the *dominium utile* in any land, that amount shall be increased by an amount equal to the compensation, if any, which would be payable under the last preceding section in respect of that acquisition or sale if subsection (5) of that section were disregarded.
- (2) In calculating for the purposes of subsection 1(b) of the said section 20 the amount of the compensation which would have been so payable in accordance with that subsection, that amount shall be increased by an amount equal to the compensation, if any, which would have been payable under the last preceding section in respect of that acquisition or sale if the land had not been subject to any relevant prestation (as construed in the said section 20) and subsection (5) of the last preceding section were disregarded.
- (3) Where in respect of an acquisition or sale such as is mentioned in section 31(1)(a) of this Act any consideration has been paid in accordance with the said section 20, and a planning decision relating to the land in question is made thereafter in the circumstances mentioned in the said section 31(1)(a), the person who has received the consideration shall, on a claim duly made by him, be entitled to receive from the acquiring authority an amount (in this and the next following subsection referred to as "additional consideration ") equal to the difference between—
- (a) the amount of the consideration he has received, and
 - (b) the amount of the consideration he would have received if that planning decision had been made before the date when the consideration which he has

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received was determined and the permission thereby granted had been in force before that date,

if the last mentioned amount is greater than the amount mentioned in paragraph (a) of this subsection.

- (4) If in accordance with the last preceding subsection a person would be entitled to additional consideration in respect of an acquisition or sale, but before the planning decision in question that person has died, or any other act or event has occurred whereby the right to the additional consideration, if vested in him immediately before that act or event, would thereupon have vested in some other person, the right to the additional consideration shall be treated as having devolved as if that right had been vested in him immediately before his death or immediately before that act or event, as the case may be, and the additional consideration shall be payable to the persons claiming under him accordingly.
- (5) The provisions of Parts II and III of Schedule 3 to this Act shall have effect for the purposes of this section.

33 Provisions as to claims under ss. 31 and 32

- (1) For the purpose of facilitating the making of claims for compensation under section 31 of this Act—
- (a) the person entitled to receive the compensation or purchase price in respect of such an acquisition or sale as is mentioned in subsection (1)(a) of that section, or
 - (b) any person claiming under him as being a person who, if compensation under that section became payable, would be entitled thereto by virtue of subsection (4) of that section,
- may give to the acquiring authority an address for service under this section.
- (2) Where, at any time after a person has given to an acquiring authority an address for service under this section, a planning decision is made in the circumstances mentioned in section 31(1) of this Act, the acquiring authority shall give notice of the decision in the prescribed form to that person at that address; but the acquiring authority need not give notice of the decision to the person mentioned in paragraph (a) of the preceding subsection after an address for service has been given to them by such a person as is mentioned in paragraph (b) of that subsection, if they have reasonable grounds for believing that the former person is dead or that any other act or event has occurred as mentioned in section 31(4) of this Act.
- (3) A claim for compensation under section 31 of this Act in respect of a planning decision shall not have effect if made more than six months after the following date, that is to say.—
- (a) if the claim is made by a person who has not given the acquiring authority an address for service under this section, the date of the decision;
 - (b) if the claim is made by a person who has given the acquiring authority such an address, the date on which notice of the decision is given to him in accordance with subsection (2) of this section;

except that where there is an appeal against the planning decision the date of the decision on the appeal shall be substituted in paragraph (a) of this subsection for the date of the decision.

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The references in this subsection to an appeal against a planning decision include an appeal made by virtue of section 14(3) of the Town and Country Planning (Scotland) Act 1947.

- (4) Where a person has given to an acquiring authority an address for service under this section, and that authority, before the end of the period mentioned in section 31(1)(a) of this Act, cease to be entitled to an interest in the whole or part of the land comprised in the acquisition or sale, without remaining or becoming entitled to the *dominium utile*, or a tenancy, of that land or that part thereof, as the case may be, they shall notify the local planning authority; and thereafter it shall be the duty of the local planning authority to give notice to the acquiring authority of any planning decision of which the acquiring authority are required to give notice under subsection (2) of this section.
- (5) Notice under subsection (4) of this section of a planning decision—
 - (a) in the case of a decision made by the local planning authority, shall be given within seven days after the making of the decision, and
 - (b) in any other case, shall be given within seven days after the making of the decision has been notified to the local planning authority.
- (6) Subject to the preceding provisions of this section, the provisions of Part I or, as the case may be, Part II of this Act shall (so far as applicable) apply in relation to the assessment of compensation under section 31 of this Act as they apply in relation to the assessment of compensation in respect of the compulsory acquisition of an interest in land.
- (7) The preceding provisions of this section, except subsection (6), shall apply to claims for additional consideration such as is mentioned in section 32(3) of this Act as they apply to claims for compensation payable under section 31 of this Act, with the substitution—
 - (a) for any reference to the person entitled to receive the compensation or purchase price in respect of such an acquisition or sale as is mentioned in section 31(1)(a) of this Act, of a reference to any person who has received consideration in accordance with section 20(1) of this Act in respect of such an acquisition or sale,
 - (b) for any reference to compensation under the said section 31, of a reference to additional consideration as aforesaid, and
 - (c) for any reference to section 31(4) of this Act, of a reference to section 32(4) of this Act.

34 Extension of ss. 31, 32 and 33 to planning permission where no planning decision made

- (1) The provisions of sections 31, 32 and 33 of this Act (except subsection (2) of the said section 33) shall have effect in relation to any planning permission which, in accordance with any direction or provision given or made by or under an enactment, is deemed to be granted for any development, as if a planning decision granting that permission had been made at the following time, that is to say.—
 - (a) where the enactment contains provision as to the time when the permission is deemed to be granted, at that time;
 - (b) where the enactment contains no such provision, at the time when the direction is given.

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- (2) The provisions of sections 31, 32 and 33 of this Act (except subsection (2) of the said section 33) shall have effect in relation to any planning permission which is granted for any development by virtue of a development order, as if—
- (a) a planning decision granting that permission had been made at the time of the occurrence of the event in consequence of which (in accordance with the provisions of the order) the development is deemed to be sanctioned by a government department, or
 - (b) in a case not falling within the preceding paragraph, such a planning decision had been made at the time when the development is initiated.
- (3) Where the provisions of sections 31 and 32 of this Act have effect as applied by subsection (1) or subsection (2) of this section, then if—
- (a) before the time of the planning decision which is to be assumed in accordance with those provisions as so applied, a person who (under section 33(1) of this Act as so applied) is entitled to give an address for service under that section has given such an address to the acquiring authority, and
 - (b) the development is proposed to be carried out by the acquiring authority, or, if it is proposed to be carried out by a person other than the acquiring authority, notice of that proposal is given to the acquiring authority by the person proposing to carry out the development,
- it shall, subject to subsection (4) of this section, be the duty of the acquiring authority to give notice of that proposal in the prescribed form to the person mentioned in paragraph (a) of this subsection at the address given by him to the authority.
- (4) An acquiring authority shall not be required by virtue of subsection (3) of this section to give notice of proposed development to the person mentioned in section 33(1)(a) of this Act after an address for service has been given to them by such a person as is mentioned in paragraph (b) of the said section 33(1), if they have reasonable grounds for believing that the former person is dead or that any other act or event has occurred as mentioned in section 31(4) of this Act.
- (5) Any reference in this section to section 33(1) of this Act shall include a reference to that subsection as extended by subsection (7) thereof, and any reference in this section to section 31(4) of this Act shall accordingly include a reference to section 32(4) of this Act.

35 Extension of ss. 31, 32 and 33 to Crown development

- (1) Where—
- (a) any interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers, and before the end of the period of five years beginning with the date of completion there is initiated any additional development of any of the land which was comprised in the acquisition or sale ; and
 - (b) by reason of any such circumstances as are mentioned in subsection (2) of this section the development in question is development for which planning permission is not required ;
- the provisions of sections 31, 32 and 33 of this Act (except subsection (2) of the said section 33) shall apply as if a planning decision granting permission for that development had been made at the time when the additional development is so initiated.

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- (2) The said circumstances are either or both of the following, that is to say—
- (a) that the development is initiated by or on behalf of the Crown ;
 - (b) that there is a Crown interest in the land and the development is initiated in right of that interest.
- (3) Subject to subsection (4) of this section, sections 34(3) and 34(4) of this Act shall apply where the provisions of sections 31 and 32 of this Act have effect as applied by subsection (1) of this section as they apply where those provisions have effect as applied by section 34(1) or section 34(2) of this Act.
- (4) Where, by virtue of subsection (3) of this section, it is the duty of a government department to give notice of development initiated by or on behalf of that department, and the Minister or Board in charge of the department certifies that for reasons of national security it is necessary that the nature of the development should not be disclosed, except to the extent specified in the certificate, the department shall give notice of development, but shall not be required to give any particulars of the nature thereof except to the extent specified in the certificate.
- (5) In this section " Crown interest" means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.

36 Regulations for purposes of Part V

- (1) The Secretary of State may by statutory instrument make regulations for prescribing the form of any notice required by this Part of this Act to be given in the prescribed form.
- (2) Any statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

37 Interpretation of Part V

- (1) In this Part of this Act—
- " additional development ", in relation to an acquisition or sale of an interest in land, means any development of the land other than the following, that is to say—
- (a) where the acquiring authority are a local authority, and acquired the interest for the purposes of any of their functions, development for the purposes of the functions for which they acquired it;
 - (b) where the acquiring authority are not a local authority, development for the purposes of the project in connection with which they acquired the interest;
 - (c) development for which planning permission was in force on the relevant date; and
 - (d) development for which—
 - (i) in the case of a compulsory acquisition, it was, for the purpose of assessing compensation in respect thereof, assumed (in accordance with the provisions of section 23 or section 24 of this Act) that planning permission would be granted, or
 - (ii) in the case of a sale by agreement it would have been so assumed that planning permission would be granted if the interest

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(instead of being sold by agreement) had been compulsorily acquired by the acquiring authority in pursuance of a notice to treat served on the relevant date;

" date of completion ", in relation to an acquisition or sale of an interest in land, means the date on which the acquisition or sale is completed by the vesting of that interest in the acquiring authority ;

" local authority " means any county council, town council or district council, or any other authority within the meaning of the Local Authorities Loans (Scotland) Act 1891, and includes any joint board or joint committee of which all the constituent authorities are such local authorities as aforesaid;

" prescribed " means prescribed by regulations under this Part of this Act;

" the relevant date ", in relation to a compulsory acquisition of an interest in land, means the date of service of the notice to treat, and, in relation to a sale of such an interest by agreement, means the date of the making of the contract in pursuance of which the sale was effected.

(2) In this Part of this Act any reference to the granting of permission for the carrying out of development of any land is a reference to the granting of permission for that development—

- (a) either unconditionally or subject to conditions, and
- (b) either in respect of that land taken by itself or in respect of an area including that land, and
- (c) either on an ordinary application or on an outline application,

and any reference to an area defined in a development plan is a reference to an area defined in such a plan in the form in which (whether as originally approved or made by the Secretary of State or as subsequently amended) that plan was in force on the relevant date.