



Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

1972 CHAPTER 52

PART VII **S**

COMPENSATION FOR PLANNING DECISIONS RESTRICTING NEW DEVELOPMENT

Unexpended balance of established development value

123 Scope of Part VII. **S**

- (1) The provisions of this Part of this Act shall have effect for enabling compensation to be claimed in respect of planning decisions hereby 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. **S**

- (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 1947 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).

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part VII. (See end of Document for details)

- (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 making of the claim, or before or after the establishment thereof, shall be construed as references to the prospective right, under the 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 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. S

- (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. **S**

- (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. S

- (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 provisions for continuance of unexpended balance. S

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 consequence of compensation. S

- (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. S

- (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.

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- (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. S

- (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 15 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. S

- (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;

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“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. **S**

- (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 unexpected balance. **S**

- (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.

Status: Point in time view as at 01/02/1991.

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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 therein; 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.

Right to compensation

135 General provisions as to right to compensation. S

Subject to the provisions of this Part of this Act, a person shall be entitled to compensation under this Part of this Act in respect of a planning decision whereby planning permission for the carrying out of new development of land is refused, or is granted subject to conditions, if—

- (a) at the time of the decision he is entitled to an interest in any land to which the decision relates which has an unexpended balance of established development value; and
- (b) the value of that interest, or, in the case of an interest extending to other land, the value of that interest in so far as it subsists in such land as is referred to in the preceding paragraph, is depreciated by the decision.

136 Planning decisions not ranking for compensation. S

- (1) Compensation under this Part of this Act shall not be payable—
 - (a) in respect of the refusal of planning permission for any development which consists of or includes the making of any material change in the use of any buildings or other land; or
 - (b) in respect of any decision made on an application in pursuance of regulations under section 61 of this Act for consent to the display of advertisements.

Status: Point in time view as at 01/02/1991.

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- (2) Compensation under this Part of this Act shall not be payable in respect of the imposition, on the granting of planning permission to develop land, of any condition relating to—
- (a) the number or disposition of buildings on any land;
 - (b) the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction;
 - (c) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land;
 - (d) the use of any buildings or other land; or
 - (e) the location or design of any means of access to a [^{F1}road], or the materials to be used in the construction of any such means of access, or in respect of any conditions subject to which permission is granted for the winning an working of minerals.

In this subsection “means of access to a [^{F1}road]” does not include a service road.

- (3) Compensation under this Part of this Act shall not be payable in respect of the application to any planning permission of any of the conditions referred to in sections 38 and 39 of this Act ^{F2}
- (4) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land, if the reason or one of the reasons stated for the refusal is that development of the kind proposed would be premature by reference to either or both of the following matters, that is to say—
- (a) the stages indicated, in the structure plan or local plan for the area in which the land is situated, as the stages by which development is to be carried out;
 - (b) any existing deficiency in the provision of water supplies or sewerage services, and the period within which any such deficiency may reasonably be expected to be made good;

Provided that this subsection shall not apply if [^{F3}the reason or one of the reasons so stated is that that development would be premature by reference to the matters mentioned in paragraph (a) of this subsection and] the planning decision refusing the permission is made on an application made more than seven years after the date of a previous planning decision whereby permission to develop the same land was refused for the same reason, or for reasons which included the same reason. In this subsection, the reference to the structure plan or local plan for the area in which the land is situated is a reference to the structure plan or local plan for that area as approved by the Secretary of State, or, if the plan so approved has been amended by the Secretary of State, to that plan as so amended.

- (5) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land, if the reason or one of the reasons stated for the refusal is that the land is unsuitable for the proposed development on account of its liability to flooding or to subsidence.
- (6) For the purposes of this section, a planning decision whereby permission to develop land is granted subject to a condition prohibiting development on a specified part of that land shall be treated as a decision refusing the permission with respect to that part of the land.

Status: Point in time view as at 01/02/1991.

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Textual Amendments

- F1** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 70(4)** (with s. 128(1))
- F2** Words repealed by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 53(2), **Sch. 12 Pt. IV**
- F3** Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), **Sch. 2 para. 32**

137 No compensation if certain other development permitted. **S**

- (1) Compensation under this Part of this Act shall not be payable in respect of a planning decision whereby permission is refused for the development of land if, notwithstanding that refusal, there is available with respect to that land planning permission for development to which this section applies:

Provided that, where such permission is available with respect to part only of the land, this section shall have effect only in so far as the interest subsists in that part.

- (2) Where a claim for compensation under this Part of this Act is made in respect of an interest in any land, planning permission for development to which this section applies shall be taken for the purposes of this section to be available with respect to that land or a part thereof if, immediately before the Secretary of State gives notice of his determination in respect of that claim, there is in force with respect to that land, or that part thereof, a grant of, or an undertaking by the Secretary of State to grant, planning permission for some such development, subject to no conditions other than such as are mentioned in section 136(2) of this Act.
- (3) This section applies to any development of a residential, commercial or industrial character, being development which consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof.

138 Further exclusions from compensation. **S**

- (1) Where an interest in any land has (whether before or after the commencement of this Act) been compulsorily acquired by, or sold to, an authority possessing compulsory purchase powers (not being statutory undertakers or the National Coal Board), that authority, and any person deriving title from that authority under a conveyance made by that authority on or at any time after 1st July 1948, shall not be entitled to compensation under this Part of this Act in respect of a planning decision made after the service of the notice to treat, or after the making of the contract of sale, as the case may be, by reason that the value of that interest, or of any interest created (whether directly or indirectly) out of that interest, is depreciated by the decision.
- (2) Subsection (1) of this section shall apply to land which has at any time on or after 1st July 1948 (whether before or after the commencement of this Act) been appropriated by a local authority for a purpose for which the authority could have been authorised to acquire the land compulsorily, as it applies to land in which an interest has been acquired as mentioned in that subsection, with the substitution, for the reference to the service of the notice to treat, of a reference to the appropriation.
- (3) Where at the relevant date any land was or is operational land of statutory undertakers, or land of the National Coal Board of a class specified in regulations made under section 86 of the Act of 1947 or under section 259 of this Act, the statutory undertakers

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or the National Coal Board, as the case may be, and any person deriving title from those undertakers or that Board, shall not be entitled to compensation under this Part of this Act, in respect of a planning decision made after the relevant date, by reason that the value of any interest in that land is depreciated by that decision.

In this subsection “the relevant date”, in relation to land which was such operational land or land of the National Coal Board as is mentioned in this subsection on 1st January 1955, means that day, and, in relation to land which (whether before or after the commencement of this Act) became or becomes such operational land or land of the National Coal Board on a date subsequent to the said 1st January, means that subsequent date.

- (4) A person shall not be entitled to compensation under this Part of this Act in respect of depreciation of the value of an interest in land by a planning decision if he is entitled to compensation by virtue of section 154 of this Act in respect of depreciation of the value of that interest by that decision.
- (5) A creditor in a heritable security shall not be entitled to compensation under this Part of this Act in respect of his interest as creditor:

Provided that this subsection shall be without prejudice to the operation of any regulations made under section 151 of this Act.

Modifications etc. (not altering text)

- C1** S. 138 extended by Civil Aviation Act 1982 (c. 16), **Sch. 2 para. 4**
- C2** S. 108(2), 117–119, 121, 138, 154(3), 170–172, 175, 181, 195(6), 198(3), 199(2), 202(3), 205, 211, 212, 214, 216–230, 233(7), 242, 259, 266(6)(b), 275(2), Sch. 8, Sch. 17 para. 1–3, Sch. 18 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxv) (with **Sch. 8 para. 33**)
- C3** S. 138, 154(3) amended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 1(1)(xxiii)**
- C4** S. 138(3) amended by British Telecommunications Act 1981 (c. 38), **Sch. 3 para. 12** and Civil Aviation Act 1982 (c. 16), **Sch. 2 para. 5**

139 Grant of planning permission treated as subject to notional condition. S

- (1) The provisions of this section shall have effect where—
- (a) on an application for planning permission for the carrying out of new development of land, a planning decision is made whereby the permission is granted, whether unconditionally or subject to conditions; and
- (b) the Secretary of State certifies that he is satisfied that particular buildings or works to which the application related were included therein only because the applicant had reason to believe that permission for the other development to which the application related (in this section referred to as “the principal development”) would not have been granted except subject to a condition requiring the erection or construction of those buildings or works.
- (2) Where subsection (1) of this section applies, then for the purposes of this Part of this Act—
- (a) the application shall be deemed to have included, in place of those buildings or works, such other development of the land on which the buildings or works were to be erected or constructed as might reasonably have been expected to have been included having regard to the principal development; and

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- (b) the permission shall be deemed to have been granted for the principal development subject to a condition requiring the erection or construction of those buildings or works.

^{F4}140 **S**

Textual Amendments

F4 S. 140, 154(4), 158(5), 174, 180(2) repealed by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 53(2), [Sch. 12 Pt. IV](#)

Measure of compensation

141 General provisions as to amount of compensation. **S**

- (1) Where a person is entitled to compensation under this Part of this Act in respect of depreciation by a planning decision of the value of an interest in land, the amount of the compensation, subject to the following provisions of this section, shall be whichever is the lesser of the following amounts, that is to say—
- (a) the amount by which the value of that interest (if it is an interest subsisting only in land to which this section applies), or (if it is an interest extending to other land) the amount by which the value of the interest in so far as it subsists in land to which this section applies, is depreciated by the decision; and
 - (b) the amount of the unexpended balance of established development value, immediately before the decision, of so much of the land in which the interest subsists as is land to which this section applies.
- (2) Land to which this section applies, in relation to a planning decision, is land which—
- (a) constitutes or forms part of the decision area; and
 - (b) at the time of the decision has an unexpended balance of established development value.
- (3) If, in the case of any land to which this section applies, compensation is payable under this Part of this Act in respect of two or more interests in that land by reason of the same planning decision, and the aggregate amount of compensation payable apart from this subsection in respect of those interests would exceed the amount mentioned in paragraph (b) of subsection (1) of this section, the amount mentioned in that paragraph shall be allocated between those interests in proportion to the depreciation of the value of each of them respectively, and the amount of the compensation payable in respect of any of those interests shall be the sum so allocated to that interest.
- (4) Where the land constituting the decision area, taken as a whole, does not satisfy both of the following conditions, that is to say—
- (a) that at the time of the decision it has an unexpended balance of established development value; and
 - (b) that every interest subsisting therein, the value of which is depreciated by the decision, subsists in the whole of that land,

the provisions of subsection (5) of this section shall have effect for the purpose of assessing the compensation payable under this Part of this Act in respect of any interest subsisting in that land or any part thereof.

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- (5) Where this subsection applies in relation to an interest in land—
- (a) the depreciation of the value of the interest by the planning decision shall first be ascertained with reference to the whole of the land which constitutes or forms part of the decision area and is land in which that interest subsists;
 - (b) the land referred to in paragraph (a) of this subsection shall then be treated as divided into as many parts as may be requisite to ensure that each such part consists of land which either satisfies both of the conditions mentioned in subsection (4) of this section or is not land which, at the time of the decision, has an unexpended balance of established development value; and
 - (c) the depreciation of the value of the interest, ascertained in accordance with paragraph (a) of this subsection, shall then be apportioned between those parts, according to the nature of those parts and the effect of the planning decision in relation to each of them,
- and the amount of the compensation shall be the aggregate of the amounts which would be payable by virtue of the preceding provisions of this section if the planning decision had been made separately with respect to each of those parts.
- (6) In this section “the decision area” in relation to a planning decision means the aggregate of the land to which the decision relates.

142 Assessment of depreciation. **S**

- (1) For the purposes of this Part of this Act, the value of an interest in land, or of an interest in so far as it subsists in particular land, shall be taken to be depreciated by a planning decision (in this section referred to as “the relevant decision”) if, and to the extent to which, that value, calculated in accordance with the following provisions of this section, falls short of what that value, so calculated, would have been if the relevant decision had been a decision to the contrary effect.
- (2) Subject to the following provisions of this section, any such value shall for the purposes of this section be calculated—
- (a) as at the time of the relevant decision; but
 - (b) as affected by that decision, by any grant of planning permission made after that decision and in force immediately before the Secretary of State gives notice of his determination on the claim for compensation in respect of that decision, and by any undertaking to grant planning permission so in force; and
 - (c) on the assumption that, after the relevant decision, and apart from any such permission or undertaking as is mentioned in paragraph (b) of this subsection, planning permission would not be granted for any new development of the land in question, but would be granted for any development thereof other than new development.
- (3) If in consequence of another planning decision or of an order, being a decision or order made—
- (a) before the relevant decision; and
 - (b) either in respect of the whole or part of the land to which the relevant decision relates, or in respect of land which includes the whole or part of that land,
- compensation to which this subsection applies has become or becomes payable in respect of that other planning decision or that order, the calculation to be made under this section shall be made as if that other planning decision had been a decision to the contrary effect, or that order had not been made, as the case may be.

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- (4) Subsection (3) of this section applies—
- (a) to any compensation payable under this Part of this Act, or under Part II or Part V of the Act of 1954; and
 - (b) to so much of any compensation payable under section 153 of this Act or under the provisions of that section as applied by section 154 of this Act, and so much of any compensation to which Part IV of the Act of 1954 applied, as is or was payable in respect of loss or damage consisting of depreciation of the value of an interest in land.
- (5) In this section “a decision to the contrary effect”—
- (a) in relation to a decision refusing permission, means a decision granting the permission subject to such condition (if any) of a description falling within subsection (2) of section 136 of this Act as the authority making the decision might reasonably have been expected to impose if the permission had not been refused; and
 - (b) in relation to a decision granting the permission subject to conditions, means a decision granting the permission applied for subject only to such of those conditions (if any) as fell within subsection (2) of that section.

Claims for, and payment of, compensation

143 General provisions as to claims for compensation. S

- (1) Compensation under this Part of this Act shall not be payable unless a claim for it is duly made to the Secretary of State in accordance with the provisions of this section.
- (2) A claim for compensation under this Part of this Act shall not have effect unless it is made before the end of the period of six months beginning with the date of the planning decision to which it relates:

Provided that the Secretary of State may in any particular case (either before, on or after the date on which the time for claiming would otherwise have expired) allow an extended, or further extended, period for making such a claim.

- (3) Regulations made under this section may—
 - (a) require claims for compensation under this Part of this Act to be made in such manner as may be prescribed;
 - (b) require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in the land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed;
 - (c) require the ^{F5} planning authority to furnish the Secretary of State with such information (if any) as may be specified in, or in accordance with, the regulations, being information appearing to the Secretary of State to be relevant to the exercise of his powers under the provisions of Part III of this Act relating to the review of planning decisions where compensation is claimed.
- (4) Where a claim is received by the Secretary of State under this section—
 - (a) if it appears to the Secretary of State that the development to which the planning decision related was not new development, or that at the time of the planning decision no part of the land to which the claim relates had an

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unexpended balance of established development value, or that compensation is excluded by section 136 or 137 of this Act, the Secretary of State shall notify the claimant accordingly, stating on which of those grounds it appears to him that compensation is not payable;

- (b) unless the claim is withdrawn, the Secretary of State shall give notice of the claim to every other person (if any) appearing to him to have an interest in the land to which the planning decision related.

Textual Amendments

F5 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

144 Effect on claims of direction under s. 35. **S**

- (1) Where, in accordance with section 36(3) of this Act, the Secretary of State gives notice of a direction under section 35 of this Act to a person who has made a claim for compensation in respect of the planning decision to which that direction relates, that person, if he does not withdraw the claim, may, at any time within thirty days after the service on him of the Secretary of State's notice, give notice to the Secretary of State modifying the claim.
- (2) Subject to any modification by virtue of a notice given by a claimant under subsection (1) of this section, where the Secretary of State gives a direction under section 35 of this Act in respect of a decision of a ^{F6} planning authority, any claim made in respect of that decision shall have effect as if it had been made in respect of the decision which, by virtue of the direction, is substituted for the decision of the authority, or, as the case may be, as if it had been made in respect of the decision of the authority as modified by the direction.

Textual Amendments

F6 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

145 Determination of claims. **S**

- (1) Provision shall be made by regulations under this section—
- (a) for requiring claims for compensation under this Part of this Act to be determined by the Secretary of State in such manner as may be prescribed by the regulations;
- (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, to give notice of his determination to the claimant, and to every other person (if any) who has made, and not withdrawn, a claim for compensation under this Part of this Act in respect of the same planning decision, and, 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.
- (2) Subject to subsection (3) of this section, provision shall be made by regulations under this section—

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- (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) of this section, if he wishes to dispute the determination, 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 the determination, or, as the case may be, the apportionment, to be referred to the Lands Tribunal;
 - (b) for enabling the claimant and every other person to whom notice of any determination or apportionment has been given as mentioned in paragraph (a) of this subsection to be heard by the Tribunal on any reference under this section of that determination or apportionment, as the case may be; and
 - (c) 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 relates wholly or 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 apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

146 Payment of compensation. S

Where compensation is determined under section 145 of this Act to be payable, the Secretary of State shall pay the compensation to the person entitled thereto in accordance with the preceding provisions of this Part of this Act.

Subsequent recovery of compensation

147 Apportionment of, and recording of notice relating to, compensation. S

- (1) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, the Secretary of State determines that compensation is payable and that the amount of the compensation exceeds £20, the Secretary of State shall (if it appears to him to be practicable to do so) apportion the amount of the compensation between different parts of the land to which the claim for compensation relates, and shall include particulars of the apportionment in the notice of his determination under section 145 of this Act.
- (2) In carrying out an apportionment under subsection (1) of this section the Secretary of State shall divide the land into parts, and shall distribute the compensation between those parts, according to the way in which the different parts of the land appear to him to be differently affected by the planning decision.
- (3) On a reference to the Lands Tribunal under section 145 of this Act, unless the decision of the Tribunal will not affect the amount of the compensation or any apportionment thereof by the Secretary of State, the preceding provisions of this section shall apply with the substitution, for references to the Secretary of State, of references to the Lands Tribunal.
- (4) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, compensation has become payable of an amount exceeding £20,

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the Secretary of State shall cause notice of that fact, specifying the planning decision and the land to which the claim for compensation relates, and the amount of the compensation and any apportionment thereof under this section and referring to the provisions of sections 148 to 150 of this Act, to be recorded in the appropriate Register of Sasines, and shall send a copy of the notice to the ^{F7} planning authority.

- (5) In relation to compensation specified in a notice recorded under this section, references in this Part of this Act 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 the preceding provisions of this section, 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.

Textual Amendments

F7 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

148 Recovery of compensation on subsequent development. **S**

- (1) No person shall carry out any new development to which this section applies, on land in respect of which a notice (hereafter in this Part of this Act referred to as a “compensation notice”) is recorded under section 147 of this Act, 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 new 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; or
 - (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) of this section 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 thereto.
- (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.

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149 Amount recoverable, and provisions for payment or remission thereof. S

- (1) Subject to the following provisions of this section, the amount recoverable under section 148 of this Act 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, 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 part of any amount otherwise recoverable under section 148 of this Act.
- (3) Where, in connection with the development of any land, an amount becomes recoverable under section 148 of this Act 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) of this section, no amount shall be recoverable under section 148 of this Act 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 148 of this Act in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State under section 244 of this Act.
- (5) An amount recoverable under section 148 of this Act in respect of any compensation shall be payable to the Secretary of State, and—
 - (a) 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
 - (b) 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 new development to which section 148 of this Act 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 three 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, 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

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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 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 any 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 thereof to the ^{F8} planning authority.

Textual Amendments

F8 Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)

150 Amount recovered not to be deducted from unexpended balance. S

- (1) Where an amount has become recoverable under section 148 of this Act in respect of the compensation specified in a compensation notice, the following provisions of this section shall have effect for the purpose of determining any question as to the unexpended balance of established development value of any land at any subsequent time.
- (2) Except where, and to the extent that, payment of that amount has been remitted under section 149 of this Act, so much (if any) of that compensation as is attributable to that land shall, for the purpose mentioned in subsection (1) of this section, be treated as not having become payable, and accordingly (notwithstanding anything in section 129 of this Act) shall not be deducted from that balance.

Supplementary provisions

151 Provision for diversion of payments. S

- (1) Regulations made under this section may make provision as to the exercise of the right to claim compensation under this Part of this Act, and as to the person to whom such compensation or any part thereof is to be paid, and as to the application of any such compensation or any part thereof, in cases where, apart from this section, the right to claim the compensation is exercisable by reference to—
 - (a) a claim holding which is subject to an assignation in security, or which was so subject at a time specified in the regulations; or
 - (b) an interest in land which is subject to a ground annual or a heritable security or a trust, or which was so subject at a time specified in the regulations; or
 - (c) an interest in land which is the interest of a vassal or a lessee.
- (2) Any regulations made under this section may provide—
 - (a) for such conditions as may be prescribed to be attached to the paying by virtue of the regulations of any such compensation as aforesaid or any part thereof;
 - (b) for the application, in a case where any compensation, or any part thereof, is by virtue of the regulations to be paid to a superior or to the creditor in a ground annual, of all or any of the provisions of section 25 of the ^{M1}War Damage Act, 1943 (which relates to the rights of superiors and creditors in ground annuals as to payments for war damage) subject to such adaptations and modifications as may be prescribed; and

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- (c) for any disputes, or any disputes of such classes as may be prescribed, arising out of the regulations to be referred to the Lands Tribunal for determination by that Tribunal.

(3) In this section, “claim holding” has the same meaning as in section 126 of this Act.

Marginal Citations

M1 1943 c. 21.

152 Calculation of value. S

In calculating value for any of the purposes of this Part of this Act—

- (a) rules (2) to (4) of the rules set out in section 12 of the ^{M2}Land Compensation (Scotland) Act 1963 shall apply with the necessary modifications; and
- (b) if the interest to be valued is subject to a heritable security, it shall be treated as if it were not subject to the security:

Provided that rule (3) of those rules shall not apply for the purposes of Schedule 14 to this Act and that the value of an interest, as calculated for the purposes of section 142 of this Act, may be a minus quantity.

Marginal Citations

M2 1963 c. 51.

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part VII.