



Housing (Scotland) Act 1987

1987 CHAPTER 26

PART XV

COMPENSATION PAYMENTS

Payments for houses not meeting tolerable standard

308 Right to and amount of payments for house not meeting tolerable standard.

- (1) Where a house has been purchased at restricted value in pursuance of a compulsory purchase order made by virtue of sections 88 or 121 or paragraph 5 of Schedule 8, or in pursuance of an order under paragraph 2(1) of Schedule 2 to the Land Compensation (Scotland) Act 1963, or has been vacated in pursuance of a demolition order under section 115 or a closing order under section 114 or 119, then if—
 - (a) on the relevant date and throughout the qualifying period the house was occupied as a private dwelling, and the person so occupying the house (or, if during that period it was so occupied by two or more persons in succession, each of those persons) was a person entitled to an interest in that house or a member of the family of a person so entitled, and
 - (b) the full compulsory purchase value of the interest is greater than its restricted value,the authority concerned shall make in respect of that interest a payment of an amount equal to the difference between the full compulsory purchase value and the restricted value.
- (2) Any question as to the values referred to in subsection (1) shall be determined, in default of agreement, as if it had been a question of disputed compensation arising on such a purchase.
- (3) Where an interest in a house purchased or vacated as described in subsection (1) was acquired by any person (in this subsection referred to as the first owner) on or after 1st August 1968 and less than 2 years before the relevant date, and a payment under the said subsection (1) in respect of that interest would have fallen to be made by the authority concerned had the qualifying period been a period beginning with the

Status: Point in time view as at 28/11/2004.

Changes to legislation: Housing (Scotland) Act 1987, Cross Heading: Payments for houses not meeting tolerable standard is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

acquisition and ending with the relevant date, the authority concerned shall make to the person who was entitled to the interest at the date when the house was purchased or vacated a payment of the like amount, if—

- (a) the authority are satisfied that before acquiring the interest the first owner had made all reasonable inquiries to ascertain whether it was likely that the notice, resolution or order, by reference to which the relevant date is defined in section 311 would be served, passed or made within 2 years of the acquisition and that he had no reason to believe that it was likely; and
- (b) the person entitled to the interest at the date when the house was purchased or vacated was the first owner or a member of his family.

309 Right of parties to certain agreements secured on, or related to, houses not meeting the tolerable standard to apply to sheriff for adjustment of the agreements.

(1) This section shall apply whether or not a payment falls to be made in respect of an interest in a house under section 308 where a house is purchased at restricted value in pursuance of a compulsory purchase order made by virtue of section 88, 120 or 121, or paragraph 5 of Schedule 8, or in pursuance of an order under paragraph 2(1) of Schedule 2 to the ^{M1}Land Compensation (Scotland) Act 1963, or has been vacated in pursuance of a demolition order or a closing order, and on the date of the making of the compulsory purchase or other order the house is occupied in whole or part as a private dwelling by a person who throughout the relevant period—

- (a) holds an interest in the house, being an interest subject to a heritable security or charge, or
- (b) is a party to an agreement to purchase the house by instalments.

(2) Where the provisions of subsection (1) apply in the case of any house, any party to the heritable security, charge or agreement in question may apply to the sheriff who, after giving to other parties an opportunity of being heard, may, if he thinks fit, make an order—

- (a) in the case of a house which has been purchased compulsorily, discharging or modifying any outstanding liabilities of the person having an interest in the house, being liabilities arising by virtue of any bond or other obligation with respect to the debt secured by the heritable security or charge, or by virtue of the agreement, or
- (b) in the case of a house vacated in pursuance of a demolition order, or closing order, discharging or modifying the terms of the heritable security, charge or agreement,

and, in either case, either unconditionally or subject to such terms and conditions, including conditions with respect to the payment of money, as the sheriff may think just.

(3) In determining in any case what order, if any, to make under this section, the sheriff shall have regard to all the circumstances of the case, and in particular—

- (a) in the case of a heritable security or charge—
 - (i) to whether the heritable creditor or person entitled to the benefit of the charge acted reasonably in advancing the principal sum on the terms of the heritable security or charge; and in relation to this subparagraph he shall be deemed to have acted unreasonably if, at the time when the heritable security or charge was created, he knew or ought to have known that in all the circumstances of the case the terms

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- of the heritable security or charge did not afford sufficient security for the principal sum advanced, and
- (ii) where the heritable security or charge secures a sum which represents all or any part of the purchase price payable for the interest, to whether the purchase price was excessive, or
- (b) in the case of an agreement to purchase by instalments, to how far the amount already paid by way of principal, or, where the house has been purchased compulsorily, the aggregate of that amount and so much, if any, of the compensation in respect of compulsory purchase as falls to be paid to the seller, represents a fair price for the purchase.
- (4) In this section “the relevant period” means the period from the date of the making of the compulsory purchase or other order to—
- (a) in the case of a compulsory purchase order, the date of service of notice to treat (or deemed service of notice to treat) for purchase of the house or, if the purchase is effected without service of notice to treat, the date of completion of that purchase, and
- (b) in the case of any other order, the date of vacation of the house in pursuance of the order or of an order deemed to have been made and served in the terms of the next following subsection;
- or, if the person referred to in subsection (1) dies before the date specified in paragraph (a) or (b), to the date of death.
- (5) For the purposes of this section, a house which might have been the subject of a demolition order but which has, without the making of such an order, been vacated and demolished in pursuance of an undertaking for its demolition given to the local authority, shall be deemed to have been vacated in pursuance of a demolition order made and served at the date when the undertaking was given.

Marginal Citations

M1 1963 c. 51.

310 Provisions as to house subject to heritable security or purchased by instalments.

Section 309 (right of parties to certain agreements secured on, or related to, houses not meeting tolerable standard to apply to sheriff for adjustment of agreements) shall apply, whether or not a payment falls to be made in respect of an interest in a house under section 308, where the house not meeting the tolerable standard is purchased at restricted value in pursuance of a compulsory purchase order made by virtue of section 88, 120 or 121 or paragraph 5 of Schedule 8, or in pursuance of an order under paragraph 2(1) of Schedule 2 to the ^{M2}Land Compensation (Scotland) Act 1963, or has been vacated in pursuance of a demolition order or a closing order as it applies where a house has been purchased or vacated before 25th August 1969 as described in section 309.

Marginal Citations

M2 1963 c. 51.

Status: Point in time view as at 28/11/2004.

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311 Interpretation of sections 308 to 310.

(1) In section 308, in relation to any house purchased or vacated, “the relevant date” and “the authority concerned” mean respectively—

- (a) if the house was purchased compulsorily in pursuance of a notice served under section 121, the date when and the authority by whom the notice was served;
- (b) if the house was comprised in an area declared by a final resolution passed under Part IV to be a housing action area, the date when notice of that resolution was published and served in accordance with the provisions of Part I of Schedule 8 and the authority by whom the resolution was passed;
- (c) if the house was declared not to meet the tolerable standard by an order under paragraph 2(1) of Schedule 2 to the ^{M3}Land Compensation (Scotland) Act 1963, the date when the order was made and the acquiring authority within the meaning of that Act;
- (d) if the house was vacated in pursuance of a demolition order or closing order, the date when and the authority by whom the order was made;
- (e) if the house was compulsorily purchased under section 88(4), the date when and the authority by whom the order was served;

and “the qualifying period” means the period of 2 years ending with the relevant date, except that where that date is earlier than 31st July 1970, it means the period beginning with 1st August 1968 and ending with the relevant date.

(2) In sections 308 to 310—

“full compulsory purchase value”, in relation to any interest in a house, means the compensation which would be payable in respect of the compulsory purchase of that interest if the house were not being dealt with under Part IV or Part VI as not meeting the tolerable standard, and, in the case of a house subject to a demolition order or closing order, the making of that order were a service of the notice to treat;

“interest” in a house does not include the interest of a tenant for a year or any less period or of a statutory tenant within the meaning of the ^{M4}Rent (Scotland) Act 1984 [^{F1}or of a statutory assured tenant within the meaning of the Housing (Scotland) Act 1988];

“restricted value”, in relation to the compulsory purchase of a house, means compensation in respect thereof assessed under or by virtue of section 120 or 121 or Part III of Schedule 8.

(3) For the purposes of section 308, a house which might have been the subject of a demolition order but which has, without the making of such an order, been vacated and demolished in pursuance of an undertaking for its demolition given to the local authority having power to make the order shall be deemed to have been vacated in pursuance of a demolition order made and served by that authority at the date when the undertaking was given.

Textual Amendments

F1 Words inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(2), [Sch. 9 para. 18](#)

Marginal Citations

M3 1963 c. 51.

M4 1984 c. 58.

Status:

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