



# Lands Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 19 8 and 9 Vict

## *Purchase of lands otherwise than by agreement*

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

### **17 Notice of intention to take lands**

When the promoters of the undertaking shall require to purchase any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this or the special Act to sell and convey the same, or their rights and interests therein, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

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

- C1** S. 17 extended by [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38, SIF 74:1\)](#), s. 6(2)(a)
- C2** S. 17 applied (S.) by [Offshore Petroleum Development \(Scotland\) Act 1975 \(c. 8, SIF 86\)](#), s. 1, [Sch. 2 para. 3\(1\)\(a\)](#)
- C3** S. 17 restricted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 93, 335, [Sch. 7 Pt. II para. 5\(a\)](#)
- C4** S. 17 applied by [Housing \(Temporary Accommodation\) Act 1944 \(c.36\)](#) ss. 6(4), 7 which 1944 Act was repealed (S.) by [Housing \(Financial Provisions\) \(Scotland\) Act 1972 \(c. 46, SIF 61\)](#), ss. 70, 79(3), [Sch. 8 para. 10](#), [Sch. 11 Pt. III](#)

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**18 Service of notices on owners and occupiers of lands.**

All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found; and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, such notices, when the same are to be given to an owner of lands, shall be served on the factor or agent, if any, of such owner, and shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

**19 If parties fail to treat, or in case of dispute, question to be settled as after mentioned.**

If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner herein-after provided for settling cases of disputed compensation.

**20 Dispute, as to compensation may be referred to arbitration.**

If no agreement be come to between the promoters of the undertaking and the owners of or parties by this or the special Act enabled to sell and convey any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, it shall be lawful for the parties to refer the same to arbitration.

**21 Settlement of claim not exceeding 50*l*.**

If the compensation claimed and disputed shall not exceed fifty pounds, unless both parties agree to refer such compensation to arbitration, the same shall be settled by the sheriff.

**22 Method of proceeding for settling disputes as to compensation by sheriff.**

It shall be lawful for the sheriff, upon the application of either party with respect to any such question of disputed compensation, to issue an order for the other party to appear before such sheriff, at a time and place to be named in the order; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the order, it shall be lawful for such sheriff to hear and determine such question and for that purpose to examine such parties or any of them, and their witnesses, upon oath, without written pleadings or reducing the evidence to writing; and the expences of every such inquiry, excepting the remunerative expences of the sheriff, shall be in the discretion of such sheriff, and he shall settle the amount thereof; and the determination of the sheriff upon such question shall be final and conclusive, and not subject to review or appeal in any form or court whatever.

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**23 Where compensation claimed exceeds 50*l.*, it may be settled by arbitration if claimant so desire.**

If the compensation claimed or offered in any case shall exceed fifty pounds, and if the party claiming such compensation desire to have the same settled by arbitration, and signify such desire to the promoters of the undertaking before they have presented their petition to the sheriff to summon a jury in respect of such lands, under the provisions herein-after contained, by a notice in writing, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein-after provided.

**24 Appointment of arbiters when questions are to be determined by arbitration.**

When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbiter, each party, on the request of the other party, shall nominate and appoint an arbiter, to whom such dispute shall be referred; and every appointment of an arbiter shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a company or corporation under the hand of the proper officer or person authorized by such company or corporation; and such appointment shall be delivered to the arbiters, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbiter, such other party fail to appoint an arbiter, then upon such failure the party making the request, and having himself appointed an arbiter, may appoint such arbiter to act on behalf of both parties, and such arbiter may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbiter shall be final.

**25 Vacancy of arbiter to be supplied.**

If before the matters so referred shall be determined any arbiter appointed by either party die, or become incapable, the party by whom such arbiter was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbiter may proceed ex parte; and every arbiter so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbiter at the time of such his death or disability as aforesaid.

**26 Appointment of oversman.**

Where more than one arbiter shall have been appointed such arbiters shall, before they enter upon the matters referred to them, nominate and appoint by writing under their

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hands an oversman to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such oversman shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another oversman in his place; and the decision of every such oversman on the matters on which the arbiters shall differ shall be final.

**27 Lord ordinary empowered to appoint an oversman on neglect of the arbiters.**

If in either of the cases aforesaid the said arbiters shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an oversman, it shall be lawful for the lord ordinary, on the application of either party to such arbitration, to appoint an oversman; and the decision of such oversman on the matters on which the arbiters shall differ, or which shall be referred to him under this or the special Act, shall be final.

**28 In case of death of single arbiter, the matter to begin de novo.**

If when a single arbiter shall have been appointed such arbiter shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbiter had not been appointed.

**29 If either arbiter refuse to act, the other to proceed ex parte.**

If when more than one arbiter shall have been appointed either of the arbiters refuse or for seven days neglect to act the other arbiter may proceed ex parte, and the decision of such arbiter shall be as effectual as if he had been the single arbiter appointed by both parties.

**30 If arbiters fail to make their award within 21 days the matter to go to the umpire.**

If where more than one arbiter shall have been appointed, and neither of them shall refuse or neglect to act as aforesaid, such arbiters shall fail to make their award within twenty-one days after the day on which the last of such arbiters shall have been appointed, or within such extended time as shall have been appointed for that purpose by both such arbiters under this Act, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

**31 Power of arbiters to call for books, &c.**

The said arbiters or their oversman may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose, and take all evidence competent according to the law of Scotland.

**32 Costs of arbitration how to be borne.**

All the expences of any such arbitration, and incident thereto, to be settled by the arbiters or oversman, as the case may be, shall be borne by the promoters of the undertaking, unless the arbiters or oversman shall award the same sum as or a less

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sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own expences incident to the arbitration; and in all cases the expences of the arbiters or oversman, as the case may be, and or recording the decret arbitral or reward in the books of the council and session, shall be borne by the promoters of the undertaking.

**33 Award to be delivered to the promoters of the undertaking**

The arbiters shall make their decret arbitral or award in writing, and shall cause the same to be recorded in the books of council and session, or shall deliver the same to the promoters of the undertaking, to be by them so recorded, and the said promoters shall, on demand, at their own expence, furnish an extract thereof from the said books to the other party to the arbitration; and extracts of decreets arbitral or awards shall bear faith in all courts and cases the same as the original writings, unless the originals be improven.

**34 Award not to be set aside for error in form.**

No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.

**35 Settlement of arbitration &c.**

If the party claiming compensation shall not, as herein before provided, signify his desire to have the question of such compensation settled by arbitration, or if, when the matter shall have been referred to arbitration, the arbiters or their umpire shall for three months have failed to make their or his award, the question of such compensation shall be settled by the verdict of a jury, as herein-after provided.

**36 Party claiming compensation may require a jury to be summoned.**

But if any party entitled to any compensation in respect of any such lands or interest therein, exceeding fifty pounds as aforesaid, shall desire to have the amount of such compensation determined by a jury, it shall in like manner be lawful for him to given notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed by him; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, they shall, unless the question shall previously have been agreed to be settled by arbitration, present their petition to the sheriff to summon a jury for settling the same in the manner herein-after provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any competent court.

**37 Promoters of the undertaking to give notice before summoning a jury.**

Before the promoters of the undertaking shall present their petition for summoning a jury for settling any case of disputed compensation they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned; and

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in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

**38 Petition for summoning jury to be addressed to the sheriff.**

In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall present their petition to the sheriff to summon a jury for that purpose; and such petition shall, if the promoters be a company or corporation, be signed by the secretary or proper officer or person authorized by such company or corporation, and if they be not a company or corporation such petition shall be signed by the promoters, or any two of them, if more than one.

**39 Jurymen to be summoned.**

Upon the receipt of such petition as aforesaid the sheriff shall summon a jury of twenty-five indifferent persons, duly qualified to act as common jurymen, for the trial of civil causes in the Court of Session, to meet at a time and place to be named by the sheriff in the warrant for that purpose.

**40 Notice of inquiry.**

Not less than ten days notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party, or to his known agent.

**41 Jury to be impanelled.**

Out of the jurors appearing upon such summons a jury of thirteen persons shall be drawn by ballot; and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges for cause against any of the jurymen; and each party may have three peremptory challenges.

**42 Sheriff to preside; jury may view**

The sheriff shall preside on the said inquiry; and the party claiming compensation shall be deemed the pursuer, and the proceedings at such trials shall be conducted in like manner as in criminal trials; and, if either party so request, the sheriff shall order the jury, or any seven or more of them, to view the place or matter in controversy.

**43 Penalty on jury for default.**

If any person summoned and returned upon any jury under this or the special Act, . . . <sup>F1</sup> do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds; and every such penalty shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the

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same regulations, pains, and penalties as if such jury had been returned for the trial of a civil cause in the Court of Session.

#### **Textual Amendments**

**F1** Words repealed by [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), [Sch. 4](#)

#### **44 Witnesses to be summoned.**

If either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question.

#### **45 Penalty on witnesses making default.**

If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expences shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds, and, in addition to the penalty hereby imposed, shall be subject to the same regulations, pains, and penalties as if such witness, having been duly summoned, but failed to appear, or having appeared had refused to be examined, in any other cause.

#### **46 If the party make default the inquiry not to proceed.**

If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a valuator appointed by the sheriff in manner herein-after provided.

#### **47 Jury to be sworn.**

Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

#### **48 Sums to be paid for purchase of lands and for damage, to be assessed separately.**

Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict, by a majority of their number, separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained such party is entitled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated

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therewith: Provided always, that if the parties agree to dispense with such separation in the verdict may be returned for one sum.

#### 49 Verdict and judgment to be recorded.

The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury; and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the sheriff court among the records of that court; and such verdicts and judgments shall be deemed records, and the same or official copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence.

#### 50 Expences of the inquiry how to be borne.

On every such inquiry before a jury all the expences of such inquiry shall be borne by the promoters of the undertaking unless the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or unless the owner of or party interested in the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, in either of which cases one half of the expences of the promoters of the undertaking shall be defrayed by the owner of or party interested in the lands.

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

C5 S. 50 extended by [Juries Act 1949 \(c. 27\), s. 27](#)

#### 51 Particulars of the expences.

The expences of any such inquiry shall, in case of difference, be settled by the sheriff on the application of either party; and such expences shall include all reasonable charges and expences incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and agents, recording the verdict and judgment thereon, and otherwise incident to such inquiry, including . . . <sup>F2</sup> to the sheriff . . . <sup>F2</sup> his reasonable travelling expences . . . <sup>F2</sup> Provided always, that . . . <sup>F2</sup> in all cases of inquiry as aforesaid before the sheriff, with or without a jury, the . . . <sup>F2</sup> expences of the sheriff shall be borne by the promoters of the undertaking.

#### Textual Amendments

F2 Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

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

C6 S. 51 extended by [Juries Act 1949 \(c. 27\), s. 27](#)



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## 52 Payment of expences.

If any such costs shall be payable by the promoters of the undertaking and if within seven days after demand such expences be not paid to the party entitled to receive the same they shall be recoverable by poinding and sale, and on application to the sheriff he shall issue his warrant accordingly; and if any such expences shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner or party interested, or determined by the valuation of a valuator under the provision herein-after contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such expences shall exceed the amount of the money so awarded or determined the excess shall be recoverable by poinding and sale, and on application to the sheriff he shall issue his warrant accordingly.

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55.

### Textual Amendments

F3 Ss. 53—55 repealed by [Juries Act 1949 \(c. 27\)](#), [Sch. 3](#)

## 56 Compensation to absent parties to be determined by a valuator, appointed by the sheriff.

The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such valuator as the sheriff shall nominate for that purpose, as hereinafter mentioned.

### Modifications etc. (not altering text)

- C7 S.56 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, [Sch. 24 para. 31](#)
- C8 S. 56 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), [Sch. 4 paras. 4, 5](#)
- C9 S. 56 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), [Sch. 8 para. 6\(a\)](#)(with s. 45(3), [Sch. 12 para. 3](#))
- C10 S. 56 excluded (27.5.1997) by [1997 c. 8](#), ss. 195, 278(2), [Sch. 15 Pt. II para. 31](#)

## 57 Sheriff to nominate a valuator.

Upon application by the promoters of the undertaking to the sheriff, and upon such proof as shall be satisfactory to him that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such sheriff shall, by writing under his hand, nominate a valuator for determining such compensation as aforesaid, and such valuator shall

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determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof.

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

- C11** S. 57 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, **Sch. 24 para. 31**
- C12** S. 57 amended by [Lands Tribunal Act 1949 \(c. 42\)](#), s. **1(6)(8)(a)**; modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C13** S. 57 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8, para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C14** S. 57 excluded (27.5.1997) by [1997 c. 8, ss. 195, 278\(2\)](#), **Sch. 15 Pt. II para. 31**

**58 Declaration to be made by the valuator.**

Before such valuator shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such sheriff, make and subscribe the oath following at the foot of such nomination; (that is to say),

“I A.B. do solemnly swear, that I will faithfully, impartially and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. So help me GOD. A.B.”

“Sworn and subscribed in the presence of”

And if any valuator shall corruptly make such oath, or having made such oath shall wilfully act contrary thereto, he shall be guilty of and incur the pains of perjury.

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

- C15** S. 58 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, **Sch. 24 para. 31**
- C16** S. 58 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C17** S. 58 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8 para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C18** S. 58 excluded (27.5.1997) by [1997 c. 8, ss. 195, 278\(2\)](#), **Sch. 15 Pt. II para. 31**

**59 Valuation, &c. to be produced to the owner of the lands, &c.**

The said nomination and declaration shall be annexed to the valuation to be made by such valuator, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

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

- C19** S. 59 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, **Sch. 24 para. 31**
- C20** S. 59 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5

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- C21** S. 59 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8, para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C22** S. 59 excluded (27.5.1997) by [1997 c. 8, ss. 195, 278\(2\)](#), **Sch. 15 Pt. II para. 31**

## 60 Promoters to bear expense.

All the expences of and incident to every such valuation shall be borne by the promoters of the undertaking.

### Modifications etc. (not altering text)

- C23** S. 60 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C24** S.60 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, **Sch. 24 para. 31**
- C25** S. 60 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8 para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C26** S. 60 excluded (27.5.1997) by [1997 c. 8, ss. 195, 278\(2\)](#), **Sch. 15 Pt. II para. 31**

## 61 Purchase money and compensation how to be estimated.

In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid regard shall be had not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any other Act incorporated therewith.

### Modifications etc. (not altering text)

- C27** S. 61 extended by [Gas Act 1965 \(c. 36\)](#), Sch. 4 paras. 5(4), 9; applied by [New Towns \(Scotland\) Act 1968 \(c. 16\)](#), s. 19(3)
- C28** S. 61 applied by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 117(3)
- C29** S. 61 modified by [Gas Act 1972 \(c.60, SIF 44:2\)](#), s. 6(5), **Sch. 2 para. 26** and by [Land Compensation \(Scotland\) Act 1973 \(c.56, SIF 28:2\)](#) s. 63(2)
- C30** S. 61 applied (27.5.1997) by [1997 c. 8, ss. 196\(4\)\(a\), 278\(2\)](#) (with s. 201(2))

## 62 Compensation may be apportioned among different parties.

On estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, the sheriff, arbiters, valuator, or jury, as the case may be, shall apportion the said compensation among the parties who may be interested in the said lands as joint owners or lessees, or as holding some security or burden or claim thereon or interest therein, and who shall have been parties to the said trial or arbitration or valuation: Provided always, that nothing herein contained shall prevent any person having a separate interest from having the same separately tried.

### Modifications etc. (not altering text)

- C31** S. 62 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5

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

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- C32** S. 62 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8 para. 6(a)**(with s. 45(3), Sch. 12 para. 3)

**63 Where compensation to absent party has been determined by a valuator the party may have the same submitted to arbitration.**

When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a valuator, and deposited in the Bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, and if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Session for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted to and settled by arbitration in the manner herein-before provided for settling disputes by arbitration.

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

- C33** S. 63 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C34** S.63 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, **Sch. 24 para. 31**
- C35** s. 63 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8 para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C36** S. 63 excluded (27.5.1997) by [1997 c. 8, ss. 195, 278\(2\)](#), **Sch. 15 Pt. II para. 31**

**64 Question to be submitted to the arbiters.**

The question to be submitted to the arbiters in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

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

- C37** S. 64 modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), s. 14(3), Sch. 4 paras. 4, 5
- C38** S.64 excluded by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), s. 278, **Sch. 24 para. 31**
- C39** S. 64 modified (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 57(4), 89(2), **Sch. 8 para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C40** S. 64 excluded (27.5.1997) by [1997 c. 8, ss. 195, 278\(2\)](#), **Sch. 15 Pt. II para. 31**

**65 If further sum awarded, promoters to pay or deposit same within 14 days.**

If the arbiters shall decide that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after making of such decreet arbitral or award, or in default thereof the same may be enforced by diligence, or recovered, with expences, by action in any competent court.

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

- C41 S. 65 modified by Agriculture (Miscellaneous Provisions) Act 1968 (c. 34), s. 14(3), Sch. 4 paras. 4, 5
- C42 S.65 excluded by Town and Country Planning (Scotland) Act 1972 (c. 52, SIF 123:2), s. 278, **Sch. 24 para. 31**
- C43 S. 65 modified (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 57(4), 89(2), **Sch. 8 para. 6(a)**(with s. 45(3), Sch. 12 para. 3)
- C44 S. 65 excluded (27.5.1997) by 1997 c. 8, ss. 195, 278(2), **Sch. 15 Pt. II para. 31**

**66 Expences of the arbitration.**

If the arbiters shall determine that the sum so deposited was sufficient, the expences of and incident to such arbitration, to be determined by the arbiters, shall be in the discretion of the arbiters; but if the arbiters shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the expences of and incident to the arbitration shall be borne by the promoters of the undertaking.

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

- C45 S.66 excluded by Town and Country Planning (Scotland) Act 1972 (c. 52, SIF 123:2), s. 278, **Sch. 24 para. 31**
- C46 S. 66 excluded (27.5.1997) by 1997 c. 8, ss. 195, 278(2), **Sch. 15 Pt. II para. 31**

**Status:**

Point in time view as at 25/09/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Lands Clauses Consolidation (Scotland) Act 1845, Cross Heading: Purchase of lands otherwise than by agreement.