1967 No. 496

LAND COMMISSION

BETTERMENT LEVY

The Case F General Regulations 1967

Made - - - - - - -	3*rd March* 1967
Laid before the House of Commons	6*th March* 1967
Coming into Operation - - -	6*th April* 1967

The Minister of Housing and Local Government, being for the purposes of these regulations the appropriate Minister in relation to England and Wales, in exercise of the powers conferred on him by sections 35, 36(6), 42 and 98 of the Land Commission Act 1967(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

PRELIMINARY

Citation, extent and commencement

1. These regulations, which may be cited as the Case F General Regulations 1967, apply to England and Wales and shall come into operation on 6th April 1967, being the first appointed day under the Act (b).

Interpretation

2.—(1) In these regulations the following expressions have the meanings hereby assigned to them respectively, that is to say:—

" the Act " means the Land Commission Act 1967;

" the Commission " means the Land Commission;

" disposition " has the meaning assigned to it by section 99(1) of the Act, and section 85(4) of the Act shall apply as it applies for the purpose of Part III of the Act; " disposition falling within the antecedent period " has the meaning assigned to it by paragraph 2(2) of Schedule 5 to the Act; and " the last relevant disposition " has the meaning assigned to it by paragraph 6 of that Schedule;

" the Notification Regulations " mean the Betterment Levy (Notification) Regulations 1967(c);

(a) 1967 c. 1.
(b) *See* S.I. 1967/146 (1967 I, p. 241).
(c) S.I. 1967/309 (1967 I, p. 1062).

" the operative date " means the date on which these regulations are approved by resolution of the Commons House of Parliament or the first appointed day (whichever is the later);

" related tenancy " has the meaning assigned to it by paragraph 22(2) of Schedule 5 to the Act;

" the Tenancies and Reversions Regulations " mean the Betterment Levy (Tenancies and Reversions) Regulations 1967(a);

(2) Any other expression used in these regulations of which there is a definition in the Act, or in respect of which there is in the Act any provision relating to the construction thereof or of any reference thereto, has the meaning assigned to it by the Act, whether for the purpose of the Act as a whole or for the purpose only of Part III thereof or of any Schedule to the Act or any part of any such Schedule.

(3) Except in so far as the context otherwise requires, any reference in these regulations to a section bearing a number is a reference to the section bearing that number in the Act and any such reference to a regulation bearing a number is a reference to the regulation bearing that number in these regulations.

(4) Except in so far as the context otherwise requires, any reference in these regulations to any provision of the Act shall be construed as a reference to that provision as modified by these regulations or any other regulations made under the Act.

(5) The Interpretation Act 1889(b) applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Acts or Events Designated and Charge of Levy in Case F

Category 1. *Renewals, extensions and variations of tenancies*

3.—(1) A disposition to which this regulation applies made on or after the operative date shall constitute an act or event designated for the purposes of Case F, as mentioned in section 27(2), if that disposition is notified to the Commission in accordance with the provisions of these regulations.

(2) This regulation applies to any disposition which, not being a disposition to which section 29, section 30 or section 34 applies, is made for valuable consideration and fulfils either or both of the following conditions, that is to say—

(*a*) that it renews or extends a tenancy;

(*b*) that it varies the terms and conditions of a tenancy by releasing or modifying a covenant or agreement whereby the development of any land comprised in the tenancy is restricted.

(3) In the following provisions of this regulation and in Schedule 1 to these regulations the tenancy which is renewed or extended or (as the case may be) the terms and conditions whereof are varied is referred to as " the old tenancy ".

(4) The amount on which levy is to be charged in the case of a disposition to which this regulation applies (in the following provisions of this regulation and in Schedule 1 to these regulations referred to as " the Case F disposition ") shall be an amount equal to the amount which, for the purpose of assessing levy in Case B, would be taken to be the net development value realised by the disposition if—

(a) S.I. 1967/298 (1967 I, p. 1018). (b) 1889 c. 63.

(*a*) the old tenancy had been surrendered by the grantee to the grantor and had merged before the relevant date in the interest which the grantor then had in the relevant land;

(*b*) the Case F disposition constituted a grant by the grantor to the grantee at the relevant date of a tenancy (in this regulation referred to as " the new tenancy ") of the relevant land on the terms and conditions of the old tenancy as renewed, extended or varied by the Case F disposition;

(*c*) the amount of the consideration for the disposition had been adjusted by adding to it, in a case to which paragraph 2 of Schedule 1 to these regulations applies, the amount referred to as the additional amount in the said paragraph;

(*d*) the base value realised by the disposition had been adjusted by adding to it the sum described in paragraph 7 of that Schedule; and

(*e*) for the purpose of Schedule 5 to the Act paragraph 9 of Schedule 1 to these regulations had effect.

(5) In these regulations and in the provisions of the Act which are applied (whether expressly or impliedly) by these regulations, for the purpose of assessing levy in respect of a disposition to which this regulation applies,—

" the grantor " means the person by whom the Case F disposition is made and " the grantee " means the tenant under the tenancy which is the subject of that disposition;

" the relevant land " means the land comprised in that tenancy;

" the relevant date " means the date of the Case F disposition; and

" the chargeable interest " means the interest which the grantor would have had in the relevant land immediately before the relevant date if the old tenancy had then been surrendered.

Category 2. Rights in the nature of easements

4.—(1) A disposition to which this regulation applies made on or after the operative date shall constitute an act or event designated for the purposes of Case F, as mentioned in section 27(2) of the Act, if that disposition is notified to the Commission in accordance with the provisions of these regulations.

(2) This regulation applies to any disposition which (not being a disposition to which section 29, section 30, section 34 or regulation 3 applies) is made for valuable consideration and is a disposition granting to a Government department, statutory undertakers or any other body a right to place, construct or maintain a main, pipe, cable, wire or other apparatus in, on, over or under land; and for the purposes of this regulation any instrument whereby such a right is compulsorily acquired by a Government department, statutory undertakers, or any other body, shall be treated as a disposition granting that right for valuable consideration.

(3) For the purpose of determining the amount on which levy is to be charged in respect of such a disposition, section 34 (Levy in Case E) shall apply as it applies in relation to a disposition granting an easement subject to the following provisions of this regulation.

(4) In these regulations and in the provisions of the Act which are applied (whether expressly or impliedly) by these regulations, for the purpose of assessing levy in respect of a disposition to which this regulation applies,—

" the amount of the consideration for the disposition " means the consideration or compensation paid in respect of the grant of the right;

" the grantor " means the person from whom the right is acquired whether compulsorily or by agreement, and " the grantee " means the Government department, statutory undertakers or other body by whom the right is acquired;

" the relevant date " means the date by reference to which the compensation or consideration for the disposition falls to be assessed;

" the relevant land " means the land over which the right is granted together with so much of any associated land as is incidentally affected by the disposition, and for this purpose section 34(6) shall apply as it applies in relation to the grant of an easement as if the references therein to the easement were references to the right; and

" the chargeable interest " and " the relevant interest " shall each mean the interest in the relevant land which the grantor has at the date of the disposition.

Category 3. Statutory rights to compensation for depreciation

5.—(1) The accrual on or after the operative date of a right to compensation for depreciation of the value of an interest in land under any enactment specified in Schedule 2 to these regulations shall, in so far as it is a right to compensation for such depreciation, constitute an act or event designated for the purposes of Case F, as mentioned in section 27(2), if the accrual of that right is notified to the Commission in accordance with the provisions of these regulations.

(2) Paragraph (1) of this Regulation shall not apply to any compensation which is payable as part of the purchase price or consideration given for any disposition to which Regulation 4 applies.

(3) For the purpose of determining the amount on which levy is to be charged in respect of such a right to compensation, section 33 (Levy in Case D) shall apply as it applies in relation to any right to compensation to which that section applies subject to the following provisions of this regulation.

(4) In these regulations and in the provisions of this Act which are applied (whether expressly or impliedly) by these regulations, for the purpose of assessing levy in respect of a right to compensation to which this regulation applies,—

" the amount of the compensation " shall mean the compensation payable under the enactment specified in Schedule 2 to these regulations under which the right to compensation accrues in so far as it is compensation in respect of the depreciation of the value of the relevant interest;

" the grantor " means the person to whom the right to compensation accrues and " the grantee " means the person by whom the compensation is payable;

" the relevant date " means the date by reference to which, in accordance with the enactments under which the right to compensation accrues, the compensation falls to be assessed;

" the relevant interest " and " the chargeable interest " each mean the interest in respect of which the right to compensation accrues;

" the relevant land " means the land in which the relevant interest subsists; and

" the relevant order or decision " means the order, decision or other action in consequence of which the right to compensation accrues.

Liability for levy

6. The person liable to pay the levy in respect of a disposition to which regulation 3 or regulation 4 applies or a right to compensation to which regulation 5 applies shall be the grantor.

Further Provisions

Notification

7.—(1) The person by whom a notice may be served in the case of an act or event to which regulation 3, 4 or 5 applies shall be the grantee.

(2) Any notice to which this regulation applies shall be served within thirty days after the date of the disposition or the date on which the compensation is paid, whichever is the later, or such extended period in either case as the Commission may in any particular case allow.

(3) The provisions of paragraphs (2) to (4) of regulation 9 of the Notification Regulations shall apply as they apply to any notice authorised to be given by those Regulations and

(*a*) in the case of a disposition to which regulation 3 applies the notice shall contain (*mutatis mutandis*) such particulars of the disposition as are referred to in Part III of Schedule 1 to the Notification Regulations;

(*b*) in the case of a disposition to which regulation 4 applies the notice shall contain (*mutatis mutandis*) particulars of the matters referred to in Part II of Schedule 3 to the Notification Regulations;

(*c*) in the case of the accrual of a right to compensation to which regulation 5 applies the notice shall contain (*mutatis mutandis*) particulars of the matters referred to in Part I of Schedule 3 to the Notification Regulations.

Application of Schedule 12 to the Act

8. For the purpose of paragraph 1 of Schedule 12 to the Act (Death, Bankruptcy, Winding-up and Floating Charges) the expression "person prospectively liable for levy" means, in relation to a chargeable act or event falling within Case F, the grantor.

Given under the official seal of the Minister of Housing and Local Government on 3rd March 1967.

(L.S.) *Anthony Greenwood,*
Minister of Housing and Local Government.

SCHEDULE 1

Calculations for the purpose of assessing Levy in Dispositions of Category 1

Addition to the amount of the consideration for the disposition

1. For the purpose of assessing levy in respect of a Case F disposition the provisions of paragraphs 2 to 6 of this Schedule shall apply in relation to the ascertainment of the amount which in the circumstances described in paragraph (4) of regulation 3 would be required to be added to the amount of the consideration for the disposition.

2. Where, if the old tenancy had been a related tenancy, the last disposition thereof before the Case F disposition (in this Schedule referred to as "the last disposition") would have been the last relevant disposition thereof, the amount (in this Schedule referred to as "the additional amount") which shall be added to the amount of the consideration for the disposition shall be determined in accordance with whichever of paragraphs 3 to 6 of this Schedule is applicable to the case, and for this purpose a disposition granting a tenancy shall be treated as a disposition of that tenancy.

3. Where the last disposition was a disposition assigning the old tenancy, being a disposition falling within the antecedent period, the additional amount shall be the amount of the consideration given for that disposition.

4. Where the last disposition was a disposition assigning the old tenancy, being a disposition of a tenancy which was made on or after the first appointed day and constituted a chargeable act or event which was or is notified in accordance with the provisions as to notification contained in Part III of the Act, there shall be ascertained—

(*a*) the amount of the consideration given for that disposition, and

(*b*) the value (in this sub-paragraph referred to as " the previous current use value ") which, for the purpose of assessing levy in respect of that disposition, was or is taken to be the current use value of that tenancy,

and the additional amount shall be the amount (if any) by which the consideration given for that disposition exceeded the previous current use value.

5. Where the last disposition was the disposition by which the old tenancy was granted, being a disposition falling within the antecedent period, the additional amount shall be the amount which would have been taken to be the amount of the consideration for the disposition on an assessment of levy made in respect of that disposition if the first appointed day had been before the date of that disposition, and for the purpose of ascertaining that amount paragraphs (5) and (6) of regulation 7 of the Tenancies and Reversions Regulations shall apply as they apply to a tenancy which is a chargeable interest.

6. Where the last disposition was the disposition by which the old tenancy was granted and was made on or after the first appointed day and constituted a chargeable act or event which was or is notified in accordance with the provisions as to notification contained in Part III of the Act, there shall be ascertained—

(*a*) the amount which for the purpose of assessing levy on the grant of the tenancy would be taken to be the amount of the consideration for the disposition, and for that purpose the said paragraphs (5) and (6) shall apply as they apply to a tenancy which is a chargeable interest, and

(*b*) the amount which would have been taken to be the current use value of the old tenancy if a disposition to which section 29(1) applies had been made immediately after the disposition granting that tenancy and that tenancy had been the relevant interest,

and the additional amount shall be the amount (if any) by which the amount described in sub-paragraph (*a*) above exceeds the amount described in sub-paragraph (*b*) above.

Addition to base value realised by the disposition

7. For the purpose of assessing levy in respect of a Case F disposition the sum which in the circumstances described in paragraph (4) of regulation 3 would be required to be added to the base value realised by the disposition is the aggregate of the following amounts; that is to say:—

(*a*) where an amount is treated as being added to the amount of the consideration for the disposition under regulation 3(4)(*c*), that amount, and

(*b*) an amount determined in accordance with paragraph 8 below.

8.—(1) There shall be ascertained what would have been the current use value of the reversion immediately expectant on the determination of the old tenancy under paragraph 3 of Schedule 4 to the Act if—

(*a*) a disposition to which section 29(1) applies had been made at the relevant date and no surrender of the old tenancy had taken place,

(*b*) that reversion had been the relevant interest, and

(*c*) it had to be assumed that the old tenancy would terminate by effluxion of time and in no other manner.

(2) There shall then be ascertained what would have been the current use value of the chargeable interest under paragraph 3 of Schedule 4 to the Act if—

(*a*) a disposition to which section 29(1) applies had been made at the relevant date, and

(*b*) the chargeable interest had been the relevant interest.

(3) There shall then be calculated the amount (if any) by which the amount ascertained under sub-paragraph (1) above exceeds the amount ascertained under sub-paragraph (2) above and the amount of the excess (if any) shall be the amount determined for the purpose of paragraph 7(*b*) above.

Modification of Schedule 5 base value

9. For the purpose of assessing levy in respect of a disposition to which regulation 3 applies, where the old tenancy was granted by a disposition made on or after the first appointed day and constituted a chargeable act or event which was or is notified in accordance with the provisions as to notification contained in Part III of the Act, and for the purpose of assessing levy on the grant of that tenancy paragraph 16 of Schedule 5 had effect,—

(*a*) that disposition shall be treated as a previous disposition of the chargeable interest; and

(*b*) the amount of the consideration given for that disposition shall be ascertained in accordance with paragraphs (3) to (5) of regulation 8 of the Tenancies and Reversions Regulations in like manner as if the chargeable interest were a reversion to which that regulation applies.

SCHEDULE 2

ENACTMENTS UNDER WHICH RIGHTS TO COMPENSATION FOR DEPRECIATION OF THE VALUE OF AN INTEREST IN LAND ACCRUE

Lands Clauses Consolidation Act 1845(a)	section 68
Waterworks Clauses Act 1847(b)	section 6
Electric Lighting Act 1882(c)	section 17
Public Health Act 1936(d)	section 278
Water Act 1945(e)	section 18(3)
" " "	Schedule 3 section 9(2)
" " "	Schedule 3 section 19(3)
" " "	Schedule 3 section 19(3) as applied by section 20
" " "	Schedule 3 section 92

(a) 1845 c. 18.
(b) 1847 c. 17.
(c) 1882 c. 56.
(d) 1936 c. 49.
(e) 1945 c. 42.

Water Resources Act 1963(a)	section 66
" " " "	section 67 and Schedule 8 paragraph 7
" " " "	section 46
" " " "	section 46 as extended by section 47(6)
" " " "	section 46 as extended by section 48
Gas Act 1965(b)	section 7
" " "	section 12
" " "	section 13
Compulsory Purchase Act 1965(c)	section 10

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations deal with the charge of betterment levy under Part III of the Land Commission Act 1967 in Case F.

The main occasions upon which development value is realised are set out in Cases A to E in sections 29 to 34 of the Act; and Part III of the Act with its Schedules, and the regulations made under the Act, define how betterment levy is to be assessed in relation to chargeable acts or events falling within those Cases. There are however a number of occurrences which, while basically similar to chargeable acts or events falling within Cases A to E, differ sufficiently in detail to require some adaptation of the main provisions in order to meet their special circumstances. These occurrences are all gathered together under the heading of Case F. These Regulations specify what are to be chargeable acts or events in Case F and, together with the Case F Supplemental Regulations 1967(d), make the necessary adaptations for the purpose of assessing betterment levy.

There are three types of occurrence affecting land in England and Wales which can be designated for the purpose of Case F. They are defined in subsections (2), (3) and (5) of section 35 of the Act and are described in Regulations 3, 4 and 5. The first is any transaction, resulting in an alteration in the relationship of the landlord and tenant under a tenancy, which takes the form of a renewal or extension of the tenancy, or a variation of its terms and conditions so as to free the tenant from a restriction against development. In practice it is likely to be a combination of the two: in other words, restrictions in a lease may be altered to allow more development, and this could be coupled with an extension of the term of the tenancy. The second type of occurrence concerns what is popularly known as a wayleave. The grant of a true easement would fall under Case E, but a right or licence to use land may be granted, commonly in the context of compulsory powers, which, though bearing certain similarities to an easement, is not an interest in land and therefore does not have the same legal status. It is therefore dealt with under Case F. Thirdly, there are many statutory provisions enabling works to be done on land, under which compensation will be payable for the consequential depreciation of the value of interests in that land. These miscellaneous compensation payments constitute the third type of occurrence under Case F. The enactments providing for such compensation are set out in Schedule 2 to the Regulations.

(a) 1963 c. 38.
(b) 1965 c. 36.
(c) 1965 c. 56.
(d) S.I. 1967/299 (1967 I, p. 1034).

Many events of the categories embraced by Case F can occur without any development value being realised. Thus, the terms of a tenancy of a shop may be varied to allow the carrying on of some different trade, or electricity pylons may be placed on farmland in return for a standardised payment made to cover the damage caused to the agricultural use of the land. In the first case, by virtue of section 99(2) of the Act and Regulation 3(2)(*a*) of the Material Development Regulations 1967(**a**), the change of use would not be material development and would not therefore attract levy in Case C, and in the second the payment is limited to injury to current use: in neither would development value be present on which levy could be assessed. But on some occurrences of this type development value will be realised. The Regulations therefore provide that these occurrences are chargeable acts or events only if they are voluntarily notified to the Commission, so that the grantee may notify where he considers development value to have been realised.

Regulation 3, with Schedule 1, deals with renewals, extensions and variations of a tenancy and provides for each case being treated as the surrender of the existing tenancy and the grant of a new one on the new terms. Levy is assessed in relation to the grant of the new tenancy as though this were a disposition falling within Case B, subject to three adjustments. First, if the tenant had acquired the old tenancy by an assignment for valuable consideration or by the payment of a premium on its grant to him, he may have paid for some development value which would not be reflected in the consideration that he paid for the alteration of the terms of his tenancy. On a subsequent occassion, after this alteration therefore—in particular on an assessment for levy under Case C on his beginning to carry out a project of development—the tenant might find himself liable for too much levy because, without any adaptation, his base value would not reflect the development value he had paid for on his acquisition of the old tenancy. Without any adaptation his base value would only reflect what he had paid for on what has to be treated as his last relevant disposition, namely the transaction which for the purpose of Case F is treated as the grant of the new tenancy. The amount of any development value paid for on his acquisition of the old tenancy will be included in the amount determined under paragraphs 1 to 6 of Schedule 1 and added to the amount of the consideration for the grant of the new tenancy so that on a subsequent chargeable act or event affecting the tenancy it can be taken into account in determining his Schedule 5 base value. This result is achieved by the adaptation of Regulation 7 of the Betterment Levy (Tenancies and Reversions) Regulations(**b**) made by Regulation 17(3) of those Regulations. The landlord however, who is treated as the grantor of the new tenancy, has not realised any of this development value on this occasion and, in order to avoid his being subject to levy upon it, a similar sum is added to his base value by paragraph 7(*a*) of Schedule 1.

The second adjustment derives from the fact that the landlord will either have granted the old tenancy before the first appointed day (as a result of which future rent would have been free from levy) or will have been subject to levy on the grant of the old tenancy on the expectation of receiving rent for the duration of the old tenancy. Regulation 3(4)(*d*), with paragraphs 7(*b*) and 8 of Schedule 1, make provision to ensure that on the assessment of levy on the grant of the new tenancy the grantor does not pay levy in respect of the rent which would have been payable during the unexpired part of the old tenancy. A similar problem arises wherever a tenancy is surrendered without payment of pecuniary consideration. For the general case this problem is dealt with by Regulation 15 of the Betterment Levy (Tenancies and Reversions) Regulations 1967, which provides for an addition to base value on the assessment of levy

(**a**) S.I. 1967/494 (1967 I, p. 1652). (**b**) S.I. 1967/298 (1967 I, p. 1018).

on a chargeable act or event subsequent to the surrender affecting the interest of the person who had been landlord under the surrendered tenancy. Paragraphs 7(*b*) and 8 of Schedule 1 provide for the ascertainment of a similar sum and for this to be added to base value on the assessment of levy on the alteration of the terms of a tenancy.

The third adjustment stems from the fact that the interest of the landlord, though treated as being free from the existing tenancy for the purpose of the Case F assessment, is in reality in reversion on that tenancy. Accordingly, if that tenancy was granted after the first appointed day, the landlord will already have received credit on the Case B assessment on the grant of the tenancy for part of any development value he may have paid for when he acquired the interest out of which he granted the existing tenancy. In order to limit the credit under this head on future assessments of levy to the balance of the development value paid for, Regulation 3(4)(*e*) and paragraph 9 of Schedule 1 attract the provisions of Regulation 8 of the Betterment Levy (Tenancies and Reversions) Regulations 1967, which deal with the Schedule 5 base value of a reversion. The result is to define what for this purpose is " the amount of the consideration given for the last relevant disposition ", and the rules of Case B are then applied under Regulation 3(4).

Regulation 4 deals with dispositions granting rights over land to Government departments, statutory undertakers or other bodies (including local authorities). From the point of view of assessment of levy these are virtually identical to grants of easements, and therefore the assessment is made under the provisions of the Act as though the disposition were a chargeable act or event in Case E subject only to some minor changes in definitions.

Regulation 5 deals in a comparable manner with rights to compensation for depreciation of the value of interests in land under the enactments set out in Schedule 2 to these Regulations, these being assessed to levy as though they were rights to compensation falling within Case D, subject once again to some minor changes in definitions.

Regulation 6 imposes liability for levy in Case F on the person defined in each case as the grantor, i.e. the landlord, or the owner of land over which a right is acquired, or whose land is depreciated in value, i.e. in every case the person who realises development value.

Regulation 7 provides for notification. The only person entitled to notify is the person defined in each case as the grantee, i.e. the tenant, or the authority which acquires the right, or the person liable to pay compensation. Notification, if made, is required to be made within a limited time. For the form of notice the provisions of the Betterment Levy (Notification) Regulations 1967(**a**) are attracted.

Regulation 8 deals with the application of Schedule 12 to the Act (death, bankruptcy, winding up and floating charges), in Case F.

The Regulations apply to England and Wales.

(**a**) S.I. 1967/309 (1967 I, p. 1062).