5. CLAIMS FOR DEPRECIATION OF LAND VALUES

The Claims for Depreciation of Land Values (Scotland) Regulations, 1948

1948 No. 907 (S. 59)

Made - - - -	*27th April*, 1948
Laid before Parliament	30*th April*, 1948
Coming into operation	1*st July*, 1948

In exercise of the powers conferred on me by section 57, subsection (2) of section 61, and section 107 of the Town and Country Planning (Scotland) Act, 1947(a), and of all other powers enabling me in that behalf I hereby make the following regulations:—

Citation and Commencement

1. These regulations may be cited as the Claims for Depreciation of Land Values (Scotland) Regulations, 1948, and shall come into operation on the 1st day of July, 1948.

Interpretation

2.—(1) The Interpretation Act, 1889(b), shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(2) In these regulations:—

(i) The expression " the Act " means the Town and Country Planning (Scotland) Act, 1947;

(ii) The expression " the Acts relating to previous planning control " means the Town and Country Planning (Scotland) Act, 1932(c), any enactment repealed by that Act or repealed by any enactment which that Act repeals, the Town and Country Planning (Interim Development) (Scotland) Act, 1943(d), the Town and Country Planning (Scotland) Act, 1945(e), the Restriction of Ribbon Development Acts, 1935(f) and 1943(g), the Building Restrictions (War-Time Contraventions) Act, 1946(h), or all or any one or more of the foregoing enactments;

(iii) The expression " the Board " means the Central Land Board;

(iv) The expression " section 55 scheme " means a scheme to be made by the Treasury under section 55 of the Act;

(v) The expression " claim " means a claim made to the Board in accordance with the provisions of subsection (1) of section 57 of the Act for a payment under a section 55 scheme;

(vi) The expression " said interest in land " means the interest in land in respect of which a claim is made;

(vii) The expression " said land " means the land in respect of an interest in which a claim is made and includes, where the context so admits, any part or parts thereof;

(a) 10 & 11 Geo. 6. c. 53.
(b) 52 & 53 Vict. c. 63.
(c) 22 & 23 Geo. 5. c. 49.
(d) 6 & 7 Geo. 6. c. 43.
(e) 8 & 9 Geo. 6. c. 33.
(f) 25 & 26 Geo. 5. c. 47.
(g) 6 & 7 Geo. 6. c. 34.
(h) 9 & 10 Geo. 6. c. 35.

(viii) The expression " claimant " means the person by whom a claim in respect of the said interest in land has been duly made or other the person to whom, to the knowledge of the Board, the right to receive a payment under a section 55 scheme in respect of the same interest in land has been transmitted by assignation or by operation of law or, in a case where any such person as aforesaid is unable to act, the person who, to the knowledge of the Board, is duly authorised to act on his behalf;

(ix) The expressions " unrestricted value ", " restricted value " and " development value " of an interest in land have the meanings respectively assigned to them by subsections (2) and (1) of section 58 of the Act.

Making of Claims and Furnishing of Information

3. A claim shall be made on a form to be issued by the Board and such form may require all information which in the opinion of the Board is material for the purposes of ascertaining the development value of the said interest in land and of preparing a section 55 scheme to be given in relation to all or any of the following matters:—

(i) particulars of the said interest in land and of the said land, together with such a description or with such a plan of suitable size as may be requisite to identify the said land, and land, other than the said land, to which the provisions of sub-head (xii) of this regulation apply, and all servitudes subject to or with the benefit of which the said land or the said interest in land is held;

(ii) the particular interest in the said land of the person by whom the claim is made, and his title to such interest;

(iii) the identity of the person by whom the claim is made;

(iv) all servitudes, privileges, rights and pertinents effeiring or appertaining to or held or enjoyed in connection with the said land or the said interest in land;

(v) all reservations, restrictions, obligations, conditions, limitations and real burdens including servitudes and whole other rights, subject to which the said land or the said interest in land is held, and any limitation as to the purposes for which the said interest in land can be enjoyed;

(vi) the mineral interests subject to or with the benefit of which the said land or the said interest in land is held;

(vii) all heritable securities, including securities constituted by *ex facie* absolute disposition over the said land and affecting the said interest in land:

(viii) particulars of any feu duty, ground annual, tack duty, rent or other periodical payment, stipend, teind, cess or land tax secured over or payable in respect of the said land:

(ix) all interests, other than those of the person by whom the claim is made, subsisting in the said land;

(x) all contracts or missives of sale or exchange or notices to treat affecting the said interest in land;

(xi) all interests which the person by whom the claim is made has in other land in the vicinity of the said land and in respect of which a separate claim is made;

(xii) particulars of any other land held with the said land which may affect the unrestricted value of the said interest in land pursuant to subsection (6) of section 58 of the Act;

(xiii) all uses to which the said land is being or has been put which may be relevant for the purpose of ascertaining the operation of section 10 of the Act, and the Third Schedule thereto, in relation to the said land;

(xiv) all improvements and developments relating to the said land either in course of execution or carried out with a view to the further development of the said land;

(xv) any application made under the Acts relating to previous planning control in respect of the said land, and the results thereof;

(xvi) any planning permission which has been granted, or which by virtue of section 75 of the Act is deemed to be granted, in respect of the said land;

(xvii) any work on the said land in respect of which any compensation has been paid under subsection (2) of section 7 of the Town and Country Planning (Interim Development) (Scotland) Act, 1943;

(xviii) any contribution paid under subsection (4) of section 4 of the Town and Country Planning (Interim Development) (Scotland) Act, 1943 to the owner of the said interest in land or his predecessor in title;

(xix) any enforcement notice which has been served by virtue of section 72 of the Act in relation to the said land;

(xx) if the said land is requisitioned land:—

(*a*) the date of the beginning of the period of requisition;

(*b*) any buildings or works erected or constructed on the said land during the period of requisition, in respect of the value of which a payment has been or is required to be made to a Minister by any person interested in the said land in pursuance of an agreement made between them, or which were otherwise erected or constructed wholly or partly at the expense of any such person, together with full particulars thereof;

(*c*) any development of the said land carried out during the period of requisition, being development in respect of which compensation is payable under the Compensation (Defence) Act, 1939(**a**), or under regulations made under the Emergency Powers (Defence) Act, 1939(**b**), together with full particulars thereof;

(xxi) the amounts claimed as representing the unrestricted value, restricted value and development value respectively of the said interest in land together with such particulars thereof as in the opinion of the Board are requisite to enable them to determine that development value;

(xxii) such other particulars relating to the said land or to the said interest in land as may be required by the Board for the purpose of determining the development value of the said interest in land;

(xxiii) such other particulars as are required for the purposes of the preparation of a section 55 scheme.

4. A claim shall be made to the Board within the period commencing on the date on which these regulations come into operation and ending on the 31st day of March, 1949.*

5. If the Board shall require further information in addition to that which is required to be furnished by a form issued pursuant to Regulation 3 of

(**a**) 2 & 3 Geo. 6. c. 75. (**b**) 2 & 3 Geo. 6. c. 62.

* "30th day of June" substituted for "31st day of March", *see* p. 4255 below.

these regulations or which could have been required so to be furnished, or if the information furnished on such form shall be insufficient for the requirements of the Board, the claimant shall furnish to the Board such further information with respect to the matters specified in that regulation as the Board may by notice in writing require within such period (not being less than 30 days) as the Board may specify in the notice.

6. A claim and any information given to the Board in relation thereto shall be related to the said interest in land as it subsisted on the 1st day of July, 1948, or

(*a*) in the case of an interest in land to which the provisions of subsection (1) of section 87 of the Act apply, to the said interest in land as it would have subsisted if the purchase to which that subsection refers had been completed immediately before the 1st day of July, 1948, or

(*b*) in the case of an interest in land to which the provisions of subsection (2) of section 87 of the Act apply, to the said interest in land as it subsisted immediately before the date of the notice to treat to which that subsection refers or of the making of the contract to which that subsection as applied by subsection (4) of that section refers, as the case may be, with all incidents to which it was then subject, or

(*c*) in the case of an interest in land with respect to which the provisions of section 58 of the Act are modified by any other provisions of the Act (other than the provisions of section 87 of the Act) or of any regulations made thereunder, to the said interest in land as it subsisted on such date as may be appropriate having regard to the provision by which such modification is effected.

7. Any assignation of the right to receive a payment under a section 55 scheme or a part of such a payment shall be of no effect for the purposes of a section 55 scheme unless notice in writing of such assignation containing such information as to enable the Board to identify the land and the interest therein to which the notice relates, is transmitted to the Board within the period commencing on the date on which these regulations come into operation or the date on which such assignation takes effect whichever is the later and ending on the 31st day of December, 1952.

8.—(1) Where, after a claim has been duly made and before the 1st day of January, 1953:—

(*a*) an enforcement notice is served by virtue of section 72 of the Act in relation to the said land, or

(*b*) a notice to treat affecting the said interest in land is served on the claimant, or the claimant enters into a contract for the acquisition of the said interest in land by any authority or person who have power or could be authorised to acquire that interest compulsorily under any enactment,

the claimant shall, within thirty days after the date of the service of any such enforcement notice or notice to treat, or of entering into any such contract, as the case may be, notify the Board thereof in writing.

(2) In this regulation, a reference to service of a notice to treat shall not be construed as including a reference to the constructive service of such a notice which, by virtue of the Sixth Schedule to the Town and Country Planning (Scotland) Act, 1945, or of any other enactment, is to be deemed to be served.

9. The Board may require any information given to them under these regulations to be verified by a statutory declaration.

*10. The right to receive a payment under a section 55 scheme shall be conditional upon due and punctual compliance with the provisions of Regulations 3, 4 and 5 of these regulations within the limits of the time specified in these regulations, so however that if pursuant to Regulation 11 of these regulations the Board extend the period for the making of a claim the provisions of the relevant regulation shall be deemed to have been duly and punctually complied with if the claim is made within such extended period.

†11. The Board may extend the period for the making of a claim specified in Regulation 4 of these regulations on application being made to them in that behalf and notwithstanding that the period has expired in any case in which the Board are satisfied that the making of such claim was not reasonably possible within that period. Provided that any extension so granted shall in no case be for a period expiring after the 30th day of June, 1949.

Determination of Development Value

12.—(1) The Board shall be the authority which shall determine the development values of interests in land in respect of which any claim is made.

(2) After a claim has been duly made the Board shall consider the claim, make such enquiries and inspections and take such steps as they may think requisite, and shall as soon as practicable thereafter prepare a statement of the amount (if any) which they propose to determine as the development value of the said interest in land, and (except in a case where the Board propose to determine that there is no development value in the said interest in land) such statement shall state the amounts of the unrestricted value and restricted value by reference to which the Board propose to determine the development value.

(3) When the Board have prepared the said statement, they shall serve notice in writing upon the claimant of the amount specified therein as the proposed development value and (except as aforesaid) of the amounts of the unrestricted value and restricted value to which the said statement refers.

(4) Within 60 days after service upon him of the notice pursuant to paragraph (3) of this regulation, the claimant may give notice in writing to the Board that he objects to any amount specified in the statement and shall state the grounds of his objection and the amount or amounts which he desires to be specified in lieu thereof and in the event of any such notice being given the Board shall consider the grounds of such objection.

(5) As soon as may be after giving effect to the preceding provisions of this regulation, the Board shall determine the amount (if any) of the development value of the said interest in land and shall serve notice in writing thereof upon the claimant, and (except in a case where the Board determine that there is no development value in the said interest in land) such notice shall state the amounts of the unrestricted value and restricted value by reference to which the Board so determine the development value. Subject to the provisions of Regulations 13 and 14 and of paragraph (1) of Regulation 15 of these regulations, the development value when so determined and notified by the Board shall be treated as conclusive for the purposes of a section 55 scheme.

Arbitration

13.—(1) If the claimant disputes the development value as determined by the Board under paragraph (5) of Regulation 12 of these regulations and

* *See* amendment, p. 4255 below.
† Regulation 11 deleted, *see* p. 4255 below.

shall not before the date of such determination have notified to the Board in writing his agreement of the development value at a sum equal to or less than the development value as so determined, he may within 30 days after notice has been served upon him by the Board pursuant to that paragraph give notice in writing to the Board of such dispute and of the grounds thereof and, in particular, of the amounts of the unrestricted value and restricted value by reference to which he asserts that the development value should be determined and thereupon, subject to the provisions of paragraph (7) of this regulation, the dispute shall be referred to and settled by an arbiter appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919(**a**), as amended by the Acquisition of Land (Assessment of Compensation) (Scotland) Act, 1931(**b**).

(2) The claimant shall immediately after giving notice to the Board pursuant to paragraph (1) of this regulation send to the Reference Committee for Scotland constituted under the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended, a copy thereof and an application for the selection of an arbiter and shall thereupon send a copy of that application to the Board.

(3) The provisions of the Acquisition of Land (Assessment of Compensation) (Scotland) Rules, 1931(**c**), and the Acquisition of Land (Assessment of Compensation) Fees Rules, 1931(**d**), and of any other Rules for the time being in force made under the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended, shall apply to an arbitration pursuant to paragraph (1) of this regulation so far as the same are not modified by or inconsistent with the Act or these regulations and subject to the following modifications:—

(*a*) references therein to the acquiring authority shall be construed as references to the Board;

(*b*) references therein to land to be acquired shall be construed as references to the said land;

(*c*) references therein to a claim shall be construed as references to a dispute of which notice has been given pursuant to paragraph (1) of this regulation;

(*d*) references in Rule 3 of the Acquisition of Land (Assessment of Compensation) Fees Rules, 1931, to the amount awarded to the claimant shall be construed as references to the development value specified in the award;

(*e*) references therein to compensation shall be construed as references to development value;

(*f*) paragraph (*a*) of Rule 1 and paragraph (*b*) of Rule 4 of the Acquisition of Land (Assessment of Compensation) (Scotland) Rules, 1931, shall not apply; and

(*g*) the following paragraph shall apply in substitution for paragraph (*a*) of Rule 6 of the Acquisition of Land (Assessment of Compensation) (Scotland) Rules, 1931:—

> " Where notices of dispute have been given in the case of any two or more interests in the same land the Board may, subject as hereinafter provided, at any time after an application for the selection of an arbiter to hear the disputes has been made make an application to the Reference Committee to have the same person selected as the arbiter to hear and determine all the disputes to which the application relates.

(**a**) 9 & 10 Geo. 5. c. 57. (**b**) 21 & 22 Geo. 5. c. 11.
(**c**) S.R. & O. 1934 (No. 581) I, p. 919. (**d**) S.R. & O. 1931 (No. 157) p. 558.

Provided that no such application shall be made as respects a dispute if an arbiter has already entered on the consideration of the dispute."

(4) The arbiter shall by his award either confirm the development value as determined by the Board under paragraph (5) of Regulation 12 of these regulations or direct the Board to alter the development value as so determined by them to such an amount as he thinks proper having regard to all the circumstances of the case, and such direction shall state the amounts of the unrestricted value and restricted value by reference to which the arbiter has ascertained the altered development value.

(5) If by his award the arbiter confirms the development value as determined by the Board such development value shall as from the date of the award, and subject to any directions of the Court of Session in proceedings arising out of the arbitration, be treated as conclusive for the purposes of a section 55 scheme.

(6) If by his award the arbiter so directs, the Board shall alter the development value so as to give effect to such direction and shall give notice in writing to the claimant of the development value as so altered, and thereupon the development value as so altered shall (subject to any directions of the Court of Session in proceedings arising out of the arbitration) be treated as conclusive for the purposes of a section 55 scheme.

(7) If, at any time after the claimant shall have given notice of dispute under paragraph (1) of this regulation and before the arbiter has made his award or before the decision of the Court of Session has been made upon any case stated by the arbiter, the Board and the claimant shall in writing agree such development value, then the Board shall determine the development value in accordance with such agreement and the same shall as from the date of such determination be treated as conclusive for the purposes of a section 55 scheme.

General

14. If, at any time after a determination of development value by virtue of any provision in any preceding regulation of these regulations and before the 1st day of January, 1953, there shall come to the knowledge of the Board any matter:—

(*a*) which, pursuant to the provisions of section 72 of the Act, involves a modification of the assumptions required to be made for the purpose of calculating the development value of the said interest in land, or

(*b*) by virtue of which an adjustment is required by subsection (3) of section 87 of the Act to be made of any calculation previously made of the restricted value or the unrestricted value of the said interest in land,

then and in any such case the said determination shall be of no effect, and the provisions of Regulations 12 and 13 of these regulations shall again come into effect.

15.—(1) If a claimant desires to question the regularity of any determination of development value on the ground that any requirements of the Act or of these regulations (other than requirements in connection with the settlement of any dispute by reference to arbitration pursuant to Regulation 13 of these regulations) have not been complied with in relation to that determination, he may within six weeks of such determination make an application for that purpose to the Court of Session and the Court, if satisfied upon the hearing of the application that the interests of the claimant have been substantially prejudiced by any such requirement as aforesaid

not having been complied with, may quash the determination of the development value and give such directions as appear to the Court to be requisite for remedying the default.

(2) Subject as aforesaid and to any alteration of development value effected in conformity with paragraph (6) of Regulation 13 of these regulations, the development value of every interest in land as determined by the Board shall be deemed to have been regularly made for the purposes of a section 55 scheme, and the right to make satisfaction of payment in accordance with a section 55 scheme on the basis of such determination shall not after the expiration of the said period of six weeks be questioned in any other legal proceedings whatsoever.

Dated this twenty-seventh day of April, 1948.

Arthur Woodburn,
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These regulations prescribe the manner and the period in which claims for payments under a scheme made under section 55 of the Town and Country Planning (Scotland) Act, 1947, in respect of interests in land which are depreciated in value by virtue of the provisions of that Act, shall be made to the Central Land Board, the particulars which are to accompany such claim and the evidence by which they shall be verified.

They also provide for the ascertainment of the development values of interests in land in respect of which such claims are made and for the ascertainment of such other particulars as may be required for the purposes of the scheme.

The regulations further provide that the Central Land Board shall be the authority which shall determine the development values and prescribe the manner in which they shall be determined.

Disputes arising in relation to such determinations are by these regulations to be settled by an arbiter appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

The regulations prescribe the practice and procedure to be followed in connection with the making of determinations and the settlement of disputes arising in relation thereto and the time and manner in which procedings may be taken in connection with alleged irregularities.

The right to a payment is by the regulations made conditional upon compliance with the provisions thereof with respect to the making of claims.

The regulations also prescribe the manner and period in which notice of any assignation of a right to receive a payment under the scheme shall be given to the Central Land Board in order to be effective.