The Planning Payments (War Damage) (Scotland) Regulations, 1949

1949 No. 2339 (S. 159)

Made - - - -	15*th December*, 1949
Laid before Parliament	16*th December*, 1949
Coming into Operation	23*rd December*, 1949

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, for the purposes of the Planning Payments (War Damage) (Scotland) Scheme, 1949(b), the following regulations:—

Citation and Commencement

1. These regulations may be cited as the Planning Payments (War Damage) (Scotland) Regulations, 1949, and shall come into operation on the 23rd day of December, 1949.

Interpretation

2.—(1) The Interpretation Act, 1889(c), 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 Act of 1943" means the War Damage Act, 1943(d);

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

(iv) the expression "the Commission" means the War Damage Commission;

(v) the expression "the section 56 scheme" means the Planning Payments (War Damage) (Scotland) Scheme, 1949;

(vi) the expression "appointed day" means the appointed day for the purposes of the Act, that is to say, the 1st day of July, 1948(e);

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

(viii) 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 the section 56 scheme, except in relation to a claim under Regulation 13 of these regulations or in relation to a claim for a payment under a section 55 scheme;

(ix) the expression "claimant" means the person by whom a claim in respect of the said interest in land has been or is deemed to have been duly made, or other the person to whom, to the knowledge of the Board, the right to receive a payment under the section 56 scheme in

(a) 10 & 11 Geo. 6. c. 53. (b) S.I. 1949 No. 2325, p. 4072 above.
(c) 52 & 53 Vict. c. 63. (d) 6 & 7 Geo. 6. c. 21.
(e) *See* S.I. 1948 (No. 265) I, p. 4236.

respect of the same interest in land has been transmitted by assignation or by operation of law (otherwise than by the provisions of the section 56 scheme) 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;

(x) the expressions "development value" and "restricted value" mean those values ascertained in accordance with the provisions of the section 56 scheme;

(xi) the expression "hereditament" means war-damaged land which the Commission have determined to constitute a unit under section 5 of the Act of 1943 and which is identical with or comprises the said land, and other expressions the meaning of which is defined for the purposes of the Act of 1943 have the same meaning as they have for the purposes of that Act, and, in particular, the expression "value payment" also includes any such appropriate payment as is referred to in subsection (2) of section 56 of the Act;

(xii) the expression "qualified interest" has the meaning assigned to it by paragraph 4 of the section 56 scheme;

(xiii) the expression "said interest in land" means the interest in land in respect of which a claim is or is deemed to be made;

(xiv) the expression "said land" means the land in respect of an interest in which a claim is or is deemed to be made, and includes, where the context so admits, any part or parts thereof.

Making of Claims and Furnishing of Information

3.—(1) 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—

(i) ascertaining whether the said interest in land is a qualified interest, and, if so, whether any, and, if so, what payment shall be made under the section 56 scheme in respect of the said interest in land, and

(ii) verifying the right of the claimant to receive a payment under the section 56 scheme.

(2) Without prejudice to the generality of the last foregoing paragraph, such form may require all such information as the Board would have been entitled to require pursuant to the Claims for Depreciation of Land Values (Scotland) Regulations, 1948(a), if the claim were one made to the Board in accordance with subsection (1) of section 57 of the Act for a payment under a section 55 scheme, and also all information in relation to all or any of the following matters:—

(i) the name and address of any agent whom the claimant appoints to act for him in connection with the claim;

(ii) the full postal address (if any) 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 (if the said land is not identical with the hereditament) particulars of the difference either by way of such a description or of such a plan of suitable size as may be requisite to identify that difference;

(iii) the reference number allotted by the Commission in respect of the hereditament;

(a) S.I. 1948 (No. 907) I, p. 4247.

(iv) particulars of all heritable securities affecting the said interest in land which subsisted on the appointed day, where the debt secured thereby has not been discharged in full when the claim is made ;

(v) particulars of the state and of the use of the said land immediately before the date on which the hereditament first sustained war damage, and of any changes in the state or in the use thereof since that date ;

(vi) particulars of the amount claimed, together with particulars showing, by reference to the appropriate provisions of the section 56 scheme, how the amount claimed has been calculated, and such other particulars relating to the said land or the said interest in land as may be required by the Board for the purpose of determining the amount of the payment (if any) to be made under the section 56 scheme.

4.—(1) A claim shall be made to the Board before the 1st day of February, 1951, or before the expiration of six months from the date of the determination by the Commission of the amount (if any) of the value payment payable in respect of the hereditament, whichever date is the later.

(2) A claim for a payment under a section 55 scheme which has been duly made in accordance with the Claims for Depreciation of Land Values (Scotland) Regulations, 1948 and 1949(**a**), in respect of an interest in land consisting of or comprising a hereditament shall be deemed to be also a claim duly made for a payment under the section 56 scheme in respect of the same interest in that land if, within the time limit mentioned in paragraph (1) of this regulation, the claimant by notice in writing to the Board claims that it shall be so treated, and specifies in such notice the reference number allotted by the Board to the claim for a payment under a section 55 scheme, and in that event the claimant shall furnish such further information as the Board may require pursuant to Regulations 3 and 5 of these regulations.

(3) A claim in respect of a qualified interest in land which is duly made in accordance with paragraph (1) of this regulation shall be deemed to be also a claim duly made for a payment under a section 55 scheme in respect of the same interest in that land if, before the 1st day of February, 1951, the claimant by notice in writing to the Board claims that it shall be so treated, and in that event the provisions of Regulation 4 of the Claims for Depreciation of Land Values (Scotland) Regulations, 1948, as amended by Regulation 2 of the Claims for Depreciation of Land Values (Scotland) Amendment Regulations, 1948(**b**), shall not apply to any claim for a payment under a section 55 scheme so deemed to be duly made but all the other provisions of the Claims for Depreciation of Land Values (Scotland) Regulations, 1948 and 1949, shall apply thereto.

5. If the Board shall require further information in addition to that which is required to be furnished by any form issued pursuant to Regulations 3 or 13 of these regulations or by any notice given pursuant to Regulation 12 of these regulations or which could have been required so to be furnished, or if the information furnished on such form or notice shall be insufficient for the requirements of the Board, the claimant, the heritable creditor, or the superior or the creditor in the ground annual, as the case may be, shall furnish to the Board such further information, with respect to the matters

(a) S.I. 1948 (No. 907) I, p. 4247; S.I. 1948 (No. 2825) I, p. 4255; and S.I. 1949 No. 1193, p. 4054 above.
(b) S.I. 1948 (No. 2825) I, p. 4255.

specified in the relevant regulation, as the Board may by notice in writing require, within such period (not being less than thirty 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 such date or dates as may be appropriate having regard to the provisions of the Act and of any regulations made thereunder and of the section 56 scheme.

7.—(1) Where, after a claim has been or is deemed to have been duly made, and before the determination of the amount (if any) of the payment to be made in respect thereof falls to be treated, in accordance with these regulations, as conclusive for the purposes of the section 56 scheme—

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

(ii) 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(a), or of any other enactment, is to be deemed to be served.

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

9. The right to receive a payment under the section 56 scheme shall be conditional upon due and punctual compliance with the provisions of Regulations 3, 4, 5, and 7 of these regulation within the limits of the time specified in these regulations.

Determination of amount of payment under the Section 56 Scheme

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

(2) After a claim has been or is deemed to have 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 amount of the payment to be made under the section 56 scheme in respect of the said interest in land, and (except in a case where the Board propose to determine that the said interest in land is not a qualified interest, or that for any other reason no payment shall be made under the section 56 scheme in respect of the said interest in land, in any of which cases the statement shall state such proposal and the reason therefore) such statement shall state the amounts by reference to which the Board propose to determine the amount of the payment to be made under the section 56 scheme in respect of the said interest in land.

(a) 8 & 9 Geo. 6. c. 33.

(3) When the Board have prepared the said statement they shall serve a copy thereof upon the claimant, and within sixty days after such service the claimant may give notice in writing to the Board that he objects to any amount specified in the statement, or to the proposed determination by the Board that the said interest in land is not a qualified interest, or that for any other reason no payment shall be made under the section 56 scheme in respect of the said interest in land, and shall state the grounds of his objection and the amount or amounts which he considers should have been specified in the statement, and in the event of any such notice being given the Board shall consider the grounds of such objection.

(4) 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 payment to be made under the section 56 scheme in respect 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 the said interest in land is not a qualified interest, or that for any other reason no payment shall be made under the section 56 scheme in respect of the said interest in land, in any of which cases the notice shall state the reason for such determination) such notice shall state the amounts by reference to which the Board so determine the amount of the payment to be made under the section 56 scheme in respect of the said interest in land. Subject to the provisions of Regulation 14 and of paragraph (1) of Regulation 15 of these regulations, the determination by the Board of the amount of the payment to be made under the section 56 scheme, or that no amount is payable, shall, when notified by the Board, be treated as conclusive for the purposes of the section 56 scheme.

Assignations, Heritable Securities, and Feuduties or Ground Annuals

11. Any assignation of the right to receive a payment under the section 56 scheme or a part of such a payment shall be of no effect for the purposes of the section 56 scheme unless notice in writing of such assignation, containing such information as will enable the Board to identify the said land and the interest therein to which the notice relates, is transmitted to the Board before the expiration of thirty days from the date when the determination of the amount (if any) of the payment to be made under the section 56 scheme to which the notice relates falls to be treated, in accordance with these regulations, as conclusive for the purposes of the section 56 scheme.

12.—(1) Notwithstanding anything in section 24 of the Act of 1943 as applied by paragraph 12 of the section 56 scheme, any payment thereby required to be made by the Board to a heritable creditor in respect of a qualified interest may be made to the person who would be entitled to receive it apart from that section as so applied, unless notice of the heritable security has been transmitted to the Board before the expiration of thirty days from the date when the determination of the amount (if any) of the payment to be made under the section 56 scheme in respect of the qualified interest in question falls to be treated, in accordance with these regulations, as conclusive for the purposes of the section 56 scheme.

(2) Any such notice shall be in writing, and shall state the names and addresses of the debtor and creditor under the heritable security and the amount of the debt secured by the heritable security then remaining undischarged and shall contain such information as will enable the Board to identify the said land and the interest therein to which the notice relates.

13.—(1) A superior or a creditor in a ground annual shall, in order to be entitled to receive a sum out of a payment under the section 56 scheme, make a claim therefor 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—

(i) ascertaining the amount of such sums as aforesaid (including particulars of any agreement, as to any matter referred to in the Schedule to the section 56 scheme, made between the superior or, as the case may be, the creditor in the ground annual and the owner of the qualified interest in question and any person holding a heritable security over the superiority or the qualified interest or an assignation in security of the ground annual);

(ii) verifying the right of the superior or the creditor in the ground annual to receive such a sum as aforesaid.

(2) It shall be a condition of the right of a superior or a creditor in a ground annual to receive such a sum as aforesaid that—

(i) the claim therefor is made before the 1st day of February, 1951, or before the expiration of six months from the date of the determination by the Commission of the amount (if any) of the value payment payable in respect of the hereditament, whichever date is the later;

(ii) the superior or the creditor in the ground annual shall have given notice of the claim made by him to the owner of the qualified interest in question and also to all other persons interested in any other land subject to the feuduty or ground annual (being persons any part of whose liability in respect of the feuduty or the ground annual will be extinguished as a result of the receipt by the superior or the creditor in the ground annual of such a sum as aforesaid), and shall have given an undertaking to the Board that he will notify the owner of the qualified interest in question and all such other persons as aforesaid of particulars of the amount of such a sum as aforesaid immediately after it has been paid to him;

(iii) the superior or the creditor in the ground annual has duly and punctually complied with the provisions of Regulation 5 of these regulations;

(iv) the superior or the creditor in the ground annual satisfies the Board that the provisions of this regulation and paragraphs 6 and 7 of the Schedule to the section 56 scheme have been complied with.

(3) Any question arising under the Schedule to the section 56 scheme whether any, and, if so, what, sum out of a payment under the section 56 scheme is to be paid thereunder or as to the amount of any such sum shall, in default of agreement between the superior or the creditor in the ground annual and the owner of the qualified interest in question and any person holding a heritable security over the superiority or the qualified interest or an assignation in security of the ground annual, be referred to and determined by an arbiter appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919(**a**).

(4) The provisions of the Acquisition of Land (Assessment of Compensation) (Scotland) Rules, 1931(**b**), and the Acquisition of Land (Assessment of Compensation) Fees Rules, 1931(**c**), and of any other Rules for the time

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

being in force made under the Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply to an arbitration pursuant to the last foregoing paragraph so far as the same are not modified by or inconsistent with these regulations and subject to the following modifications:—

(*a*) any reference therein to the acquiring authority or to the claimant shall be construed as a reference to any party or any other party to the dispute as the context may require;

(*b*) in the Acquisition of Land (Assessment of Compensation) (Scotland) Rules, 1931, paragraph (*b*) of Rule 4 and in paragraph (*a*) of Rule 1 the words from "at any time" to "was served" shall be omitted, and for paragraph (*a*) of Rule 6 there shall be substituted the following paragraph:

"(*a*) Where more than one dispute arises as to whether any sum is payable out of a payment under the section 56 scheme, or as to the amount of any such sum, a party to any such dispute may, subject as hereinafter provided, at any time after an application for the selection of an arbiter to hear the dispute 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:

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

(5) The provisions of paragraph (4A) of Regulation 13 of the Claims for Depreciation of Land Values (Scotland) Regulations, 1948, as amended by the Claims for Depreciation of Land Values (Scotland) Amendment Regulations, 1949(**a**), shall apply to an arbitration under paragraph (3) of this regulation with the substitution, however, for the words "either the claimant or the Board make" of the words "any party to the dispute makes".

Settlement of disputes

14.—(1) If a claimant disputes the determination by the Board, under paragraph (4) of Regulation 10 of these regulations, of the amount of the payment to be made under the section 56 scheme, and shall not before the date of such determination have notified the Board in writing that he agrees a sum equal to or less than that amount, or if the claimant disagrees with the determination by the Board that there is no development value in the said interest in land, or that the development value thereof is not more than one tenth of the restricted value thereof, or that for any other reason no payment shall be made under the section 56 scheme in respect of a qualified interest, he may, within thirty days after notice has been served upon him by the Board pursuant to the said paragraph (4), give notice in writing to the Board of such dispute or disagreement, and the grounds thereof, and, in particular, the amounts by reference to which he asserts that the amount of the payment to be made under the section 56 scheme in respect of the said interest in land should be determined, and thereupon, subject to the provisions of paragraph (4) of this regulation, the dispute or disagreement 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, and in that event the provisions of paragraphs (2), (3), (4) and (4A)

(a) S.I. 1949 No. 1193, p. 4054 above.

of Regulation 13 of the Claims for Depreciation of Land Values (Scotland) Regulations, 1948, as amended by the Claims for Depreciation of Land Values (Scotland) Amendment Regulations, 1949, shall apply thereto subject to the following and any other necessary modifications—

(*a*) for references to a dispute and to development value there shall be substituted respectively references to a dispute or disagreement and to payment to be made under the section 56 scheme in respect of the said interest in land ; and

(*b*) in the said paragraph (4) for the reference to paragraph (5) of Regulation 12 of those regulations there shall be substituted a reference to paragraph (4) of Regulation 10 of these regulations and the words " of the unrestricted value and the restricted value " shall be omitted.

(2) If by his award the arbiter confirms the amount of the payment to be made under the section 56 scheme as determined by the Board, such amount shall, as from the date of the award, be treated as conclusive for the purposes of the section 56 scheme.

(3) If by his award the arbiter so directs, the Board shall alter their determination of the amount of the payment to be made under the section 56 scheme and any amounts by reference to which the amount of the said payment was determined, and shall give notice in writing to the claimant of their determination and of the aforesaid amounts as so altered, and thereupon the amount of the said payment as so altered shall be treated as conclusive for the purposes of the section 56 scheme.

(4) If, at any time after the claimant shall have given notice of dispute or disagreement under paragraph (1) of this regulation, and before the arbiter has made his award, the Board and the claimant shall in writing agree the amount of the payment to be made under the section 56 scheme, then the Board shall determine that amount in accordance with such agreement, and the same shall as from the date of such determination be treated as conclusive for the purposes of the section 56 scheme.

General

15.—(1) If a claimant desires to question the regularity of any determination by the Board pursuant to Regulation 10 of these regulations in respect of a qualified interest on the ground that any requirements of the Act or of these regulations (other than requirements in connection with the settlement of any dispute or disagreement pursuant to Regulation 14 of these regulations) have not been complied with in relation to that determination or if a claimant desires to question any determination by the Board that the said interest in land is not a qualified interest (other than such a determination made in pursuance of the provisions of paragraph 3 of the section 56 scheme), 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, or by the making of any such determination (other than as aforesaid), as the case may be, may quash the determination 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 any determination by the Board effected in conformity with paragraph (3) of Regulation 14 of these regulations, the determination by the Board of the amount of the payment

to be made under the section 56 scheme or that no amount is payable shall be deemed to have been regularly made for the purposes of the section 56 scheme, and the right to make payment in accordance with the section 56 scheme on the basis of such determination shall not after the expiration of the said period of six weeks be questioned in any legal proceedings whatsoever.

Dated this 15th day of December, 1949.

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 the Planning Payments (War Damage) (Scotland) Scheme, 1949, made under section 56 of the Town and Country Planning (Scotland) Act, 1947, in respect of interests in certain war-damaged lands 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 claims, and the evidence by which they shall be verified.

They also provide for the ascertainment of the amounts of the payments to be made under the Scheme relating to interests in land in respect of which such claims are made.

The regulations further provide that a claim made for a payment under the Claims for Depreciation of Land Values (Scotland) Regulations, 1948 and 1949, in respect of a scheme to be made under section 55 of the Act of 1947 shall, if the claimant gives notice in due time, be treated, in appropriate cases, as a claim under these regulations, and vice versa.

Disputes or disagreements arising in relation to determinations made under these regulations are to be settled by an arbiter appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919; the regulations also provide for appeal by way of stated case on any question of law arising in the course of the arbitration proceedings to be made to the Lands Valuation Appeal Court.

These regulations also prescribe the practice and procedure to be followed in connection with the making of determinations and the settlement of disputes or disagreements arising in relation thereto, and the time and manner in which proceedings 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 prescribe the manner and period in which notices of heritable securities and of assignations of the right to receive a payment under the Scheme, shall be given to the Central Land Board in order to be effective.

The regulations also provide for the making of claims, by superiors and creditors in ground annuals, to a share in any payment to be made under the Scheme, and for the settlement of questions relating to such claims.