6. PLANNING PAYMENTS (WAR DAMAGE)

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

1949 No. 2325

Made - - - -	14*th December*, 1949
Laid before Parliament	16*th December*, 1949
Coming into Operation	23*rd December*, 1949

The Treasury in exercise of the power conferred on them by section fifty-six of the Town and Country Planning (Scotland) Act, 1947(**a**), hereby make the following scheme:—

SCHEME

Interests qualifying for payments

1. Subject to the provisions of the Town and Country Planning (Scotland) Act, 1947, and of this scheme, a payment under this scheme shall be made by the Central Land Board in respect of any interest in land which is depreciated in value by virtue of the provisions of the said Act, if, on a claim duly made in respect of that interest, it is shown—

(*a*) that the land is comprised in a hereditament which sustained war damage in respect of which, in accordance with any determination under the War Damage Act, 1943(**b**), a value payment has been paid or is payable, or would be payable but that the value of the hereditament in the state in which it was immediately after the occurrence of the war damage is not less than its value in the state in which it was immediately before the occurrence of that damage;

(*b*) that by reason of the prospects of development other than the making good of the war damage, the value of the hereditament in the state in which it was immediately after the occurrence of the damage was higher than it would have been apart from the prospect of such development, and accordingly either the value payment paid or payable as aforesaid is less than it would otherwise have been, or no such payment falls to be made;

(*c*) that the interest in respect of which the claim is made is a proprietary interest within the meaning of the War Damage Act, 1943, which was subsisting at the time when the right to receive the value payment vested under the War Damage Act, 1943; and

(*d*) that the person entitled on the appointed day to the interest in respect of which the claim is made or, in the case of an interest to which subsection (2) of section eighty-seven of the Town and Country Planning (Scotland) Act, 1947, applies, the person required by that subsection to be treated as having been so entitled, is the person who, apart from the provisions of sections twenty-four to twenty-six and section twenty-eight of the War Damage Act, 1943, would have been entitled to receive the value payment or the appropriate share thereof if it had been paid on the appointed day.

(a) 10 & 11 Geo. 6. c. 53. (b) 6 & 7 Geo. 6. c. 21.

2. No payment shall be made under this scheme in respect of any land comprised in a hereditament in the case of which a value payment has been paid or is payable—

(*a*) by virtue of section fourteen of the War Damage Act, 1943 (which relates to partially damaged land compulsorily acquired); or

(*b*) in accordance with subsection (1) of section thirteen of that Act (which relates to payment in respect of partial damage not made good) otherwise than in pursuance of an application made under that section before the coming into operation of this scheme.

3. No payment shall be made under this scheme in respect of any interest in land unless the development value of that interest exceeds one-tenth of its restricted value; and for the purposes of this paragraph the development value and the restricted value of any interest in land shall be calculated—

(*a*) in the case of an interest being the interest of a lessee under a lease, as if the rent payable under the lease were a rent of one penny if asked;

(*b*) in the case of an interest which is subject to a feuduty or ground annual, as if the interest were not subject thereto.

4. Any interest in land in respect of which a payment is required to be made by virtue of the foregoing provisions is referred to in this scheme as a qualified interest.

Persons entitled to claim

5. Subject to the provisions of sections fifty-seven and sixty-one of the Town and Country Planning (Scotland) Act, 1947, and of regulations made thereunder for the purposes of this scheme, a claim for a payment under this scheme may be made in respect of any qualified interest by the person who was entitled to that interest on the appointed day or, in the case of an interest to which subsection (2) of section eighty-seven of the said Act applies, who is required by that subsection to be treated as having been so entitled, or by any person in whom the right to receive a payment under this scheme in respect of that interest has become vested by assignation or by operation of law.

Amount of payment

6. Subject to the provisions of this scheme, the payment to be made under this scheme in respect of any qualified interest shall be calculated as follows:—

(1) There shall be ascertained—

(*a*) the development value of the interest;

(*b*) the war damage depreciation in the restricted value, that is to say the amount by which the restricted value of the interest on the appointed day falls short of the value which would have been its restricted value on that day if the land had been on that day in the state in which it was immediately before the occurrence of the war damage;

(*c*) the value payment, that is to say, the amount of the value payment payable in respect of the war damage which is appropriate to the interest.

(2) If the development value exceeds the war damage depreciation in the restricted value, the payment shall be a sum equal to the amount by which the war damage depreciation in the restricted value exceeds the value payment.

(3) If the war damage depreciation in the restricted value is equal to or exceeds the development value, the payment shall be a sum equal to the development value.

7. The reference in paragraph 6 of this scheme to the value payment payable in respect of the war damage shall be construed as a reference to the amount of that payment as determined in accordance with the War Damage Act, 1943, and the War Damage (Increase of Value Payments) Order, 1947(a), including any payment made under section eighteen of the said Act, but no account shall be taken for the purposes of that paragraph of any interest payable on that payment or any share thereof or of any reduction of that payment or any share thereof effected under section sixty-one of that Act.

8. For the purposes of paragraph 6 of this scheme, the amount of a value payment which is appropriate to a qualified interest shall, where no apportionment of that payment is required under section twelve of the War Damage Act, 1943, be taken to be the whole of that payment, and where such an apportionment is required, be taken to be the share of that payment apportioned to that interest under that section:

Provided that where any interest in land is a qualified interest under this scheme in respect of part only of the land in which it was subsisting at the time when the right to receive the value payment vested under the War Damage Act, 1943, the Central Land Board shall estimate what part of the value payment or share of value payment apportioned to that interest under that Act is attributable to that part of the land, and the part so estimated shall be deemed for the purposes of paragraph 6 of this scheme to be the amount appropriate to that interest.

Ascertainment of values

9. Except as otherwise provided by the following provisions of this scheme, the provisions of the Town and Country Planning (Scotland) Act, 1947, regulating the ascertainment of the restricted values of interests in land, including, so far as they affect restricted values, the provisions of that Act regulating the ascertainment of development values, shall apply to the ascertainment under this scheme of the value which would have been the restricted value of an interest in land on the appointed day if the land had then been in the state in which it was immediately before the occurrence of the war damage as they apply to the ascertainment of the restricted value of any such interest.

10. Where a certificate is issued in respect of any land under section seventy-seven of the Town and Country Planning (Scotland) Act, 1947 (which relates to land ripe for development before the appointed day), then, for the purpose of ascertaining under this scheme the war damage depreciation in the restricted value of any interest in that land, the restricted value (and the restricted value only) shall be calculated on the assumption that planning permission would be granted for the development specified in the certificate, and that no development charge would be payable in respect of that development.

11. In the case of land which on the appointed day was requisitioned land within the meaning of section eighty-five of the Town and Country Planning (Scotland) Act, 1947, the following provisions shall have effect, that is to say—

(*a*) if the whole of the war damage occurred before the beginning of the period of requisition, the war damage depreciation in the restricted value

(a) S.R. & O. 1947 (No. 390) I, p. 2666.

of any interest in the land shall be taken to be a sum equal to the amount by which the restricted value of the interest, calculated in accordance with the provisions of subsection (1) of the said section eighty-five, falls short of the value which would have been the restricted value of the interest on the appointed day, calculated apart from those provisions, if the land had then been in the state in which it was immediately before the occurrence of the war damage;

(*b*) if the war damage, or any of the war damage, occurred during the period of requisition—

(i) subsection (1) of the said section eighty-five shall not affect the ascertainment of the war damage depreciation in the restricted value of any interest in the land; and

(ii) the provisions of this scheme shall have effect in relation to any such interest as if for references to the unrestricted value, the restricted value and the development value there were substituted respectively references to the unrestricted, restricted and development values calculated apart from the provisions of the said subsection (1).

Disposal of payments

12. Subject to the following provisions of this scheme, sections twenty-four, twenty-eight, twenty-nine and thirty of the War Damage Act, 1943 (which regulate the right to receive value payments in cases of interests subject to a heritable security, trust, testamentary disposition and pending contract for sale) shall apply in relation to payments under this scheme as they apply in relation to value payments subject to the following modifications, that is to say:—

(*a*) for references to an interest or a proprietary interest in the hereditament there shall be substituted references to a qualified interest; and

(*b*) for references to the material time, or to the time which is in relation to a value payment the material time, there shall be substituted references to the appointed day.

13. Notwithstanding anything in the said section twenty-four as applied by the foregoing paragraph, any payment thereby required to be made by the Central Land 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 unless notice of the heritable security has been given to the Board in accordance with regulations made for the purposes of this scheme under section fifty-seven of the Town and Country Planning (Scotland) Act, 1947.

14. The provisions of the Schedule to this scheme (being provisions substantially corresponding, subject to the necessary modifications, with those of section twenty-five of the War Damage Act, 1943, and of Part I of the Fourth Schedule to that Act, as they apply to Scotland) shall have effect for the purposes of the application of this scheme to interests in land subject to feuduties or ground annuals.

Postponement of payment and recovery of overpayments

15. If it appears to the Central Land Board that any land in respect of which a claim for a payment is made under this scheme is land in respect of which a direction might be given by the Secretary of State under subsection (5) of section eighty-two of the Town and Country Planning (Scotland) Act, 1947 (which relates to land held for charitable or ecclesiastical purposes), the

Board may postpone the making of any payment under this scheme in respect of any qualified interest in that land pending the making and determination of an application for a direction under that subsection, or until the expiration of the period within which such an application may be made.

16. If, after a payment under this scheme has been made to any person in respect of any interest in land, any such direction as is mentioned in the last foregoing paragraph is given in respect of that land, the amount of the payment shall be repaid by that person to the Central Land Board.

17. If, after a payment under this scheme has been made to any person in respect of any interest in land, a certificate is issued in respect of that land under section seventy-seven of the Town and Country Planning (Scotland) Act, 1947 (which relates to land ripe for development before the appointed day), the amount by which that payment exceeds the payment which would have been made if the certificate had been issued before the payment was made shall be repaid by that person to the Central Land Board.

18. Where any sum payable under this scheme in respect of any interest in land has been paid, by virtue of the provisions of paragraph 12 or paragraph 14 of this scheme, to a heritable creditor or to the superior or to a creditor in a ground annual, and that sum or any part of that sum is required by this scheme to be repaid to the Central Land Board, then, notwithstanding anything in the two last foregoing paragraphs, the repayment shall be made by the person to whom the sum would have been payable apart from the said provisions.

Determination of questions

19. Any question arising under this scheme whether a payment falls to be made thereunder in respect of an interest in land, or as to the amount of any such payment, shall be determined by the Central Land Board in accordance with such procedure as may be prescribed by regulations made under the Town and Country Planning (Scotland) Act, 1947, for the purposes of this scheme, and subject to such provision as may be made by those regulations for the settlement of disputes.

20. Any question arising under the Schedule to this scheme whether any payment is to be made thereunder in respect of a feuduty or ground annual or as to the amount of any such payment shall, in default of agreement 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 interest or an assignation in security of the ground annual, be determined in accordance with regulations made for the purposes of this scheme under the Town and Country Planning (Scotland) Act, 1947.

Accounts and audit

21. For each financial year in which payments under this scheme are made, the Central Land Board shall prepare, in such form and manner as the Treasury may direct, an account of all sums issued to the Board out of the Consolidated Fund for the purposes of the payments and of all the payments made, and shall transmit the account not later than the thirtieth day of November following the end of that year to the Comptroller and Auditor General, who shall examine and certify the account and lay copies thereof, together with his report thereon, before Parliament.

Interpretation

22. For the purposes of this scheme the expression "appointed day" means the appointed day for the purposes of the Town and Country Planning (Scotland) Act, 1947, that is to say, the first day of July, nineteen hundred and forty-eight; and other expressions the meaning of which is defined for the purposes of that Act or the War Damage Act, 1943, have the same meaning as they have for the purposes of those Acts.

23. The Interpretation Act, 1889(a), shall apply for the purposes of the interpretation of this scheme as it applies for the purposes of the interpretation of an Act of Parliament.

Citation and commencement

24. This scheme may be cited as the Planning Payments (War Damage) (Scotland) Scheme, 1949.

25. This scheme shall come into operation on the twenty-third day of December, nineteen hundred and forty-nine.

Dated this fourteenth day of December, 1949.

Richard Adams,
J. W. Snow,
Two of the Lords Commissioners of His Majesty's Treasury.

SCHEDULE

LAND SUBJECT TO A FEUDUTY OR A GROUND ANNUAL

1. Where a payment falls to be made under this scheme in respect of a qualified interest and at the appointed day a feuduty or ground annual was payable in respect of that interest or in respect of that interest together with an interest in other land, then if—

(*a*) the amount of the feuduty or ground annual, so far as attributable to the land in which the qualified interest subsists (in this Schedule referred to as "the charged land") exceeded the available annual restricted value of that land; and

(*b*) at the time when the question whether this condition is satisfied falls to be determined, no development sufficient to make good the excess has been carried out, or, having regard to all the circumstances, is likely to be carried out within a reasonable period after that time,

then, subject to the provisions of the next following paragraph, the person who was on the appointed day the superior or, as the case may be, the creditor in the ground annual shall be entitled, if he makes a claim in that behalf in accordance with regulations made for the purposes of this scheme under section fifty-seven of the Town and Country Planning (Scotland) Act, 1947, to receive out of the payment under this scheme a sum equal to the capital equivalent of the excess.

2. If the amount of the feuduty or ground annual so far as attributable to the charged land was greater by any sum than the available annual unrestricted value of that land, the capital equivalent of the excess mentioned in the foregoing paragraph shall be computed as if the said excess had been reduced by that sum.

3. Where the superior or, as the case may be, the creditor in a ground annual receives any sum under paragraph 1 of this Schedule, so much of the feuduty or ground annual as is equal to the excess mentioned in that paragraph shall be

(a) 52 & 53 Vict. c. 63.

extinguished on the date on which the said sum is paid, and as between the persons interested in the charged land on the one hand and in other land subject to the feuduty or ground annual on the other hand, the proper share of the persons interested in the charged land of the liability for the residue of the feuduty or ground annual in respect of any period after the extinguishment shall be treated as being an amount per annum equal to the available annual restricted value of the charged land.

4. Where the superior or, as the case may be, the creditor in a ground annual makes such a claim as is mentioned in paragraph 1 of this Schedule, and the right to receive the payment in respect of the qualified interest out of which (or out of which together with any other interest) the feuduty or ground annual is payable is vested by virtue of the provisions of section twenty-four of the War Damage Act, 1943, as applied by paragraph 12 of this scheme in a person holding a heritable security over that interest, then, if the heritable security had priority over the feuduty or ground annual, effect shall be given to the right conferred by this Schedule on the superior or, as the case may be, the creditor in the ground annual out of any sums to which the owner of the qualified interest would otherwise have been entitled under those provisions as to heritable creditors accounting, and if the feuduty or ground annual had priority over the heritable security, the sum payable to the person holding the heritable security shall be reduced by the amount required for giving effect to the right so conferred.

5. Where the superior or, as the case may be, the creditor in a ground annual receives any sum under paragraph 1 of this Schedule, and on the appointed day there subsisted a heritable security over the superiority or an assignation in security of the ground annual, the provisions of section twenty-four of the War Damage Act, 1943, as applied by paragraph 12 of this scheme shall have effect in relation to the said sum as they have effect in relation to a payment in respect of a qualified interest subject to a heritable security with the substitution for references therein to such an interest of references to the superiority or the ground annual.

6. The right conferred by paragraph 1 of this Schedule on a superior or on the creditor in a ground annual to receive a part of a payment under this scheme shall not be exercisable until—

(*a*) in the case where the feuduty or ground annual is payable in respect of the charged land and also of other land, the part of the feuduty or ground annual attributable to the charged land has been allocated thereon; and

(*b*) the feuduty or ground annual or the part thereof so allocated, as the case may be, in so far as it exceeds the available annual restricted value of the charged land has been discharged.

7. Where for the purposes of this Schedule a feuduty or ground annual is required to be allocated or a feuduty or a ground annual or a part thereof so allocated is required to be discharged, the superior or, as the case may be, the creditor in the ground annual shall execute and record in the appropriate Register of Sasines—

(*a*) a memorandum specifying the sum to be allocated and describing particularly or by reference the land on which it is to be allocated; or, as the case may be,

(*b*) a discharge of the feuduty or the ground annual or the part thereof specifying the extent to which the same is discharged and describing particularly or by reference the land so disburdened;

and any such allocation or discharge shall be binding on all having interest.

8. The following provisions of this paragraph shall have effect for the purpose of ascertaining the amounts and values mentioned in the foregoing paragraphs of this Schedule, that is to say—

(*a*) the annual restricted value of the charged land shall—

(i) if the charged land is coterminous with land in respect of which a payment under this scheme falls to be made, be taken to be five per cent. of the restricted value of that land;

(ii) if the charged land is part only of the land in respect of which a payment under this scheme falls to be made, be determined by apportioning an appropriate part of the said percentage of the said restricted value to the charged land;

(*b*) the annual unrestricted value of any land shall be taken to be five per cent. of the unrestricted value of the land (determined in like manner as the unrestricted value of an interest in the land) in the state in which it was on the appointed day;

(*c*) the available annual value of the charged land, whether unrestricted or restricted, shall be taken to be the annual value thereof, unrestricted or restricted as the case may be, less the amount, so far as attributable to any of the charged land, of any feuduty or ground annual having priority over the feuduty or ground annual in question to which the charged land was subject at the appointed day:

Provided that in ascertaining the available annual value of the charged land no deduction shall be made from the annual value thereof in respect of any such amount as aforesaid in so far as the superior or, as the case may be, the creditor in the ground annual is liable for the payment of that amount as between himself and the owner of the interest in respect of which the feuduty or ground annual is payable;

(*d*) the amount attributable to any land of a feuduty or ground annual shall, where on the appointed day that land was the only land subject to the feuduty or ground annual, be taken to be the whole amount of the feuduty or ground annual, and where the charged land was not the only land subject to the feuduty or ground annual, shall be determined by apportioning or allocating to that land so much (if any) of the whole amount as may be appropriate having regard—

(i) primarily to any apportionment or allocation of that feuduty or ground annual which may have been made otherwise than so as to be binding on the superior or on the creditor in the ground annual, as the case may be, before the appointed day; and

(ii) subject as aforesaid, to the proportion borne by the annual unrestricted value of that land to the annual unrestricted value of the other land subject to that feuduty or ground annual;

(*e*) the capital equivalent of the excess of the amount of the feuduty or ground annual so far as attributable to the charged land over the available annual restricted value of that land shall be taken to be that excess multiplied by the number of years purchase which the feuduty or ground annual might have been expected to realise on the sale thereof in the open market immediately before the seventh day of January, nineteen hundred and forty-seven, if on that day the feuduty or ground annual had been subsisting with the like incidents in all respects as it had on the appointed day and the annual value of any land subject to the feuduty or ground annual had been its annual unrestricted value.

9. Where the right conferred by section twenty-five of the War Damage Act, 1943, has been exercised in respect of a feuduty or ground annual, whether before or after the appointed day, the amount of that feuduty or ground annual on the appointed day shall be deemed for the purposes of this scheme to be the amount thereof as reduced under that section.

EXPLANATORY NOTE

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

1. This scheme, which is made under Section 56 of the Town and Country Planning (Scotland) Act, 1947, authorises additional payments in respect of interests in war-damaged land in certain cases where the appropriate payment under the War Damage Act, 1943, was a value payment. The value payment represented the difference between the before-damage and after-damage

values of the land. The cases covered by the scheme are, broadly speaking, those in which the after-damage value was increased (and the value payment therefore reduced—sometimes to nothing) because there was in the damaged site development value which the Act of 1947 now prevents the owner from realising.

2. In these cases the scheme admits claims by persons (or their successors in title) who, on 1st July, 1948 (the appointed day for the purposes of the Act of 1947), held proprietary interests which qualified them to receive the whole or part of the value payment under the Act of 1943 (paragraphs 1, 4 and 5). But it excludes cases where an entitlement to a value payment has been substituted for an original entitlement to a " cost of works " payment under Section 13 or Section 14 of the Act of 1943, except where conversion has already been made or applied for under Section 13 before the scheme comes into force (paragraph 2). It also excludes, on the lines of Section 60 of the Act of 1947, claims in respect of land with very small development value (paragraph 3).

3. In relation to each qualified interest, two amounts have to be considered:—

(*a*) the development value of which the owner has been divested by the Act of 1947 (i.e. the difference between the restricted and the unrestricted value, both as at 1st July, 1948); and

(*b*) the depreciation in the restricted value due on that day to unrepaired war damage (i.e. the difference between the actual restricted value on 1st July, 1948, and the restricted value as it would have been if the property had on that day been undamaged).

Where (*a*) exceeds (*b*), the payment under the scheme will equal (*b*), less the value payment (if any) already made. Where (*b*) equals or exceeds (*a*), the payment under the scheme will equal (*a*). (Paragraph 6.)

4. The scheme excludes or reduces payments in cases where the development value of the land is left wholly or partly with the owner by reason of Sections 77 and 82 of the Act of 1947; these sections relate respectively to " dead ripe " land and to certain land held for charitable or ecclesiastical purposes (paragraphs 10 and 15-18). Special provisions apply to land which was under requisition on 1st July, 1948 (paragraph 11).

5. The scheme makes provision on the lines of the Act of 1943 for diverting to heritable creditors, superiors and creditors in ground annuals in certain cases the right to receive payments (paragraphs 12-14).

6. Payments will be made in cash and will include interest for the period between 1st July, 1948, and the date of payment at a rate to be prescribed by the Treasury.

7. Section 55 of the Act of 1947 provides for payments totalling £300m. to owners who have lost the development value of their land, and a scheme will be made by the Treasury under that section for distributing so much of the £300m. as is allocated to Scotland. It is intended that that scheme shall take account of payments made under the present scheme; where the payment under the present scheme equals the full development value, no further payment will be made under the Section 55 scheme, and in other cases the payment under the Section 55 scheme will be appropriately reduced.