1955 No. 652 (S. 78)

The Town and Country Planning (Diversion of Payments) (Scotland) Regulations, 1955

Made - - - -	28*th April*, 1955
Laid before Parliament	5*th May*, 1955
Coming into Operation	16*th May*, 1955

In exercise of the powers conferred on me by sections 66 and 68 of the Town and Country Planning (Scotland) Act, 1954(a), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Town and Country Planning (Diversion of Payments) (Scotland) Regulations, 1955, and shall come into operation on the 16th day of May, 1955.

Interpretation and Information

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, unless the context otherwise requires—

"the Act" means the Town and Country Planning (Scotland) Act, 1954;

"the Board" means the Central Land Board;

"Lands Tribunal" means the Lands Tribunal for Scotland:

Provided that until sections 1 to 3 of the Lands Tribunal Act, 1949(c), come into force as regards Scotland for any references in these regulations to the Lands Tribunal there shall be substituted a reference to an official arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919(d), and sections 3, 5 and 6 of that Act shall apply, subject to any necessary modifications, in relation to the determination of any question under these regulations by an arbiter so appointed; and

"original applicant" means a person entitled to exercise the right to apply for a payment under Part I of the Act or to claim compensation under Part II or Part V of the Act apart from these regulations.

(3) Where, before the 1st day of January, 1955, an interest in land has ceased to be subject to a heritable security created before the 1st day of July, 1948, the expression "heritable creditor" in Regulation 4 of these regulations in relation to that interest, and in Regulation 5 of these regulations in relation to compensation under Part V of the Act in respect of that interest shall include a person who held a heritable security over that interest immediately before it ceased to be subject to that security or a person claiming under such a security.

(a) 2 & 3 Eliz. 2. c. 73. (b) 52 & 53 Vict. c. 63.
(c) 12, 13 & 14 Geo. 6. c. 42. (d) 9 & 10 Geo. 5. c. 57.

3. Where by these regulations any heritable creditor or owner of a qualified interest within the meaning of Part IV of the regulations is empowered to give any notice or claim any compensation, the Board or the Secretary of State, as the case may be, may require that heritable creditor or owner to provide further particulars or evidence in support of his notice or claim (including further information as to any relevant interest in land and as to any other person's interest in such land) and the heritable creditor or owner of a qualified interest shall furnish any particulars or evidence available to him within 30 days of any such requirement.

PART II

HERITABLE SECURITIES

Payments under Part I of the Act

4.—(1) This regulation applies to any payment under any of the provisions of Part I of the Act other than sections 3, 8 and 11 (which provide respectively for payments where development charge has been incurred, payments where the claim holding was purchased, and payments to persons other than the holder of a claim holding) where, at the 1st day of January, 1955 :—

(*a*) the right to apply for the payment was exercisable by reference to an interest in land which is subject to a heritable security created before the 1st day of July, 1948, or was, on or after the 13th day of August, 1947, subject to such a security ; and

(*b*) the moneys secured thereby have not been paid in full or secured exclusively on other land ; and

(*c*) the heritable creditor is not the holder of the claim holding which relates to that interest.

(2) Where the Board has received from an original applicant an application for any payment to which this regulation applies and it appears to them from information in their possession that a heritable creditor would be entitled on compliance with paragraph (3) of this regulation to receive the payment or part of the payment under paragraph (5) of this regulation, the Board shall give notice to that heritable creditor that such an application has been made, and shall send a copy of the notice to any other heritable creditor who, from the information in their possession, might be so entitled if he had priority, and any such notice or copy may be sent to the last known address of any such creditor or his agent.

(3) Any heritable creditor who has received a notice or copy under the last preceding paragraph and who may be entitled to receive in accordance with paragrah (5) of this regulation any payment or part of any payment to which this regulation applies shall, if he wishes to receive such payment or part thereof, notify the Board in writing within 30 days of the date of the notice, declaring that the moneys secured by the heritable security have not been paid in full or secured exclusively on other land, stating whether any other heritable creditor has priority to him, and giving particulars of the interest in land to which the heritable security relates or related.

(4) Where an original applicant has failed to apply for any payment to which this regulation applies on or before the 30th day of April, 1955, the right to make application for payment, subject to the allowing of an extended or further extended period by the Board, shall, in so far as it is exercisable by reference to any interest in land which is, or was, subject to a heritable security, be exercisable by a heritable creditor under that security and where

such right is so exercisable paragraphs (2) and (3) of this regulation shall apply as if that creditor were an original applicant as well as a heritable creditor and the original applicant shall be entitled, on the allowing of such extended period as aforesaid, to make application only in respect of his interest in the part of the land (if any) not subject to the heritable security.

(5) Subject to the foregoing provisions of this regulation and to paragraph (4) of Regulation 2 of these regulations, where any payment to which this regulation applies falls to be made and the moneys secured by the heritable security have not been paid in full or secured exclusively on other land, the principal amount of the payment and the interest thereon shall be paid to the heritable creditor who has given notice to the Board under paragraph (3) of this regulation, or, where there is more than one such creditor, to the creditor having first priority in order of ranking, and in either case the heritable creditor shall be liable to account therefor as if the payment and the interest thereon had been proceeds of sale of the interest in land subject to the heritable security, or which was so subject, arising under a power of sale exercised by that heritable creditor on the date on which payment is made:

Provided that where the rights of the heritable creditor extend or extended only to part of the land by reference to which the payment falls to be made, this paragraph shall have effect in relation only to so much of the payment as is attributable to the land subject to the security or which was so subject.

(6) Notwithstanding anything contained in the last preceding paragraph, where no heritable creditor has notified the Board in accordance with paragraph (3) of this regulation that he wishes to receive any payment the Board may make payment to the person otherwise entitled thereto.

Compensation under Parts II and V of Act

5.—(1) This regulation applies to any compensation payable under Part II or Part V of the Act, where, at the time when the right to claim the compensation has become exercisable:—

(*a*) in the case of compensation payable under Part II of the Act the said right is exercisable by reference to an interest in land which is subject to a heritable security created before the 1st day of July, 1948, or on or after the 1st day of January, 1955;

(*b*) in the case of compensation payable under Part V of the Act the said right is exercisable by reference to an interest in land which is subject to a heritable security created before the 1st day of July, 1948, or was, at any time on or after the said 1st day of July and before the 1st day of January, 1955, subject to such a heritable security, and the heritable creditor of the person having the said interest is not the holder of the claim holding which relates to that interest,

and the moneys secured thereby have not been paid in full or secured exclusively on other land:

Provided that this regulation shall have effect, as regards any heritable security created on or after the said 1st day of January, 1955, subject to any provision to the contrary in that security or agreement relating thereto.

(2) Where the Secretary of State has received from an original applicant a claim for any compensation to which this regulation applies and it appears to the Secretary of State that a heritable creditor would be entitled on

compliance with paragraph (3) of this regulation to receive the compensation or part of the compensation under paragraph (5) of this regulation, the Secretary of State shall give notice to that heritable creditor that such a claim has been made, and shall send a copy of the notice to any other heritable creditor who might, in his opinion, be so entitled, if he had priority and any such notice or copy may be sent to the last known address of any such heritable creditor or his agent.

(3) Any heritable creditor who has received a notice or copy under the last preceding paragraph and who may be entitled to receive in accordance with paragraph (5) of this regulation any compensation or part of any compensation to which this regulation applies shall, if he wishes to receive such compensation, notify the Secretary of State in writing within 30 days of the date of the notice, declaring that the moneys secured by the heritable security have not been paid in full or secured exclusively on other land, stating whether any other heritable creditor has priority to him, and giving particulars of the interest in land to which the heritable security relates or related.

(4) Where an original applicant has failed to claim any compensation to which this regulation applies within the period prescribed in that behalf by the Act, the right to claim shall, in so far as it is exercisable by reference to any interest in land which is, or was, subject to a heritable security, and subject to the allowing of an extended or further extended period by the Secretary of State, be exercisable by a heritable creditor of the person having the said interest, and where such right is so exercised paragraphs (2) and (3) of this regulation shall apply as if that creditor were an original applicant as well as a heritable creditor and the original applicant shall be entitled, on the allowing of such extended period as aforesaid, to claim compensation only in respect of his interest in the part of the land (if any) not subject to the heritable security.

(5) Subject to the foregoing provisions of this regulation and to paragraph (4) of Regulation 2 of these Regulations, where any compensation to which this regulation applies falls to be paid and the moneys secured by the heritable security have not been paid in full or secured exclusively on other land the compensation (including in the case of any compensation under Part V of the Act, the interest thereon) shall be paid to the heritable creditor who has given notice to the Secretary of State under paragraph (3) of this regulation, or, where there is more than one such heritable creditor, to the heritable creditor having first priority in order of ranking, and in either case the heritable creditor shall be liable to account therefore as if such compensation had been proceeds of sale of the interest in land subject to the security or which was so subject, arising under a power of sale exercised by that heritable creditor on the date on which the compensation is paid :

Provided that where the rights of the heritable creditor extend or extended only to part of the land by reference to which the compensation falls to be paid, this paragraph shall have effect in relation only to so much of the compensation as is attributable to the land subject to that heritable security, or which was so subject.

(6) Notwithstanding anything contained in the last preceding paragraph, where no heritable creditor has notified the Secretary of State in accordance with paragraph (3) of this regulation that he wishes to receive any compensation the Secretary of State may pay the compensation to the person otherwise entitled thereto.

PART III

Assignations of claim holdings in security

6. Where the holder of a claim holding becomes entitled:—

(*a*) to a payment under section 9 of the Act (which provides for certain payments to a person deriving title from the original claim holder) and he became entitled, under an assignation in security, to the claim-holding in respect of which that payment has become payable; or

(*b*) to compensation under subsection (2) of section 45 of the Act (which provides for the payment of compensation under Part V of the Act to a person entitled to the claim holding under an assignation in security),

he shall apply any such payment or compensation (including interest) as if it were proceeds of sale of an interest in land subject to a heritable security arising under a power of sale exercised by that assignee on the date on which the payment is made or the compensation is paid, as the case may be.

PART IV

SUPERIORS AND CREDITORS IN GROUND ANNUALS

Interpretation

7. In this Part of these regulations:—

"feu charter" has the meaning assigned to it by section 113 (1) of the Town and Country Planning (Scotland) Act, 1947(a);

"qualified interest" means the interest of the superior in a feu or the interest of the creditor in a ground annual;

"qualified interest payment" means a sum payable by the Secretary of State out of compensation under Part II or Part V of the Act, being a sum to which the owner of a qualified interest is entitled, if he makes a claim in that behalf, under the Schedule to these regulations; and

"qualified interest claim" means a claim for a qualified interest payment.

Qualified interest claims

8.—(1) Where the Secretary of State receives from an original applicant a claim for any compensation payable under Part II or Part V of the Act and that compensation is claimed by reference to an interest in land which is subject to a qualified interest created:—

(*a*) in the case of compensation payable under the said Part II, either on or before the 1st day of July, 1948, or on or after the 1st day of January, 1955;

(*b*) in the case of compensation payable under the said Part V, before the said 1st day of July,

the Secretary of State shall give to any owner of a qualified interest appearing to him to be entitled to a qualified interest payment notice of the fact that such a claim has been made.

(2) Any owner of a qualified interest who has received a notice under the last preceding paragraph and who desires to receive any qualified interest payment shall make a qualified interest claim to the Secretary of State within 30 days of the date of the said notice.

(a) 10 & 11 Geo. 6. c. 53.

(3) Any qualified interest claim shall be in writing and shall state :—

(*a*) the name and address of any agent whom the owner of the qualified interest appoints to act for him in connection with the claim for a qualified interest payment ;

(*b*) the name and address of the original applicant and of the owner of the qualified interest ;

(*c*) the amount of the feu-duty or ground annual, as the case may be ;

(*d*) the date of the feu charter or contract of ground annual, as the case may be ; and the date of recording thereof in the Register of Sasines ;

(*e*) the postal address of the land in which the qualified interest subsists together with a plan of a size suitable to enable the precise location and extent of the land to be identified ;

(*f*) particulars of any other qualified interest affecting the land, including the date of the feu charter or contract of ground annual, so far as known to the owner of the qualified interest.

(4) Where an original applicant has failed to claim any compensation payable under Part II or Part V of the Act within the period prescribed in that behalf by the Act, the right to claim compensation shall, subject to the allowing of an extended or further extended period by the Secretary of State, be exercisable by any owner of a qualified interest, in so far as it is necessary to enable a qualified interest payment to be made to him or to any other owner of a qualified interest, as if he were an original applicant, and such owner shall with his claim under Part II or Part V of the Act furnish to the Secretary of State a qualified interest claim ; and where such right is so exercised, the original applicant

(*a*) shall be entitled to any compensation found to be payable in respect of the charged land in excess of any qualified interest payments ; and

(*b*) may, on the allowing of such extended period as aforesaid, claim compensation only in respect of his interest in the part of the land (if any) not subject to a qualified interest claim.

Determination of payments

9. The provisions of the Schedule to these regulations (being provisions substantially corresponding, subject to the necessary modifications, with those of section 25 of the War Damage Act, 1943(**a**), and of the Fourth Schedule to that Act) shall have effect for the purpose of determining whether a qualified interest payment is payable in respect of a qualified interest claim and the amount of any such payment.

Arbitration

10.—(1) Where a qualified interest claim has been duly made under paragraph (2) or paragraph (4) of Regulation 8 of these regulations in respect of a qualified interest (in this regulation referred to as " the qualified interest in question ") the Secretary of State shall, on giving notice of his determination as to the amount of compensation, send a notice (in this regulation referred to as " a qualified interest notice ") to the original applicant and to the owner of the qualified interest in question.

(2) A qualified interest notice shall specify :—

(*a*) the amount of the qualified interest payment which the Secretary of State has determined to be payable in respect of the qualified interest in question, the annual equivalent ascertained under paragraph 5 of the Schedule to these regulations and such other amounts and values in

(a) 6 & 7 Geo. 6. c. 21.

relation to the payment as were required to be ascertained under the said Schedule; and

(*b*) the amount of any qualified interest payment which the Secretary of State has determined to be payable in respect of any prior ranking qualified interest or would have so determined on a qualified interest claim by the owner of that interest:

Provided that where no qualified interest payment is payable, the notice shall specify that fact, as if an amount were determined to be payable.

(3) Subject to paragraph (5) of this regulation, if any person to whom a qualified interest notice has been sent wishes to dispute any part of that notice, he may, within 30 days of the issue of the qualified interest notice—

(*a*) give in writing to the Lands Tribunal a notice of dispute specifying the part or parts of the qualified interest notice to which the dispute relates; and

(*b*) notify the Secretary of State that he has done so,

and on receipt of a notice under sub-paragraph (*b*) of this paragraph the Secretary of State shall notify all other persons to whom qualified interest notices were given under paragraph (1) of this regulation.

(4) Where after receipt of a qualified interest notice any person signifies in writing to the Secretary of State his agreement to that notice, he shall not thereafter be entitled to give a notice of dispute under the immediately preceding paragraph of this regulation.

(5) The original applicant and the owner of the qualified interest in question and, so far as the dispute relates to or may affect the amount of the qualified interest payment in respect of a qualified interest other than the qualified interest in question, the owner of that interest, shall, on compliance with the rules of the Lands Tribunal for the time being in force, be afforded an opportunity to be heard in any dispute before the Lands Tribunal under this regulation.

(6) The Lands Tribunal shall by their decision either confirm or vary the qualified interest notice relating to the qualified interest in question and shall notify the parties of their decision:

Provided that where the determination of the Secretary of State as to the compensation payable under Part II or Part V of the Act has been referred to the Lands Tribunal by virtue of any of the provisions of the Act and the amount of such compensation has been varied by that Tribunal, that variation shall be taken into account, but, except in such a case, the Tribunal shall not by their decision vary such amount.

(7) Where the Lands Tribunal vary a qualified interest notice under the last preceding paragraph effect shall be given by the Secretary of State to such variation in making any qualified interest payment out of the said compensation whether or not the qualified interest notice relating to that payment has been varied by the Tribunal.

PART V

TRUSTS

11. Where the right to make application for any payment under any of the provisions of Part I of the Act, or to claim any compensation under Part II or Part V of the Act, becomes exercisable by reference to an interest in land which is, at the time when the said right is exercisable, subject to a trust, then—

(*a*) the right to make the application or to claim compensation as the case may be, shall be exercisable by the trustees under the trust: and

(*b*) where an application or claim has been made by reference to such an interest as aforesaid and the payment falls to be made, or compensation falls to be paid, the principal amount of the payment and the interest thereon or the compensation (including in the case of compensation under Part V of the Act interest thereon) shall be paid to the trustees under the trust.

PART VI

COMPENSATION FOR DEPRECIATION UNDER PART IV OF ACT

12. The provisions of these regulations other than Regulation 4 shall apply in relation to compensation for depreciation within the meaning of subsection (3) of section 40 of the Act as they apply in relation to compensation under Part II thereof:

Provided that for the purposes of the said application references to the Secretary of State shall be construed as references to the local planning authority.

Dated this 28th day of April, 1955.

James Stuart,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.

SCHEDULE Regulation 9

PROVISIONS FOR DETERMINING QUALIFIED INTEREST PAYMENTS

Definitions

1. In this Schedule—

" the relevant decision " means the planning decision in respect of which the right to claim compensation under Part II or Part V of the Act becomes exercisable, and, in the case of compensation under the said Part V, includes an order revoking or modifying planning permission ; and

" the material time " means the date of the relevant decision determined, in the case of a planning decision, in accordance with the provisions of subsection (3) of section 69 of the Act.

Entitlement to qualified interest payment

2.—(1) Where the right to claim any compensation under Part II or Part V of the Act is exercisable and—

(*a*) there was subsisting at the material time a qualified interest created—

(i) in a case of compensation payable under the said Part II, either before the 1st day of July, 1948, or on or after the 1st day of January, 1955 ;

(ii) in a case of compensation payable under the said Part V before the said 1st day of July,

and created over part or the whole of the land by reference to which the said right is exercisable or over that land together with other land ; and

(*b*) the net amount of the feu-duty or, as the case may be, ground annual ascertained in accordance with paragraph 5 of this Schedule so far as attributable to the land subject thereto by reference to which the said right is exercisable (in this Schedule referred to as " the charged land ") exceeds the available annual limited value of that charged land as so ascertained,

then, subject to paragraph 3 of this Schedule, the owner of that qualified interest shall be entitled, if he makes a qualified interest claim, to receive from the Secretary of State out of the compensation which falls to be paid under Part II or Part V of the Act a sum equal to the capital equivalent of the excess, determined in accordance with sub-paragraph (*e*) of paragraph 4 of this Schedule:

Provided that the said sum shall not exceed the amount of the said compensation.

(2) Where the interest in land by reference to which the right to claim compensation is exercisable was subject at the material time to more than one such qualified interest as is mentioned in the immediately preceding sub-paragraph, then—

(*a*) where more than one owner of a qualified interest has made a qualified interest claim the qualified interest payment to each of them who has so claimed shall be so paid out of the compensation that each such owner receives the payment to which he is entitled, or so much thereof as can be satisfied out of the compensation after qualified interest payments have been made to owners of any qualified interests having priority;

(*b*) where an owner of a qualified interest fails to make a qualified interest claim he shall not be entitled to the payment of any sum under this Schedule, but the foregoing provisions of this paragraph shall have effect to enable such qualified interest payments to be made to any other owner of a qualified interest as would have been payable if such other owner had made such a claim:

Provided that no amount shall in any case be payable under this paragraph in respect of a qualified interest, being the interest of a superior in a feu, unless every owner of such a qualified interest ranking in succession after that of the qualified interest in question has duly made a qualified interest claim.

Priority between superiors or creditors in ground annuals and heritable creditors

3. Where an owner of a qualified interest makes a qualified interest claim and the right to receive the compensation in respect of the interest in the charged land is vested, by virtue of the provisions of Regulation 5 of these regulations, in a heritable creditor, the sum payable to the creditor under Regulation 5 of these regulations shall be reduced by the amount required for giving effect to the right conferred upon the owner of the qualified interest under paragraph 2 of this Schedule.

Computation of qualified interest payment

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

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

(i) if the charged land is coterminous with or greater in area than the land by reference to which compensation under Part II or Part V of the Act falls to be paid, be taken to be five per cent. of the value of the last-mentioned land after the relevant decision;

(ii) if the charged land is part of the land by reference to which the said compensation falls to be paid, be determined by apportioning or allocating to the charged land the appropriate part (if any) of the said percentage of the said value,

and, in either case, the charged land shall be treated as if it were free from incumbrances, but subject to any servitude or other restriction affecting the land at the material time ;

(*b*) the available annual limited value of the charged land shall be taken to be the annual limited value thereof less the net amount so far as attributable to any of the charged land, of any feu-duty or ground annual, payable to the owner of a qualified interest having priority to the qualified interest in question to which the charged land was subject at the material time ;

(*c*) the amount of any feu-duty or ground annual, as the case may be, attributable to any charged land shall, where at the material time that land was the only land subject to the feu-duty or ground annual, as the case may be, be determined having regard to the whole amount of the feu-duty or ground annual, whether or not current at the said time, provided for in the feu charter or contract of ground annual, and where the charged land was not the only land subject to the feu-duty or ground annual, as the case may be, shall be determined by apportioning or allocating to that charged land so much (if any) of the whole amount as may be appropriate having regard—

(i) primarily to any apportionment or allocation of that feu-duty or ground annual, as the case may be, which may have been made otherwise than so as to be binding on the owner of the qualified interest before the material time ; and

(ii) subject as aforesaid to the proportion borne by the annual value of that charged land immediately before the relevant decision to the annual value of the other land subject to any feu-duty or ground annual, as the case may be, immediately before that decision ;

(*d*) the net amount of the feu-duty or ground annual, as the case may be, attributable to the charged land shall be taken to be the amount by which the feu-duty or ground annual payable to the owner of the qualified interest in question exceeds that payable by him to the owner of the qualified interest ranking in immediate priority ;

(*e*) the capital equivalent of the excess of the net amount of the feu-duty or ground annual, as the case may be, so far as attributable to the charged land shall be taken to be that excess multiplied by the number of years purchase which the feu-duty or ground annual, as the case may be, might have been expected to realise on a sale thereof in the open market immediately after the relevant decision if at that time—

(i) in a case where the relevant decision was an order revoking or modifying planning permission, that order had not been made ; and

(ii) in a case of any other relevant decision, that decision had been a decision to the contrary effect.

Allocations and discharge of feu-duty etc.

5. Where the owner of a qualified interest is entitled to receive any sum under paragraph 2 of this Schedule, there shall be ascertained the amount which is equal to the annual equivalent of the aggregate of that sum and any sums which owners of qualified interests having priority to the qualified interest in question are entitled to receive under the said paragraph:

Provided that where the owner of the qualified interest in question is a creditor in ground annual any sum which owners of other qualified interests are entitled to receive shall, in ascertaining the annual equivalent as aforesaid, be disregarded.

6. Without prejudice to the provisions of sub-paragraph (2) of paragraph 2 of this Schedule, the right conferred on the owner of a qualified interest to receive

a payment out of the compensation payable under Part II or Part V of the Act shall not be exerciseable until—

(*a*) in the case where the feu-duty or ground annual, as the case may be, is payable in respect of the charged land and also of other land, the part of the feu-duty or ground annual attributable to that charged land as determined in accordance with sub-paragraph (*c*) of paragraph 4 of this Schedule has been allocated thereon ; and

(*b*) there has been discharged so much of the feu-duty or ground annual attributable to the charged land as determined in accordance with sub-paragraph (*c*) of paragraph 4 of this Schedule, or the part thereof so allocated, as is equal to the annual equivalent ascertained under paragraph 5.

7. Where for the purposes of this Schedule a feu-duty or ground annual is required to be allocated or (whether in whole or in part) to be discharged, the owner of the qualified interest 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 ;

(*b*) a discharge in appropriate form of the feu-duty or ground annual or part thereof, as the case may be, specifying the extent to which the same is discharged and describing, particularly or by reference, the land so disburdened ;

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

Disqualification from payment

8. Where the owner of a qualified interest being the interest of a superior in a feu fails within 6 months of the issue of the Secretary of State's determination of the amount payable to such owner, or of the issue of the award by the Lands Tribunal in any dispute referred to them, to record such memorandum (if any) and discharge, as is referred to in the immediately preceding paragraph, the right of the owner of the qualified interest and of all owners of qualified interests ranking in order of priority to such owner, whether or not they have recorded a discharge as aforesaid, to any payment otherwise payable under these regulations shall cease and the Secretary of State may thereafter make such payment of compensation as he would otherwise have made had the owner of the qualified interest in question and any other owner of a qualified interest ranking in priority thereto not made a claim.

EXPLANATORY NOTE

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

These regulations make provision for cases where a payment under Part I of the Town and Country Planning (Scotland) Act, 1954, or compensation under Part II, IV or V of the Act is payable in respect of an interest in land subject to a heritable security, a feu-duty, ground annual or trust or (in cases under Part I and Part V) in respect of a claim holding which is subject to an assignation in security.

Part II of the regulations deals with heritable securities. Regulation 4 provides that in cases where the right to apply for a payment under Part I of the Act arises in respect of a past transaction involving a sale of land the Central Land Board are to notify persons who hold or held heritable securities

over the land under securities created before 1st July, 1948 (the date on which the development value of land became subject to the provisions of Part V of the Town and Country Planning (Scotland) Act, 1947, which provided for claims in respect of development value to be satisfied out of the fund set up for that purpose). Heritable creditors who wish to receive a payment under Part I of the Act of 1954 in respect of the development value of the land are to notify the Central Land Board, and are placed under the same obligations in respect of any payment which they receive as if it were proceeds of sale of the land subject to the heritable security. Provision is made for ensuring that where there is more than one heritable creditor priorities are observed; and for enabling a heritable creditor to apply for the payment where no application is made by the debtor in the heritable security. Regulation 5 contains similar provisions in relation to compensation payable under Parts II and V of the Act, in cases where the value of land is depreciated by a planning decision or order. In relation to depreciation occurring in the future, which is dealt with by Part II of the Act, the provisions extend also to heritable securities created after the coming into operation of the Act, subject to any provisions to the contrary in the security or agreement relating thereto. Part III deals with assignations in security of claim holdings (which were formerly claims established under Part V of the Act of 1947). Regulation 6 provides that where such an assignee is entitled to a payment under Part I of the Act of 1954 or to compensation under Part V of that Act, he is to account as if the sum paid to him were proceeds of sale of land subject to a heritable security. Thus after any debt due to him has been satisfied, the balance of the sum which he receives will go to the person who would have been entitled to the claim holding but for the assignation.

Part IV of the regulations deals with feu-duties or ground annuals created before the coming into operation of the Act of 1947, or after 1st January, 1955 (the date of commencement of the Act of 1954). Where the value of the land subject to such feu-duty or ground annual is depreciated by a planning decision or order and compensation is payable in respect of the depreciation under Part II or Part V of the Act the superior or creditor in a ground annual (hereinafter referred to as a "qualified interest") is empowered by Regulation 8 to make a qualified interest claim. He is then to be entitled to a payment determined in accordance with the Schedule to the regulations, in respect of the depreciation in value of his security. Where a payment is made, there is to be a consequential discharge of part of the feu-duty or ground annual under paragraphs 5 to 7 of the Schedule. Paragraph 8 of the Schedule secures the equitable operation of this discharge of liabilities by providing that the Secretary of State shall not make qualified interest payments to any qualified interest until all the discharges affecting those payments have been recorded. Regulation 9 provides, where disputes arise as to the amount of a qualified interest payment, for rights of appeal to the Lands Tribunal (or, until the Tribunal is set up, an arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919).

Part V of the regulations deals with cases where land in respect of which a payment under Part I or compensation under Part II or Part V of the Act becomes due is subject to a trust. In such cases the trustees are to be entitled to claim and receive the payment or compensation.

Part VI of the regulations applies the provisions of the regulations (other than Regulation 4) to the payment of compensation for depreciation under Part IV of the Act with the substitution of references to the local planning authority for the references to the Secretary of State.