The Town and country planning act, 1954 / with general introduction and annotations by D.P. Kerrigan and J.D. James.

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THE TOWN AND COUNTRY PLANNING ACT, 1954

With General Introduction and Annotations

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PREFACE

This book contains the text of the Town and Country Planning Act, 1954, together with what we hope are adequate annotations to its provisions. We have also been able to include most of the necessary subordinate legislation made under or for the purposes of the Act; the Appendix contains all the regulations and rules now available.

The Act of 1954 cannot be understood in isolation. Together with the Act of 1953 it amends the financial structure of the Town and Country Planning Act, 1947, which sought to make a once-for-all settlement of the financial problems of planning. The claims established for the loss of development value of particular interests in land, as they subsisted when the Act of 1947 came into operation on 1st July 1948, are now to be used for a different purpose. Those claims were to have been satisfied in 1953 under a Treasury Scheme to be made for the purpose of distributing a sum of £300 million. The making of that scheme was prevented by the Act of 1953, and certain payments and certain forms of compensation are now to be paid, by reference to those claims, under the Act of 1954. We have endeavoured to explain the outline of the new system in the General Introduction to this book.

The underlying scheme of the Act of 1954 is not difficult to appreciate. Its expression in the particular provisions of the Act is, however, a matter of exceedingly intricate detail. Even so, it has not been found possible to meet all difficulties, and inevitably anomalies arise. The Act uses claims established in relation to particular interests in land, as they existed at a particular date, to provide the basis for the calculation of a balance of development value relating to the land itself. It keeps, as it were, a running account from which payments may be made when the realisation of development value is prevented or restricted or land is compulsorily acquired. In the course of time land may be divided, interests may be created or expire, development may be carried out, and compensation may be paid and re-paid. Machinery has, therefore, to be provided for taking account of these and other matters, on any occasion when the balance of this running account has to be found.

We would like to express our respectful admiration of the skill with which the Parliamentary draftsman has accomplished what must have seemed an almost impossible task.

In the notes in this book, we have tried to show how the Act is related to the old law, and how different Parts of the Act are related to each other. For example, in annotating Part I, we have endeavoured to explain why the special payments under that Part are necessary, in the transition from the old system to the new; and, in annotating Part II, we have drawn attention to the provisions of that Part which are applied for the purposes of Part V of the Act. Inevitably, our account of the Act shows primarily how it is intended to operate, though we have drawn attention to anomalies where the practitioner, if warned, may be able to do something to avoid them or lessen their effect.

We are grateful for the assistance we have received from our publishers, who have also arranged for the preparation of the Index by Miss M. M. Wells, M.A., of Gray's Inn, Barrister-at-Law. We thank, too, the printers for their able co-operation. We are indebted to our professional colleagues for many helpful suggestions; and would ask the reader to assist us by drawing our attention to any errors into which we have fallen.

4 KING'S BENCH WALK,
TEMPLE, E.C.4.
10th March 1955.

D. P. K.
J. D. J.

REFERENCES AND ABBREVIATIONS

This book is written primarily for inclusion in the Annotated Legislation Service, and references are given in the usual way to other Volumes in the Service and, where appropriate, to other works such as the English and Empire Digest and Halsbury's Statutes of England. A number of additional abbreviations and references have been adopted in the present Volume to simplify the process of cross reference to earlier statutes, statutory instruments and other relevant matters. Virtually the whole of the previous law and practice (up to the year 1953) is set out, together with the Ministry's circulars and other official explanatory matter, in Hill's Complete Law of Town and Country Planning (4th Edn.) (1949) and the Second Supplement (1953) to that work; detailed cross references to Hill are therefore given throughout the present work. To facilitate reference to the Parliamentary debates on the Bill for the present Act, a note headed " The Bill and Hansard " is printed, *post*.

THE ENGLISH AND EMPIRE DIGEST

References to cases included in the original main volumes of the English and Empire Digest are given thus:—

Thew v. *South West Africa Co., Ltd.*, (1924), 9 Tax Cas. 141; 28 Digest 23, *122*.

In the case of a main replacement volume the reference is given thus:—

Outram v. *Hyde* (1875), 24 W.R. 268; 27 Digest (Repl.) 132, *956*.

References to cases which appear in the Digest Supplements (first, second or third) are given thus:—

Mills v. *Bryce*, [1951] 1 All E.R. 111; 2nd Digest Supp.

THE ALL ENGLAND LAW REPORTS

The citations of the reports of cases decided since the beginning of 1936 include a reference to the All England Law Reports, thus:—

Whyte v. *Clancy*, [1936] 2 All E.R. 735.

HALSBURY'S STATUTES OF ENGLAND

References to Public General Statutes (other than to Acts or sections printed in this volume) contained in the second edition of Halsbury's Statutes of England are followed by a reference to the volume and page in that edition where the Act or section will be found, thus:—

Criminal Appeal Act, 1907, s. 6 (5 Halsbury's Statutes (2nd Edn.) 931).

HALSBURY'S LAWS OF ENGLAND

The first figure in references to Halsbury's Laws of England indicates the volume, and the last figure indicates the page number. The edition referred to—Second (Hailsham) or Third (Simonds)—is indicated in parentheses.

ANNOTATED LEGISLATION SERVICE

References to the Statutes Volume of Butterworths Annotated Legislation Service are given thus:—

Statutes Vol., p. 250.

References to previous Statutes Supplements are given thus:—

5 Statutes Supp. 63.

Some subscribers to the service do not possess Statutes Supp. 75, containing the Income Tax Act, 1952; they are informed that the pagination in Vol. 31 of Halsbury's Statutes (2nd Edn.) is identical and reference should be made to that Volume in lieu of Statutes Supp. 75.

PARLIAMENTARY OFFICIAL REPORTS (HANSARD)

House of Lords and House of Commons Official Reports are referred to by reference to the volume followed by the number of the column. References are to column numbers of the daily issues; the weekly issue normally agrees with the daily issue but the bound volumes do not necessarily so agree. Thus:—

121 H. of L. Official Report 1200.

376 H. of C. Official Report 1600.

House of Commons Standing Committee Official Reports are referred to by reference to Standing Committee, A, B, or C, etc., followed by the date and the number of the column, thus:—

H. of C. Official Report, S.C.B., 6th December 1945, col. 12.

See also the note " The Bill and Hansard ", *post*.

STATUTORY INSTRUMENTS

References to statutory instruments are given by the official citation followed, in parentheses, by the year and number of the instrument. In some cases where the title of an instrument begins with the words Town and Country Planning these words have been omitted or abbreviated to T. & C.P. The correct citation may, in such cases, be ascertained by reference to Hill or to Halsbury's Statutory Instruments, Vol. 21.

OTHER REFERENCES AND ABBREVIATIONS

The following are the additional abbreviations used for references in the present Volume.

Abbreviation	Full title or meaning
Hill	The Complete Law of Town and Country Planning (4th Edn.) (1949) by H. A. Hill.
Hill, 2nd Supp.	Hill's Complete Law of Town and Country Planning, Second (Cumulative) Supplement to the Fourth Edition (1953). (This brings Hill, *supra*, up to date to May 1953, and includes the Act of 1953.)
Act of 1919	The Acquisition of Land (Assessment of Compensation) Act, 1919; see Hill, pp. 701–711, or 3 Halsbury's Statutes (2nd Edn.) 975.
Act of 1932	The Town and Country Planning Act, 1932 (repealed with minor savings); see Hill, pp. 372–423.
Act of 1944	The Town and Country Planning Act, 1944; see Hill, pp. 310–348 and 434–499, or 25 Halsbury's Statutes (2nd Edn.) 391 and 452.
Act of 1946	The Acquisition of Land (Authorisation Procedure) Act, 1946; see Hill, pp. 646–688, or 3 Halsbury's Statutes (2nd Edn.) 1064, or 39 Statutes Supp. 11.
Act of 1947 or the principal Act	The Town and Country Planning Act, 1947; see Hill, pp. 35–348, or 3 Halsbury's Statutes (2nd Edn.) 1089 and 25 Halsbury's Statutes (2nd Edn.) 489, or 48 Statutes Supp. 22.
Act of 1951	The Town and Country Planning (Amendment) Act, 1951; see Hill, 2nd Supp., pp. B34–B37, or 30 Halsbury's Statutes (2nd Edn.) 601, or 71 Statutes Supp. 94.
Act of 1953	The Town and Country Planning Act, 1953, see Hill, 2nd Supp., pp. B693–B703, or 33 Halsbury's Statutes (2nd Edn.) 856, or 78 Statutes Supp. 133.
Act of 1954	The Town and Country Planning Act, 1954 (pp. 1 *et seq.*, *post*), is referred to as the " Act of 1954 " in the notes to the subordinate legislation in the Appendix, *post*.
G.D.O.	The General Development Order, i.e. at present, The Town and Country Planning General Development Order, 1950 (S.I. 1950 No. 728, Part I); see Hill, 2nd Supp., pp. B163–B204.
The Minister	The Minister of Housing and Local Government; but see s. 69 and notes, p. 219, *post*, for earlier styles and transfers of functions.
Part VI claim	A claim under Part VI of the Town and Country Planning Act, 1947, for a payment in respect of an interest in land depreciated in value by the provisions of that Act. The reference is usually to a claim under s. 58 of the Act of 1947.
Third Schedule development	Development of a class specified in the Third Schedule to the Town and Country Planning Act, 1947 (as amended), and regarded as included in the existing use of land.
T. & C.P.	Town and Country Planning; e.g. T. & C.P. (General) Regulations, 1948. In some cases the words Town and Country Planning are wholly omitted in citing a Statutory Instrument; e.g. it is thought more convenient to refer to the Town and Country Planning (Development Charge Exemptions) Regulations, 1950, as " the Development Charge Exemptions Regulations of 1950 " with the addition of the number of the instrument and a page reference, thus " (S.I. 1950 No. 1233); see Hill, 2nd Supp., pp. B223–B231 ".
The White Paper	Command Paper entitled Amendment of Financial Provisions of the Town and Country Planning Act, 1947, and the Town and Country Planning (Scotland) Act, 1947, Cmd. 1952 No. 8699; see Hill, 2nd Supp., pp. B703–B715.
General Note	In the notes to the sections of the Act of 1954, references to the General Note are to the first note following the section in question. In some cases this includes a reference to a note which carries a separate heading; e.g. the note on Existing use value (pp. 24–25, *post*) is part of the General Note to s. 6.

THE BILL AND HANSARD

During the progress of the Bill for the Town and Country Planning Act, 1954, through Parliament, it was several times reprinted to incorporate amendments. As there were many hundreds of changes, many of them involving a re-numbering of the clauses and Schedules, readers may find considerable difficulty in following the earlier debates, as reported in *Hansard*, or the articles, explaining or commenting on the Bill, which appeared in legal and technical journals. The following is a combined list of the reprints of the Bill and of the daily issues of the reports of proceedings in Parliament, including debates in committee, and shows which print of the Bill was under discussion at each stage. The list should also be of assistance in reading learned articles if it is possible to guess the probable date of composition from the date of publication.

It has not been thought necessary to provide any tables correlating the actual section numbers with the numbers of the clauses in the prints of the Bill. In the notes to the Act, *post*, there are some references to *Hansard*, but it is hoped that in each case the reference is self-explanatory. In many cases, where the form of the Bill was substantially altered, the better course appeared to be to omit altogether the reference to earlier debates.

HOUSE OF COMMONS

Date (1954)	*Bill*	*Hansard*
February 26	[Bill 72]	
February 26		First Reading (524 H. of C. Official Report 709)
March 15		Second Reading (525 H. of C. Official Report 39–163)
April 8		Standing Committee C 1st Sitting (Clauses 1 and 2)
April 13		2nd Sitting (Clauses 2 and 3)
April 29		3rd Sitting (Clauses 3 and 4)
May 4		4th Sitting (Clauses 4 to 7)
May 6		5th Sitting (Clauses 7 to 10)
May 11		6th Sitting (Clauses 10 to 14)
May 13		7th Sitting (Clauses 14 to 20)
May 18		8th Sitting (Clauses 20 to 23)
May 20		9th Sitting (Clause 23)
May 25		10th Sitting (Clauses 24 to 31)
May 27		11th Sitting (Clauses 31 to 34)
June 1		12th Sitting (Clauses 34 to 37)
June 3		13th Sitting (Clauses 37 to 41)
June 16		14th Sitting (Clauses 42 to 53)
June 17		15th Sitting (other clauses)
June 22		16th Sitting (Schedules)
June 22	[Bill 134]	
July 13		Committee of House; Report; Third Reading. (530 H. of C. Official Report 298–436)

HOUSE OF LORDS

July 14	(150)	
		First Reading (188 H. of L. Official Report 985)
October 19		Second Reading (189 H. of L. Official Report 434–449 and 459–501)
November 1		Committee—First Day (189 H. of L. Official Report 851–942)
November 2		Committee—Second Day (189 H. of L. Official Report 979–1076)
November 3		Conclusion of Second Day (189 H. of L. Official Report 1077–1110)
November 2	(166)	
November 15		Report (189 H. of L. Official Report 1415–1490)
November 16		Third Reading (189 H. of L. Official Report 1499–1515)
November 16	(176)	

HOUSE OF COMMONS

November 16	[Bill 163] Lords Amendments to Lords Bill (150)	
November 22		Consideration of Lords Amendments (533 H. of C. Official Report 787–934)
November 25		Royal Assent.

The text of the Act, corresponding (except in pagination) with Lords Bill (176), was published on December 8, 1954.

CONTENTS

TABLE OF CASES

In the following Table references are given to the English and Empire Digest and its Supplements where a digest of each case will be found.

GENERAL INTRODUCTION

The Town and Country Planning Act, 1954, received the Royal Assent on 25th November 1954, and came into operation on 1st January 1955, the day appointed under s. 72 (2) by the appointed day order (S.I. 1954 No. 1598). It does not apply to Northern Ireland, and its application to Scotland is confined to making provision, under s. 63, for the dissolution of the Central Land Board. There is a separate Scots Act (2 & 3 Eliz. 2 c. 73).

The provisions of the present Act are so miscellaneous in character, and so often represent a rough and ready solution of particular problems following no general principle, that the drafting is necessarily very detailed and complex. This General Introduction can serve only as a guide to the arrangement of the Act, and to draw attention to matters requiring immediate action, particularly under Parts I and V. An attempt is made to outline some of the compensation provisions relating to planning restrictions and compulsory purchase. Those provisions cannot be explained in simple outline, however, without ignoring difficult detail. The real explanation is to be found in the sections. It might have been possible to cast more light on the purpose and effect of the Act by discussing the technical and political considerations involved; but these have no place in a legal text book.

SCOPE OF THE ACT OF 1954

Payments by reference to Part VI claims. The Town and Country Planning Act, 1954, is the second of two statutes giving effect to the Government's proposals for the amendment of the financial provisions of the Town and Country Planning Act, 1947. The proposals were announced, in outline, in the White Paper (Cmd. 8699) published on 18th November 1952. The first stage in implementing the proposals was the general abolition of development charges, as from that date, by the Act of 1953. That Act also withheld the payments which would otherwise have fallen to be made, in 1953, in respect of development value claims under s. 58 of the Act of 1947. It was declared that claims for s. 58 payments should be satisfied in such manner, in such cases, to such extent, at such times and with such interest as might thereafter be determined by an Act to be passed for the purpose.

The principal purpose of the present Act is accordingly, as stated in its long title (p. 3, *post*), to make provision for compensation and other payments by reference to s. 58 claims under the Act of 1947.

Other purposes of the Act of 1954. The other provisions of the present Act are all matters regarded by the Government as necessary amendments consequential on the White Paper proposals. They include: (1) a change in the basis of " existing use " value, as limited by the Third Schedule to the Act of 1947 (see s. 71 of the present Act, *post*), which forms the basis of the compulsory purchase price of land acquired by public authorities having the benefit of the Act of 1919; (2) a new basis of compensation for the revocation or modification of planning permission or the withdrawal of " permitted " development under a development order (see s. 38, *post*); (3) a new grant-making power substituted for ss. 93 and 94 of the Act of 1947, introducing a simplified system of Exchequer grants to local authorities (see ss. 50 and 51, *post*); (4) provision for taking account of War Damage Scheme payments under s. 59 of the Act of 1947 (see ss. 2 (2) (*b*) and 57 of the present Act, *post*); (5) provisions as to minerals and the Ironstone Restoration Fund (see ss. 54–56, *post*); and (6) provision for the ultimate winding up of the Central Land Board and for transfer of the Board's remaining functions (see s. 63, *post*).

Matters outside the scope of the Act. When the Bill for the present Act was introduced, the then Minister (Mr. Macmillan) indicated that its scope would be confined to the amendment of financial provisions of the Act of 1947. There are a variety of other amendments to that Act which the Ministry consider desirable, and it may be that these will be the subject of another Bill in the near future (see 525 H. of C. Official Report 43). It is not known what these proposed amendments may be, but it seems that the provisions of the principal Act as to purchase notices (s. 19 as amended, in another respect, by s. 70 of the present Act, *post*) and as to enforcement notices (ss. 23 and 24 of the principal Act) require improvement. There is also some criticism of the provisions relating to applications for express planning permission which allow an effective application to be made by a person having no interest in the land; this may affect the rights of those who have such interests. In an extreme case, a misguided application by a " stranger " could lead to the permanent exclusion of a payment under the present Act.

It will be noticed, also, that although the present Act incidentally amends the basis of compensation for the de-requisition of land (see s. 53, *post*), no attempt has been made to rectify the anomalies known to exist in that branch of the law.

FINANCIAL PROVISIONS OF THE ACT OF 1947

The Act of 1947. The Town and Country Planning Act, 1947, is primarily an Act passed to make provision for planning the development and use of land and for the control of land use. Its financial provisions were intended to provide a final compromise settlement of the problem of development values, short of land nationalisation. Its basic scheme was to exclude development value as an item of compensation payable on the occasion of the exercise of planning powers or on the compulsory acquisition of an interest in land.

The effect of Parts V, VI and VII of that Act, which are discussed below, amounted to the nationalisation of the development value, or the major part of it, in all land in private ownership. The owner was left, in effect, with the value of his land in its existing state and for its existing use, together with certain tolerances of development, specified in the Third Schedule and regarded as within the existing use value.

It was hoped thus to organise land values so that the exercise of planning control in the interests of efficiency or of amenity should not be hampered by problems of compensation and betterment. The Act of 1947 also operated to reduce hardship to, and anomalies as between, individual landowners affected by planning control.

Development charge : Part VII of the principal Act. One of the principal mechanisms on which the financial structure of the principal Act depended was the levy of development charge. Part VII of that Act (ss. 69–74) was intended, in the words of its long title, " to secure the recovery for the benefit of the community of development charges in respect of certain new development ". Development, beyond the Third Schedule tolerance, if carried out on or after 1st July 1948, was generally subject to a development charge calculated on the basis of the added value given to the land by permission for such development. In other words, it was necessary to buy back from the State the nationalised development value in the land, by paying, or undertaking to pay, the charge. The White Paper of 1952 criticised the system of development charges in paras. 14–18, and in para. 27 proposed its immediate abolition.

The Act of 1953 abolished development charge in principle. There are special provisions for development carried out before 18th November 1952 on a temporary basis, for certain mineral development, and for other transitional cases; but it is sufficiently accurate to say that Part VII of

the principal Act does not apply to development begun on or after 18th November 1952. So long as the realisation of new development is not prevented, by planning control or by the compulsory purchase of land, the abolition of development charge may be said to have returned to the land those elements of value which the Act of 1947 had diverted to the State.

In practice, however, planning permission is not freely available and land is subject to the threat of compulsory acquisition. The Acts of 1953 and 1954 will be seen to have created a system whereunder land values are dependent on the prospect of obtaining permission and of escaping compulsory purchase. The owner who is left free to develop is permitted to have the development value but the owner who for whatever reason does not obtain permission or whose land is taken compulsorily is in a different position.

The mechanism of Part VII of the Act of 1947 has, however, been borrowed and adapted for various purposes of the present Act. Where new development has taken place without payment of development charge, or takes place in future, the present day development value of the land will have been realised wholly or in part; generally, the value realised must be deducted from the value of Part VI claims which have survived until 1st January 1955. (This deduction, calculated on future prices under the Fourth Schedule, *post*, is required by s. 18 (4), *post*, to be made from what is called the "unexpended balance of established development value".) Similarly provision is made, under the present Act, for registering certain forms of compensation and certain War Damage Scheme payments against land; the amount registered will be recovered, if new development is subsequently carried out, in a manner similar to the levy of development charge (see s. 29, *post*).

Limited compensation for planning restrictions: Part III of the principal Act. In accordance with the financial scheme of the Act of 1947, there was in general no right to compensation, for loss of development value of an interest in land, if planning permission was refused or granted conditionally, though compensation is payable (s. 20) in some cases where the development falls within the ambit of existing use, as defined by the Third Schedule. Compensation was payable where permission was revoked, modified or withdrawn (s. 22); this normally included nothing for depreciation in value, but compensation for depreciation was payable where development value had been "bought back" through the mechanism of development charge.

Part IV (ss. 38–41, *post*) of the present Act makes an important change in this position if permission is revoked, modified or withdrawn on or after 1st January 1955. Compensation payable (under s. 22 of the principal Act, as amended by s. 38 of this Act, *post*) will include compensation for depreciation. It is payable by the local planning authority, or delegate authority, with the aid of an Exchequer grant as to part of the amount and a possible contribution from the Exchequer by reference to any unexpended balance of established development value.

Parts II and V of the present Act (ss. 16–29 and 42–46, *post*) use Part VI claims, established under the principal Act, to provide the basis of a new type of compensation for planning restrictions. In Part II, the refusal or conditional grant of permission on or after 1st January 1955, provides the occasion for releasing claim value in the form of compensation, subject however to exceptions and to reductions of the amount to be paid out. This is not a fundamental departure from the basic scheme of the Act of 1947, except that the claims under Part VI of that Act are in effect to be satisfied at a later date than was intended, and will not be satisfied in all cases or necessarily in full. Part V of the present Act in effect anticipates Part II to some extent, and provides for compensation where permission has been refused, or granted conditionally, after 30th June 1948, and before

1st January 1955. It provides also for compensation where permission has been revoked or modified between those dates; but such compensation is limited and is not placed on the favourable basis of compensation to which Part IV of this Act applies. It is dependent on the claimant being a claim holder entitled to the benefit of a Part VI claim under the principal Act.

Purchase at existing use value: Part V of the principal Act. Part V (ss. 50–57) of the Act of 1947, together with s. 119 (4) (now repealed) which related to severance, injurious affection and disturbance, provided a general limit to the compensation payable on the compulsory acquisition of an interest in land by an authority having the benefit of the Act of 1919. Compensation was in general limited to existing use value. It was assessed on the assumption that planning permission would be granted only for development specified in the Third Schedule. If permission had in fact been granted for other development it was generally to be disregarded, unless development charge had been paid or none was payable by virtue of certain exemptions under Part VIII of the Act of 1947.

Although development charge has been abolished, the general basis of compulsory purchase compensation is retained by the present Act. This leads to a " two-tier " system of land values, whereunder the possible open market price of land can far exceed the compulsory purchase price. The inconvenience of this is met, to some extent, by altering the basis of " existing use " value as defined by reference to the Third Schedule classes (see s. 71 of the present Act, *post*); that value now becomes a " current " existing use value. As development is carried out, Third Schedule rights are acquired without payment in the form of development charge or otherwise. When there are surviving Part VI claims, forming an unexpended balance or balances of established development value, supplemental compensation will be payable, by the acquiring authority, by reference to such balances (s. 31, *post*). Where development value has been realised however, by carrying out new development, its value must be deducted from the balances in question (s. 18 (4), *post*), and these may thus be reduced or extinguished before s. 31 operates further to increase the compensation payable.

Claims on the £300m fund: Part VI of the principal Act. Part VI of the Act of 1947 (ss. 58–68) provided for the making of claims in respect of interests in land depreciated in value by the coming into operation of that Act. Depreciation was assessed at the difference between the restricted value of the interest, after the coming into operation of the Act, and its unrestricted value as at that time but subject only to the law as it was before the Act came into operation. Both values were assessed by reference to prices prevailing immediately before 7th January 1947, the date of introduction of the Bill for the Act of 1947. S. 1 of, and the First Schedule to, the present Act, *post*, make a number of amendments to Part VI of the Act of 1947 involving the re-assessment of certain claims, so far as they relate to s. 58 of that Act.

Payment was to be made in respect of such claims subject to and in accordance with two schemes to be made by the Treasury, under ss. 58 and 59 of the 1947 Act. The s. 59 scheme, which is not affected by the present Act, relates to war damaged land where the development value in the land has excluded or reduced a " value payment " which was (or would otherwise have been) payable under the War Damage Act, 1943. The s. 59 scheme came into operation on 12th December 1949. Payments made under that Act may in certain circumstances be recovered under the present Act (see s. 57, *post*) and, since they are payments in respect of development value, they are treated under the present Act as payments in satisfaction or part satisfaction of development value claims (see s. 2 (2) (*b*) and the Third Schedule, *post*).

The Act of 1953 suspended the making of the s. 58 scheme. Between the passing of the 1947 Act and the coming into operation of the present Act, however, there have been many compulsory purchases of land. There have been many cases where development has been carried out and a development charge either paid or secured. Quite a number of sales or other dispositions of interests in land took place in circumstances where it was assumed that the owner was not entitled to dispose of the development value in the land. In addition, under s. 64 of the 1947 Act, the development value claim itself could be disposed of as personal property (see the notes to s. 60 of the present Act, *post*). In a number of cases, a claim has thus become divorced from the land, in respect of an interest in which the claim was originally made. Also in the period before the commencement of the present Act, there have been many refusals of planning permission or modifications or revocations of such permissions. The present Act first makes provision in Parts I and V for taking account of those transactions and restrictions, and for satisfying certain claims, wholly or in part, before using established claims " as the basis of an *ad hoc* compensation scheme ", as envisaged by the White Paper.

PART I OF THE ACT OF 1954

Special payments: Part I of the Act of 1954. Part I of the new Act converts development value claims, under Part VI of the 1947 Act, into " claim holdings ". As a general rule, the " area of the holding " is the area of the claim, and the " value of the holding " is the full face value of the claim. This rule, however, is varied to take account of cases where the claim has been pledged as security for a development charge; where a s. 59 scheme payment has been or is made under the 1947 Act; and where there has been a disposition of part of the benefit of the claim. It is necessary also to take account of any severance of a freehold interest in minerals from the freehold interest in the remainder of the land.

Subject to these matters, which may sub-divide a holding into separate holdings, and reduce in value or extinguish a holding, the holding is available for the purpose of meeting, to the extent provided, applications to be made for payments under Part I of the present Act in respect of certain past acts or events, described in outline below (see also the notes to s. 1 of the Act, and to S.I. 1954 No. 1599, *post*).

Direct Case A payments. These will be paid where the claim holder has incurred a development charge; or where he is entitled to an interest in land to which the holding relates and a charge was incurred in respect of that land by a predecessor in title. The principal amount of the payment is the amount of the charge or the value of the holding whichever is the less. Interest will be added to the payment.

Direct Case B payments. These will be paid where the claim holder, at a time when he was entitled to the holding and the interest in land to which the holding related, sold the land to a public authority at a price which fell short of the value of the holding and the existing use value of the interest assessed under Part V of the Act of 1947 (disregarding any compensation for disturbance or for severance or other injurious affection); a payment under this head will also be made where the holder sold privately before the abolition of development charges (or in pursuance of an option granted before their abolition) at a price which was less than the value of the holding and the restricted value of the interest, calculated by reference to the date of the sale and taking account of the special provisions of s. 6 of the present Act. The principal amount of the payment under Case B will be the value of the holding reduced by any amount by which the compensation or price exceeded the existing use value or the restricted value. Interest will be added to the payment.

Direct Case C payments. A Case C payment will be made where the land was disposed of by gift, before the abolition of development charges, the donor retaining the holding. In such cases the payment will be the value of the holding, plus interest.

Case D payments. These payments are to be made where a claim was purchased before 18th November 1952. The amount of the payment will be the consideration given or the value of the holding (whichever is the less), plus interest.

Case A, B and C payments to persons deriving title from the original holder. Such payments may be made in cases where the original holder would have been entitled to payment (if he had continued to be the holder) provided the person now entitled to the holding became so entitled,

(i) otherwise than for valuable consideration;
(ii) as mortgagee; or
(iii) as assignee on or after 18th November 1952, with the approval of the Central Land Board under s. 2 (2) of the Act of 1953; and

has not been at any time entitled in the same capacity to the holding and the interest, and is not entitled to a payment under Case D.

Cases analogous to Case B. Payments analogous to those under Case B may be payable (under s. 10, *post*) where land has been leased at a restricted rent; where land has been sold at a restricted value in consideration of a rentcharge; where compensation for severance or other injurious affection has been assessed on an existing use basis in connection with a compulsory purchase of other land, or the price obtained on a sale of land to a public authority has been similarly restricted; and where compensation for damage during Crown occupation, on the release of land from requisition, was calculated on an existing use basis. The principal amount of the payment will be calculated by analogy with Case B, having regard to the amount by which development value, as measured by the value of the holding, was disregarded in the transaction in question.

Residual payments. Subject to any payment made in the above cases, claim holdings are to a limited extent made available to meet applications by persons who are not claim holders, but who have incurred a development charge or sold an interest in land, to a public authority, under compulsion or the shadow of compulsion. In effect residual payments are Case A or B payments made to persons who are not claim holders, and such persons must usually rely on a previous transaction affecting the land whereunder the claim holder received consideration for development value, as represented by the holding, without assigning the holding.

Limitation of principal amount of payments. Where only one Part I payment falls to be made in respect of a claim holding, its principal amount should not exceed the value of the holding (except possibly, in the special circumstances arising under s. 6 (3), *post*, in connection with certain Case B payments). Where two or more payments are payable in respect of the same holding, their aggregate principal amount is not to exceed the value of the holding; to provide for this limitation, it is necessary (under s. 12, *post*) to divide the area of the holding into different parts, and to apportion to the parts chosen fractional amounts of the payments and of the value of the holding. The parts of the payments must then be scaled down, where they would exceed in aggregate the part of the value of the holding attaching to part of the land.

Application for payments under Part I. Application for a Part I payment must be made to the Central Land Board on a form supplied by the Board. This must normally be done by 30th April 1955, and the power

of the Board to extend time may be sparingly exercised. If a figure cannot be put on the application form in time, the form should nevertheless be sent and an accurate figure supplied later. The circumstances relied on should be identified, preferably by reference to the Board's own classification of the types of acts and events; see the notes to the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *post*.

Applications relating to settled land should be made by the trustees; payment will be made to them. It seems that the interest on the payment should probably be regarded as income of the year in which payment is made, though in fact it will represent interest from 1st July 1948.

Mortgagees have in general no right to apply for payment, unless an assignment of the Part VI claim has been made, whereby the mortgagee is the claim holder. Certain mortgagees, who are regarded as having advanced money partly on the development value of land (before 1st July 1948) are entitled to ask that payment should be made to them, to be applied as if it were proceeds of sale of mortgaged land. If the person primarily entitled to apply for payment fails to do so within the time prescribed, a mortgagee entitled to ask to receive the payment will be allowed by the Board to make the application on the default of the " original applicant ". The mortgagee in such a case will have to ask for an extension of the time for making the application. Any mortgagee who may have such a right should inform the Board at once in case he is overlooked. The mortgagee will generally have no right to take part in the determination of the amount payable, except where he applies himself in default of the original applicant. (See the notes to s. 66, *post*.) The special arrangements for mortgagees who are not claim holders do not apply to Case A or D, or to residual payments.

There are special provisions affecting applications by a company which is one of a group of associated companies (see s. 47, *post*).

Normally, the proper applicant for a Part I payment is the claim holder, as defined in s. 2 (8), *post*. Where the applicant has to rely on an assignment of the benefit of a Part VI claim, reference should be made to s. 60, *post*, and the notes thereto. Certain difficulties arise from the effect of s. 60, which invalidates a number of past assignments, where notice to or approval by the Board has not been given or obtained, and prevents assignments after 31st December 1954.

Making of payments. Payments under Part I will be made by the Central Land Board, and will carry interest from 1st July 1948, to the date of payment or 30th June 1955, whichever is the earlier. The interest payment will be treated for tax purposes as income for the current year.

Where a claim holder has an outstanding liability for development charge, the Board may apply any payment to which he may be entitled to the reduction or extinguishment of that charge. This will not arise where a holding itself has been pledged. In such cases the provisions of s. 2 and the Second Schedule, *post*, will operate to extinguish or reduce the holding and s. 49 will deal with the reduction or cancellation of the charge.

There may, however, be cases where those provisions still leave outstanding an unpaid balance of development charge. In such case the Board can have recourse to any other holding in respect of which the holder is entitled to a payment, or in respect of which he would have been entitled to payment if an application had been made.

Effect of payments on claim holdings. The holdings in respect of which application is to be made for Part I payments are the holdings as they subsist immediately before 1st January 1955. At that stage they will be considered to have been sub-divided into separate holdings, and reduced in value or extinguished, as may be necessary to take account of s. 2 of the Act and the Second and Third Schedules, and also as required in certain cases by the Minerals Regulations (S.I. 1954 No. 1706), *post*. This is

necessary to take account of dispositions of part of the benefit of a claim, pledges of claims to the Board as security for development charge, War Damage Scheme payments, and the severance of a mineral freehold from the freehold of the land in which the minerals lie.

Part I payments in turn call for the division, reduction in value or extinguishment of holdings. First it is necessary to divide the area of the holding into parts with the same history of acts or events relevant in Part I; *i.e.*, so to divide the land that each part to be considered is one where all the acts or events in question extended to the whole of that part, or none did so. It is not possible to deal with a unit part of which was affected by some one or more of the acts or events, and part not.

Where land is so divided, there will be attributed to each part a fractional amount of the value of the holding and a fractional part of the effect of the act or event. Each part will be considered to have a separate claim holding, with a separate apportioned value. When this sub-division has been made, or where none is necessary (because all the acts or events extended to the whole area), it is then necessary to reduce or extinguish the separate holdings (or the holding) by reference to the principal amount, or aggregate principal amount, of the payment or payments, so far as that amount relates to each separate area (or to the whole if there is no sub-division).

If the amount to be deducted is not less than the value of the holding in question, immediately before 1st January 1955, the holding will be extinguished. If the amount is less than that value, the amount will fall to be deducted. These adjustments affect the holding for the purposes of later Parts of the Act.

PART V OF THE ACT OF 1954

Compensation under Part V for past planning decisions and orders. Before claim holdings are used (under Parts II and III of the Act of 1954) to form the basis of the new form of compensation for planning decisions or supplemental compensation on compulsory purchase, provision is made by Part V of the Act of 1954 for the payment of compensation where land in the area of a holding is regarded as having been depreciated in value before 1st January 1955 in the exercise of planning control. Part V compensation is payable in respect of a claim holding where there has been a decision made (or treated as made) after 30th June 1948 and before 1st January 1955, refusing permission for new development or granting such permission subject to conditions. Compensation is also payable under Part V where permission has been revoked or modified by an order made between those dates. Revocations and modifications made under s. 4 of the Town and Country Planning (Interim Development) Act, 1943, are not within the provisions of Part V of the present Act. The right to make claims under Part VI of the Act of 1947 in such cases was saved by s. 61 (4) of that Act. It would appear, however, that to release compensation in respect of such orders a new application for the permission, which was revoked or modified, will have to be made and refused. Where there has been no decision or order giving rise to Part V compensation, it may be necessary, to secure compensation under Part II of the Act, to make an application for planning permission under the principal Act even where it is obvious that permission will not be granted.

Relevant holdings in Part V. The provisions of ss. 42–46 of the Act of 1954 are complex. It is necessary to deal with the " depreciation " of an interest in land so far as it subsisted in the area of a claim holding at the time of the decision or order. It is also necessary to adjust holdings to take account of Part I of the Act; *i.e.*, the benefit of a Part VI claim under the principal Act may have to be treated as sub-divided, reduced in value, or extinguished, to take account of pledges of claims, War Damage Scheme

payments, or dispositions of parts of the benefit of a claim (s. 2) or of the effect of Part I payments (s. 15). It is also necessary to deal with decisions or orders affecting the same land one by one; a payment under Part V itself arising from an earlier decision or order may call for a sub-division, as well as the reduction of the value, of the holding (s. 46). The claim holdings, as so adjusted, form the " relevant holdings " in Part V; in respect of a relevant holding the land in its area is regarded as " qualified land ". It is for the depreciation of an interest, in so far as it subsisted in qualified land, that Part V compensation may be payable.

The claimant under Part V. Normally any Part V claim will be made by the holder of a relevant holding. The holder may be a mortgagee who has taken an assignment of the holding; such a mortgagee will be able to claim in his own right in the first instance for the depreciation of the mortgagor's interest in land. Special provision is made by s. 66 of the Act and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, for claims by trustees of settled land and, in certain circumstances, by mortgagees of land and rentcharge owners. The rentcharge owner's right will normally be to have part of the compensation diverted to him by way of capitalising and extinguishing part of the rentcharge. Where a mortgagee is entitled to receive payment of the compensation, he will account for it as if it were proceeds of sale of mortgaged land.

The claimant's interest in land. Where (in the normal case) the claimant is the claim holder and not a mortgagee, he must formulate his claim by reference to an interest or interests in land to which he " is " entitled (apparently he must be so entitled when the claim is made), or which he sold (otherwise than to a public authority possessing compulsory purchase powers) after the decision or order was made and in the period after 17th November 1952 and before 1st January 1955. He may also claim in respect of an interest which subsisted at the time of the decision or order but has since merged in some other interest held by him. Other claimants will claim by reference to the interests which would be relied on by the ordinary type of claimant; *e.g.*, a mortgagee who is entitled to claim will do so by reference to an interest or interests held by the mortgagor, or which the mortgagor sold, or which merged in the mortgagor's interest.

Preparation of Part V claims. It will be found that, in any but the simplest of cases, it is of assistance to use a large scale map at the earliest possible stage in preparing a Part V claim. The " relevant holdings " can be found by outlining the original claim areas of Part VI claims under the principal Act and dividing them, etc., if necessary, to take account of Part I of the Act of 1954. The claimant's interest or interests should be fully outlined, even where part of an interest extends to land outside a claim area if such part was also affected by any decision or order which may give rise to compensation. The areas affected by decisions or orders should be indicated distinctively, as they will have to be considered in turn (so far as they relate to the same land).

Making of Part V claims. The making of claims under Part V of the Act is governed by s. 22 (as applied by s. 45) and the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*. Attention should also be given to s. 60 of the Act, which creates certain difficulties; where the holder has to rely on an assignment of the benefit or part of the benefit of a Part VI claim under the principal Act, he should consider whether the assignment is valid, having regard to that section. That section also impedes any dealing with the land, as it is no longer possible to sell an interest in land with an appropriate assignment of the claim. It seems that, when an intending vendor has made a claim under Part V, it may be possible to assign the right to pursue the claim and receive payment as

part of a sale of the land; but land should not normally be sold, when Part V compensation may be payable, before the claim is made. It seems the vendor will normally be required to claim for the purchaser's benefit. When this is not done, the purchaser may have to make a fresh planning application under the principal Act and claim, on any adverse decision, under Part II of the present Act.

Measure of Part V compensation. The value of any relevant holding, as it is considered to exist at the commencement of the Act on 1st January 1955, forms the upper limit of compensation for " depreciation " of the qualified land in its area. Subject to that limit, the compensation will be the amount of depreciation measured in accordance with s. 43, *post*. Different rules govern the assessment of depreciation by a decision and depreciation by an order.

In either type of case there are a number of exclusions from compensation, though these are somewhat less drastic in scope than those applying to decisions made after 1st January 1955 (Part II of the Act).

Review of past decisions and past orders revoking permission. In most Part V cases, the Minister has certain powers (under s. 43 (3)–(5), and s. 24 as applied) to review a decision or order before compensation is payable. This is intended to safeguard public moneys; compensation may be reduced or excluded where it seems proper to grant, or undertake to grant, permission for some development of the land. It has been emphasised that the Minister has no intention of allowing his judgment of planning matters to be influenced by a desire to avoid the payment of compensation.

Recovery of Part V compensation. Compensation paid under Part V is normally to be registered in the register of local land charges. If new development of the land is subsequently carried out, the amount of the registered compensation must usually be paid to the Minister or secured to his satisfaction (see ss. 28 and 29 of the Act, as applied by s. 46). (Similar provision is made for the registration and recovery of Part II compensation; of compensation for depreciation on the revocation or modification of permission on or after 1st January 1955; and of payments under the War Damage Scheme. Part I payments, however, are not so recoverable.) The recovery of registered compensation resembles the levy of development charge under Part VII of the principal Act, mentioned earlier, except that the maximum amount to be paid is limited by the amount registered.

Effect on holdings of payment of Part V compensation. As in the case of Part I payments, the payment of compensation under Part V will require the reduction in value or extinguishment of the relevant holdings. Where part only of the area of a holding was affected by any decision or order, the holding must be sub-divided before the adjustments of value can be made. The holdings, as so adjusted, may remain available to allow payment of compensation under Part V in respect of a later decision or order, and those holdings which survive the effect of Part V will be available to form the unexpended balances of established development value which are relevant in Parts II and III (and in s. 40 in Part IV) of the Act.

Where registered Part V compensation becomes recoverable, on the subsequent carrying out of new development, the effect of the adjustments to the relevant holding is modified. An amount is " added back ", as explained in the note to s. 29 (9) of the Act, to ensure that the land has an appropriate unexpended balance or balances.

THE UNEXPENDED BALANCE

Unexpended balance of established development value. After payments have been made for past acts and events, and past planning

decisions and orders, there will still remain many claim holdings in respect of which no payments have been made; and there will be many which have been divided or reduced but which remain subsisting. The claim holdings, however, have a relationship to interests in land and many of them will now have an independent ownership apart from, though originally arising out of, ownership of an interest in land.

The new code does not abolish the holding after the commencement of the Act. Whatever kind of a creature it is, it continues to exist, but its continued existence has but one manifestation. It gives rise to an unexpended balance of established development value of land (ss. 17 and 18 of the Act).

Land may be said to have an unexpended balance where it is in the area of a claim holding still subsisting immediately after the commencement of the Act on 1st January 1955; *i.e.*, where a claim holding has survived the operation of ss. 2 and 15 in Part I and s. 46 in Part V. Claim holdings representing the benefit of s. 58 claims relating wholly or partly to the same land are to be added together so far as they relate to the land which was common to their areas. It will often be necessary to deal with parts of an area separately, as land cannot be said to have a balance, taken as a whole, where part of the land only is in the area of a surviving holding. The largest unit which can be dealt with is one of which it is true to say that it is, or is wholly within, the area of one or more of the surviving holdings, and there is no holding whose area extends to part only of the unit (whether with or without other land). When some piece of land has to be considered, to see whether it has a balance or balances, it may therefore be found (1) that it has a balance as a whole, or (2) that each of its parts has a separate balance, but that these must not be considered together because of their different past histories, or (3) that some one or more only, or none, of the parts have a balance.

Where holdings overlap there will be attributed to the parts the value, or fractional part of the value, of each holding which attaches to the part. Each part of the land will have an original unexpended balance of an amount equal to eight-sevenths of the aggregate of the value of any holdings which have an area consisting of that land and such fraction of the value of any holdings, whose area includes the land, as is attributed thereto. Where there has been little or no development since 1948, and land transactions have been few, the original unexpended balance will be fairly simple to arrive at. Not all cases will be simple, however.

This balance is the source of payments in the form of compensation for planning restrictions and of the additional payment which will be added to the compulsory purchase price on a public acquisition of land.

Deduction of " new development " value. The unexpended balance of established development value of any land is also affected by the carrying out of new development. New development is substantially any development other than 1947 Act Third Schedule development. That Schedule, however, is substantially amended by the present Act. Where planning permission is granted and development is carried out, the whole of the development value added by the grant of permission, as well as the value of the development, enures for the benefit of the owner of the land. On a compulsory purchase the whole value will be reflected in the current existing use under the amended Third Schedule, once the development has been carried out.

Wherever new development is carried out, the added value which would be given by a planning permission for that development, will be taken into account and deducted in determining whether, and to what extent, any original unexpended balance continues to subsist on any land. The calculation of the deduction will not be made once for all, as in the case of development charges under the 1947 Act. The value of the permission will

be calculated on current prices on each subsequent occasion on which it is necessary to determine, for some other purpose, the state of any unexpended balance on any land.

COMPENSATION FROM THE BALANCE UNDER PART II

Compensation for planning decisions. Compensation for the refusal of permission or for the imposition of conditions on the grant of permission will be paid (unless excluded, *e.g.*, under ss. 20 and 21) by reference to whichever is the less of the following amounts, (1) the depreciation in the value of the interest in the land caused by the decision, or (2) the amount of any unexpended balance on the land. It may be necessary in calculating the payment to apportion both depreciation and balance. Depreciation will be calculated as the difference between two artificial market values made on given assumptions which are contained in ss. 26 and 65. These assumptions take account of any permission which has been given or promised on review; and where compensation has already been paid in respect of a previous decision that payment is not only taken into account, in the reduction of any unexpended balance, but it is also to be assumed, for the purpose of calculating the depreciation, that the previous decision was " to the contrary effect ". The effect of this assumption is principally to prevent the same depreciation being used, on successive occasions, to secure the release of the whole balance where only part is payable under the provisions of Part II.

Effect of the payment of compensation for planning decisions. Where compensation becomes payable in respect of a planning decision, then, for the purposes of determining whether the land or any part thereof has an unexpended balance at any subsequent time, the amount of the compensation will fall to be deducted from the original unexpended balance, and the original balance of the land or the part will be treated as having been reduced or extinguished immediately before the subsequent date. Where a deduction falls to be made from a balance on land which is part of a larger area which, taken as a whole, could be said to have a balance, the larger area must thereafter be split. The parts into which it is divided, or some of them, may still be considered to have a balance, but it is no longer correct to consider the land as having a balance as a whole.

Registration and recovery of compensation where development subsequently permitted. Where compensation has been paid it will be apportioned, if need be, between the various parts of any land in respect of which it has been paid, if and in so far as the parts have been differently affected by the planning decision.

Where payment is made, it will normally be registered in the register of local land charges. Where new development is subsequently carried out on the land, the Minister may usually require the repayment of the compensation payment, wholly or in part. Where the payment is repaid, that payment can be treated thereafter as not having been made and, in determining any unexpended balance at any subsequent date, a deduction in respect of the amount of the payment repaid will not be made.

This will not, however, exclude the deduction in respect of " new development " giving rise to the recovery.

COMPENSATION FROM THE BALANCE ON COMPULSORY ACQUISITION

Addition to compensation payable on the occasion of compulsory acquisition. Ordinarily the purchase price payable on a compulsory acquisition, after the commencement of the present Act, will be limited to the current existing use value, which assumes that planning permission

would be granted in accordance with the amended Third Schedule to the Act of 1947. Where, however, any of the land has an unexpended balance there will be added to the compensation, calculated on the basis of the current existing use, the amount of any unexpended balance or balances subsisting on the land at the date of the notice to treat.

Any balance will be divided, between interests in any land, substantially by paying, to any reversionary interest, the present value of the right to receive the balance at the expiry of any tenancy created immediately out of that interest, and, to any tenancy, the balance less any payment made to the immediate reversioner.

Where the acquisition does not relate to all interests, however, and there is a subsequent acquisition of the outstanding interest, the division of any balance will be made on the assumption that the former balance is being divided between the interests at that subsequent date. This ensures, for example, that the interest of a tenant left outstanding will only obtain the share in the balance which is appropriate to the term of the outstanding tenancy as at the date of the later notice to treat.

The unexpended balance in relation to severance and injurious affection. Where land is injuriously affected by severance or otherwise arising by reason of the compulsory acquisition of other land, there will be calculated, in respect of the affected land, the total injurious affection caused. This total injurious affection will be calculated according to the artificial market enacted by s. 65. There will also be calculated, in that market, the injurious affection caused to the value of the prospect of future development. This latter calculation compares the prospective development values of the land before and after affection on the assumption that the land has no value for any other use. The injury to the value of the prospect of development is given the name of " loss of development value ". The amount by which the total injurious affection exceeds the loss of development value is given the name of " loss of immediate value ". This is in effect a foreshortened version of the depreciation of the existing use value, limited in time until the development value can be expected to be realised.

If the land has no unexpended balance, the compensation for injurious affection will be the loss of immediate value. If the land as a whole has an unexpended balance, and there is only one interest therein, the compensation will be the aggregate of the loss of immediate value and whichever is the lesser of the loss of development value or the amount of the unexpended balance, at the date of affection. If there is more than one interest, the unexpended balance will be apportioned, where the total loss of development value exceeds the balance, in the proportion of the loss of development value suffered by each interest. Where there are a number of balances and a number of interests, it will be necessary to divide the land and apportion losses so that each unit can be calculated separately.

It will be seen that there may be many cases where loss of immediate value will be less than the damage to the existing use value. To meet this difficulty, the Act provides for the creation, in respect of any interest so affected, of a claim holding having a value equal to seven-eighths of the difference between the loss of immediate value and the damage to the existing use value (described in the Act as " the depreciation in restricted value "). The new claim holding is deemed to have subsisted immediately after the commencement of the Act, and is to have effect after the affection for the purpose of determining whether the affected land has an unexpended balance. If the development value which it represents is realised it will be extinguished. If not, it may be available for the purposes of compensation under Part II, if planning permission for the development, the prospective value of which it represents, is refused or granted subject to onerous conditions.

OTHER AMENDMENTS TO THE LAW OF COMPENSATION

General amendments in the law relating to compensation for compulsory purchase of land. The present Act repeals s. 119 (4) of the Act of 1947, and provides that compensation for disturbance is not to be greater than it would have been if Part V of the Act of 1947 and ss. 30–35 of the present Act had not been enacted. This substantially restores the pre-1947 Act law relating to disturbance, with the significant exception that the difference between existing use and market values cannot be raised as a matter of disturbance. It would seem, however, that abortive expenditure can be raised.

Where work has been carried out on land, with planning permission, but the works done do not create a new current existing use under the amended Third Schedule, the value of the works will be paid for. Certain limited classes of land, which were granted exemption from development charge under Part VIII of the Act of 1947, will be valued with planning permission on compulsory acquisition. Where there is no unexpended balance, because of a failure to make a claim under the Act of 1947, an " ex gratia " balance may be raised in certain circumstances. Finally, where land is purchased on the faith of a planning permission, and an assurance of the local authority that there is no intention to make public acquisition of such land has been obtained, any compulsory acquisition in a following period of some five years must include the value of the planning permission in any purchase price.

THE TOWN AND COUNTRY PLANNING ACT, 1954

(2 & 3 Eliz. 2 c. 72)

ARRANGEMENT OF SECTIONS

PART I

SPECIAL PAYMENTS FOR DEPRECIATION OF LAND VALUES

PART II

COMPENSATION FOR REFUSAL, OR CONDITIONAL GRANT, OF PLANNING PERMISSION

PART III

COMPENSATION FOR COMPULSORY ACQUISITION OF LAND

PART IV

COMPENSATION FOR REVOCATION OR MODIFICATION OF PLANNING PERMISSION

PART V

COMPENSATION FOR PAST PLANNING DECISIONS AND PAST ORDERS REVOKING OR MODIFYING PLANNING PERMISSION

PART VI

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

An Act to make provision for compensation and other payments by reference to claims for payments under section fifty-eight of the Town and Country Planning Act, 1947; *to make further provision as to the acquisition of land by public authorities, as to compensation in respect of orders revoking or modifying permission to develop land and in respect of damage to requisitioned land, as to development charges, as to monopoly value of licensed premises, as to Exchequer grants under the said Act of* 1947, *and as to payments under section fifty-nine of that Act, and to amend other provisions of that Act; to make further provision for the modification of mining leases and orders granting working rights, and as to contributions to the Ironstone Restoration Fund; to make provision for the dissolution of the Central Land Board; and for purposes connected with the matters aforesaid* [25th November 1954]

Part I

Special Payments for Depreciation of Land Values

1. Payments by reference to established claims.—(1) The provisions of this Part of this Act shall have effect for requiring payments to be made by the Central Land Board, by reference to claims established under Part VI of the Town and Country Planning Act, 1947 (in this Act referred to as " the principal Act "), in cases where the land, or part of the land, in respect of which such a claim was established, or the interest in land to which such a claim related, or the benefit, or part of the benefit, of such a claim, has before the commencement of this Act been the subject of an act or event such as is specified in any of those provisions.

(2) The claims referred to in the preceding subsection are claims for payments under the scheme which, but for the provisions of section two of the Town and Country Planning Act, 1953 (in this Act referred to as " the Act of 1953 "), would have fallen to be made under section fifty-eight of the principal Act (which provided for payments in respect of depreciation of land values in accordance with a scheme to be made under that section).

(3) A claim for such a payment in respect of an interest in land shall for the purposes of this Act be taken to have been established in respect of that land under Part VI of the principal Act if an amount was determined under the said Part VI, or is so determined after the commencement of this Act, as being the development value of the interest to which the claim related, and payment in respect of that interest would not have been excluded—

(*a*) by section sixty-three of the principal Act (which excluded claims where the development value was small in proportion to the area, or to the restricted value, of the land); or

(*b*) by any of sections eighty-two to eighty-five of the principal Act (which relate to certain land belonging to local authorities, development corporations and statutory undertakers, and to land held on charitable trusts); or

(*c*) by section eighty-four of the principal Act as applied by regulations under section ninety of that Act (which relates to the National Coal Board).

(4) In this Act the expression " established claim " means a claim which by virtue of the last preceding subsection is to be taken to have been established as mentioned in that subsection, and references to the establishment of a claim shall be construed accordingly; and the expression " the claim area ", in relation to an established claim, means the land in respect of which the claim is by virtue of that subsection to be taken to have been established.

(5) References in this Act to the benefit of an established claim—

(*a*) in relation to any time before the passing of the Act of 1953, whether before or after the making of the claim, or before or

after the establishment thereof, shall be construed as references to the prospective right, under and subject to the provisions of the scheme referred to in subsection (2) of this section, to receive a payment in respect of the interest in land to which the claim related; and

(*b*) in relation to any time after the passing of the Act of 1953 (whether before or after the commencement of this Act), shall be construed as references to such prospective right to the satisfaction of the claim as subsisted immediately before the commencement of this Act by virtue of section two of that Act;

and references to part of the benefit of an established claim shall be construed accordingly.

(6) References in this Act to the amount of an established claim are references to the amount determined, whether before or after the commencement of this Act, under Part VI of the principal Act as being the development value of the interest in land to which the claim related:

Provided that the provisions of the First Schedule to this Act shall have effect for the purpose of determining that amount, and where that amount was determined at a time before the commencement of this Act as an amount less or greater than it would have been if those provisions had at that time had effect in relation thereto, that determination shall be deemed not to have been made.

NOTES

Under Part VI of the Act of 1947 (ss. 58–68, Hill, pp. 156–172; 48 Statutes Supp. 115 *et seq.*) payments were to have been made from a fund of £300 million to persons who had made claims in respect of development value existing in land at 1st July 1948. Distribution of these payments would have been in accordance with a Treasury Scheme under s. 58 of that Act. Since 1st July 1948, as a general rule, any value in land which depends on the possibility of carrying out development has been disregarded as an element of compensation on the occasion of compulsory purchase or the imposition of restrictions under planning control. The justification for this elimination of development value was the promise, contained in Part VI of the Act of 1947, to make payments, with interest from 1st July 1948, in respect of development value claims.

Generally, development carried out or begun between 1st July 1948 and 18th November 1952, was subject to the payment of a development charge under Part VII of the Act of 1947 (ss. 69–74, Hill, pp. 172–188; 48 Statutes Supp. 132 *et seq.*). The Act of 1953 (Hill, 2nd Supp., B693–B703; 78 Statutes Supp. 133) abolished development charges from 18th November 1952, and provided that development value claims were to be satisfied in manner and to an extent thereafter to be provided by an Act of Parliament instead of the Treasury Scheme proposed by the Act of 1947.

The present Act makes the promised provision. With the abolition of development charges no general payment will be made. Compensation for compulsory purchase and for the imposition of planning restrictions continues, generally, to exclude the element of development value; but where there is an established claim certain additions may be made to the compulsory purchase price (see Part III of this Act, *post*) and payments may be made in certain circumstances on the imposition of planning restrictions (see Part II of this Act, *post*). Before the commencement of this Act, however, claimants and others in the circumstances of the law as it then existed may have acted to their immediate detriment in the faith and expectation that the loss would be made up by way of the development value claim. Part I (this section and ss. 2–15, *post*) of the present Act is concerned with payments which will be made in respect of certain acts or events which have occurred before the commencement of the Act. Past planning decisions and orders affecting any land are dealt with in Part V (ss. 42–46, *post*).

The starting point for all payments under this Act is a development value claim under Part VI of the Act of 1947. Once an amount has been determined under Part VI it becomes an established claim provided it is not of such a small amount as would exclude a payment under the 1947 Act and does not relate to an interest of a special kind in respect of which no payment would be made under that Act. The amount determined under Part VI is now an established claim. The land in respect of which it was established is a claim area. Under this Part of the Act (and in Part V) the claim is available to provide for matters which occurred before the commencement of the Act. During that period the benefit of the claim was personal property and for the purposes of this Part the claim has an existence apart from the land. The claim area and the benefit of the claim may not be in the same hands and the benefit of the claim may have been divided. This affects also the future of claims after the payments under Parts I and V have been dealt with.

The amount of the established claim is the full amount which was determined under the Act of 1947. There is no abatement by reference to a global sum of £300 million. Certain claims which have not been determined, and some which have been determined but are to be treated as not having been so determined, will now be determined under the provisions of the First Schedule. These are chiefly to avoid anomalies under Part VI of the Act of 1947 (see notes to the First Schedule, *post*). For the purposes of Parts I and V the benefit of an established claim becomes a claim holding.

By reason of payments or other circumstances arising under these Parts the claim holdings may be reduced or extinguished. This reduction or extinguishment is deemed to have occurred (at the latest) immediately before the commencement of the Act (see ss. 2, 15 and 46, *post*). Claim holdings, in some circumstances, are also to be treated as sub-divided.

Subject to the operation of these Parts of the Act, in relation to matters which occurred before the commencement, the benefit of the claim will cease to be personal property after the commencement of the Act (cf. s. 60, *post*) and claim holdings continuing to exist at that date will become in relation to their areas, or parts of their original areas, unexpended balances of established development value (see s. 17, *post*).

While the claim holdings might relate to freehold or leasehold interests, the unexpended balance will aggregate all the claim holdings which relate to the same land. Where a unit smaller than an original claim area has to be treated separately after the commencement of the Act, a fraction of the value of the claim holding or holdings is taken to attach to the land in question. Thereafter the unexpended balance will be available to provide, in the circumstances in which it may be claimed, compensation in respect of planning restrictions (Part II) and additional compensation in respect of the compulsory purchase of land (Part III). The aggregated holdings comprising the unexpended balance will under those provisions be divided between the interests then existing in the land in accordance with provisions of this Act.

Sub-s. (1).

Act or event. Briefly the circumstances in which payments will be made under this Part are:—

(1) Case A (ss. 3, 4 and 9, *post*). Where a development charge has been incurred.
(2) Case B (ss. 5, 6 and 9, *post*). Where land was sold at a price which was less than the total of its value, excluding development value, and the value of the claim holding. In the case of sales to public authorities possessing compulsory purchase powers payments will be made in the case of sales between 6th August 1947 and the commencement of this Act. Other sales must be before 18th November 1952, or pursuant to options granted between 1st July 1948 and 18th November 1952.
(3) Case C (ss. 7 and 9, *post*). Where land has been disposed of by gift between 1st July 1948 and 18th November 1952.
(4) Case D (ss. 8 and 15 (1), *post*). Where a claim holding was acquired for valuable consideration before 18th November 1952, or pursuant to an option granted before that date. The payment in these cases will be the consideration paid or the amount of the claim whichever is the less; and payment will extinguish the holding.
(5) Cases analogous to Case B (s. 10, *post*). Where the act or event affecting the land has been other than a sale; *e.g.*, a lease at a restricted rent.
(6) Residual payments (s. 11, *post*). These payments may be made to persons who are not entitled to the benefit of claims. Where they have paid a development charge (Case A); or where they have sold to an authority entitled to acquire compulsorily (Case B); if in the circumstances of the purchase from the person entitled to the claim that person received a consideration which reflected the development value, then in so far as any payment to that person is abated under Case A or Case B a residual payment may become available.

Sub-s. (2).

S. 2 of the Act of 1953. Hill, 2nd Supp., pp. B697–B700; 78 Statutes Supp. 135. Under the Act of 1947 payments were to have been made under the Treasury Scheme by 1st July 1953. The Act of 1953 postponed those payments and provided that instead of being paid under such a scheme payments should be made under the present Act in the manner and to the extent therein provided. For amendments, by this Act, of s. 2 of the Act of 1953, see s. 71 and the notes to s. 60, *post*.

Sub-s. (3).

Claims for payments. Means a claim made in accordance with s. 60 of the Act of 1947 (Hill, p. 160; 48 Statutes Supp. 119), as amended by the Lands Tribunal Act, 1949, and the regulations under s. 60; see S.I. 1948 Nos. 902, 1521 and 2822; S.I. 1949 Nos. 1083, 1176 and 1996; S.I. 1951 Nos. 746 and 2156, listed in Hill, 2nd Supp., p. B699. If no claim was made there can be no payment under the present Act based directly on a development value claim, save in the case of *ex gratia* payments on compulsory purchase under s. 35, *post*. For the preservation of claims, see s. 2 of the Act of 1953, as amended, mentioned *supra*. War Damage Scheme claims (s. 59 of the Act of 1947) were not affected by the Act of 1953; see ss. 2 and 57, *post*.

Amount determined. Whether before or after the commencement of this Act, the amount to be determined will be the difference between restricted and unrestricted values calculated under s. 61 of the Act of 1947 (Hill, pp. 162–165; 48 Statutes Supp. 121) applying the Third Schedule of that Act (Hill, pp. 271–273; 48 Statutes Supp. 214) as originally enacted and not as amended by the present Act (see s. 71 (4), *post*). The Third Schedule to the Act of 1947 is set out, in a form showing both the amended and the unamended provisions, in the notes to para. 4 of the Seventh Schedule to this Act, *post*.

S. 63 of the principal Act. Hill, p. 166; 48 Statutes Supp. 126. The development value was required under that provision to exceed £20 per acre and one-tenth of the restricted value. In its application to development values wholly based on the working of minerals if a mineral operator had an interest on 1st July 1948, and the area exceeded 25 acres and the development value £500, the exclusion did not operate; see reg. 4 of the Minerals Regulations, 1949 (S.I. 1949 No. 1996), Hill, 2nd Supp., p. B93.

Ss. 82 to 85 of the principal Act. Hill, pp. 205–211; 48 Statutes Supp. 157–160. As to compulsory acquisition of lands to which these sections apply, see s. 34 and the Sixth Schedule, *post*. See also in relation to s. 85 land included by a direction of the Minister, para. 12 of the First Schedule, *post*, and sub-s. (6), *supra*. As to refusal of planning permission affecting operational land of statutory undertakers, see s. 35 of the principal Act (Hill, p. 116; 48 Statutes Supp. 84) and the Fifth Schedule thereto (Hill, p. 274; 48 Statutes Supp. 217).

S. 90 of the principal Act. Hill, p. 216; 48 Statutes Supp. 166. For the Regulations, see the T. & C.P. (National Coal Board) Regulations, 1951 (S.I. 1951 No. 716), Hill, 2nd Supp., pp. B237 *et seq.*

Sub-s. (5).

Benefit of an established claim. In s. 2, *post*, this becomes a " claim holding ". In succeeding sections reference is made to times when a holder was entitled to a claim holding. As to past times, sub-s. (5) makes clear what is being referred to.

Right to receive payment. The right to receive payment under Part VI of the Act of 1947 vested in the person who was the owner of the interest in the land, in respect of which the claim was made, on 1st July 1948 (see s. 64 of the principal Act, Hill, pp. 166–168; 48 Statutes Supp. 127). The right was transmissible by assignment or by operation of law as personal property. Notice of assignment, to be of effect, was required to be given to the Central Land Board. Retrospectively by s. 2 of the Act of 1953 (Hill, 2nd Supp., pp. B697 to B670; 78 Statutes Supp. 135) the approval in writing of the Board was required where the assignment was after 17th November 1952, and transferred a beneficial interest in the claim to a person other than a person beneficially entitled to the interest in the land to which the claim related or some interest in which that interest merged or had merged. As to assignment of claims, see the notes to s. 60, *post*. The right to receive payment was subject to any contrary provision which might have been effected by the scheme itself, if it had been made; cf. notes to s. 66, *post*.

Commencement of this Act. 1st January 1955. See the Town and Country Planning Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598), *post*.

Sub-s. (6).

Amount of an established claim. Sub-s. (6) makes it clear that the amount determined is to be the claim. Payments under the Part VI scheme would have been subject to an overall limit of £300 million.

First Schedule to this Act. Any earlier determination is to be deemed not to have been made. A re-determination, in view of the words of sub-s. (3), *supra*, ". . . or is so determined after the commencement of this Act . . ." may result, if the determination is downward, in the application of sub-s. (3) (*a*). The Schedule, *post*, is concerned with, (1) providing for claims in the case of acquisitions under s. 55 of the Act of 1947 (Hill, p. 152; 48 Statutes Supp. 112) in the case of lands to which ss. 78 and 80 of that Act (Hill, pp. 197 and 199; 48 Statutes Supp. 150, 152) applied; (2) the elimination of the value of development carried out by acquiring authorities before 1st July 1948; (3) making new provision in relation to requisitioned land; (4) eliminating overlap between development value claims and compensation under ss. 22 and 79 of the principal Act (Hill, p. 90 and p. 198; 48 Statutes Supp. 61, 151); (5) making provision for enforcement notices under s. 75 of the principal Act (Hill, p. 191; 48 Statutes Supp. 144); (6) regularising the disregard of Rule (3) of s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977) in the determination of certain development values; (7) providing for the separate redetermination of certain claims comprising different leasehold or freehold and leasehold interests; (8) finally, lands which have been included in s. 85 of the principal Act (Hill, p. 210; 48 Statutes Supp. 160) by direction of the Minister may on application be treated as if the direction had not been given.

2. Claim holdings, their areas and values, and apportionment of values between parts of areas.—(1) Subject to the provisions of this Act, references therein to a claim holding are references to the benefit of an established claim, references to the area of a claim holding are references to

the land which, in relation to the established claim constituting that holding, is the claim area, and references to the value of a claim holding are references to the amount of the established claim constituting that holding.

(2) The provisions—

(*a*) of the Second Schedule to this Act, relating to cases where a claim holding was pledged to the Central Land Board; and

(*b*) of the Third Schedule to this Act, relating to cases where a claim holding related to an interest in land and a payment has become, or becomes, payable under section fifty-nine of the principal Act (which provides for payments in respect of certain war-damaged land) in respect of the like interest in the whole or part of that land with or without any other land,

shall have effect for extinguishing the claim holding, or reducing the value thereof, or for treating the claim holding as divided into two or more claim holdings and extinguishing any of those holdings or reducing the value thereof.

(3) Where by virtue of any disposition of part of the benefit of an established claim, not being a mortgage made otherwise than by way of assignment, different persons became entitled to different parts of that benefit, then, as from the date of that disposition (in this subsection referred to as " the relevant disposition "), each of those different parts shall be treated as having constituted a separate claim holding, and the area and value of each of those separate holdings at any material time after the relevant disposition shall be taken to have been such as may, on the occasion of an apportionment affecting that holding falling to be made for any of the purposes of this Act, be determined by the authority making the apportionment, or, where that authority's findings are referred to the Lands Tribunal under any provision of this Act, by that Tribunal, to be just and appropriate in all the circumstances; and in making their determination the authority or Tribunal shall in particular have regard to the following principles, that is to say—

(*a*) that the aggregate of the values of all claim holdings representing parts of the benefit of the same established claim shall not exceed the amount of that established claim;

(*b*) that, subject to the preceding paragraph, where a claim holding representing part only of the benefit of an established claim has been pledged to the Central Land Board within the meaning of the Second Schedule to this Act, otherwise than as is mentioned in paragraph 2 of that Schedule, and by virtue of that Schedule any deduction falls to be made from the value of that claim holding by reference to an amount due by way of development charge, the value of that holding at the time of the pledge shall not be taken to have been less than the amount credited for the purposes of the pledge by reference to the holding;

(*c*) that, in the case of the claim holding representing the part of the benefit of an established claim which was the subject of the relevant disposition, not being a claim holding to which paragraph (*d*) of this subsection applies—

(i) the area of the claim holding should be taken to be the claim area of that established claim less the area of any claim holding to which the said paragraph (*d*) applies which represents part of the benefit of the same established claim; and

(ii) the value of the claim holding immediately after the relevant disposition should, subject to paragraphs (*a*) and (*b*) of this subsection, be taken to have been that part of the amount of the established claim to which the holder purported to become entitled under the terms of that disposition;

(*d*) that where any person who has been entitled to a claim holding representing part only of the benefit of an established claim—

(i) at any time while so entitled has also been entitled to the interest in land to which the established claim related in so far as that interest subsisted in part only of the claim area; and

(ii) became entitled to both that holding and that interest in such circumstances that the authority aforesaid or, as the case may be, the Lands Tribunal are satisfied that the holding and the interest were intended to relate to one another,

the area of that claim holding should be taken to be that part of the claim area, and the value of that holding immediately after the relevant disposition should, however that or any other disposition affecting the holding was expressed but subject to paragraphs (*a*) to (*c*) of this subsection, be taken to have been an amount equal to so much of the amount of the established claim as might reasonably be expected to have been attributed to that part of the claim area if the authority determining the amount of that established claim had been required to apportion it, in accordance with the same principles as applied to its determination, between that part and the residue of the claim area.

(4) References in this Act to the fraction of the value of a claim holding which attaches to a part of the area of the holding are references to so much of the amount of the established claim of which that holding represents the benefit or part of the benefit (in this subsection referred to as " the relevant established claim ") as was properly attributable to that part of the area of the holding:

Provided that where by virtue of any provision of this Act the value of the claim holding at the time in question is to be treated as less or greater—

(*a*) in a case where the area of the holding and the claim area of the relevant established claim are the same, than the amount of that established claim; or

(*b*) in a case where the area of the holding consists of part only of the said claim area, than so much of the amount of the relevant established claim as was properly attributable to the area of the holding,

the amount of the fraction aforesaid shall be treated as reduced or, as the case may be, increased proportionately.

For the purposes of this subsection, the part of the amount of the relevant established claim which was properly attributable to any land forming part of the claim area shall be deemed to be so much of the amount of that claim as might reasonably be expected to have been attributed to that land if the authority determining that amount had been required to apportion it, in accordance with the same principles as applied to its determination, between that land and the residue of the claim area.

(5) References in this Part of this Act, other than in this section, to the value of a claim holding are references to the value of that holding immediately before the commencement of this Act.

(6) Where in accordance with any of the provisions of this Act a part of the benefit of an established claim constitutes a separate claim holding, the interest in land to which that claim holding related—

(*a*) if the established claim related to the fee simple of the claim area, shall be taken to have been the fee simple of the area of the claim holding;

(*b*) if the established claim related to a leasehold interest, shall be taken to have been that leasehold interest in so far as it subsisted in the area of the claim holding.

(7) Where in accordance with any of the provisions of this Act a claim holding (in this subsection referred to as " the parent holding ") is to be

treated as divided into two or more claim holdings, a person who is for the time being the holder of one of those holdings shall be treated as having been the holder thereof at any time when he was the holder of the parent holding.

(8) In this Act the expression " the holder ", in relation to a claim holding, means the person for the time being entitled to the holding or, where the holding is subject to a mortgage made otherwise than by way of assignment, means the person who would be so entitled if the holding had not been mortgaged.

NOTES

This section continues the translation of the terms of the Act of 1947 into the terms of the present Act. Subject to the provisions of this Act the benefit of the established claim becomes a claim holding, the claim area becomes the area of the claim holding, and the amount of the established claim becomes the value of a claim holding.

Under the Act of 1947 the Central Land Board was prepared, in certain circumstances, to accept established claims by way of security or pledge for development charges. The Second Schedule, *post*, deals with claim holdings which were the subject of such pledges, and provides for the sub-division, reduction in value, and extinguishment of such holdings.

In addition to the main scheme of payments, which was to have been made under s. 58 of the Act of 1947 (48 Statutes Supp. 116; Hill, p. 156), s. 59 of that Act (Hill, p. 159; 48 Statutes Supp. 118) made provision for additional payments in respect of certain war damaged land. S. 59 payments were to be made in circumstances where value payments under the War Damage Act, 1943 (7 Statutes Supp. 116) were reduced by reason of the prospect of development. Many payments in respect of such war damaged lands have already been made. Their justification was that the landowner had lost the value of the prospect of more profitable redevelopment by reason of the passing of the principal Act, whereunder such development, if carried out, would be subject to development charge. Since the charge has been abolished, this value may now often be realised; where this is so, the present Act provides machinery whereby such payments will be recoverable, see s. 57, *post*. Neither the Act of 1953, however, nor the present Act affects the operation of s. 59 of the Act of 1947 (Hill, p. 159; 48 Statutes Supp. 118) or of the Scheme made thereunder (Planning Payments (War Damage) Scheme, 1949 (S.I. 1949 No. 2243); Hill, 2nd Supp., p. B94). Payments made, or to be made, under the War Damage Scheme will have the effect, under sub-s. (2) (*b*), *supra*, of extinguishing or reducing claim holdings as from 12th December 1949. Such payments may, nevertheless, be recoverable on subsequent development of the land, under s. 57 of this Act, *post*, applying s. 29 (1)–(8), *post*, but not s. 29 (9). The Third Schedule, *post*, provides for adjustments to the claim holding where a war damage scheme payment is made.

Sub-s. (3) introduces a further provision subject to which the translation of terms is to be understood. Where there has been a disposition of part of the benefit of an established claim, each of the parts will be treated as a separate claim holding, from the date of the disposition; the area and value of these holdings at any material time thereafter will be taken to be what is determined to be just and reasonable on any occasion when an apportionment affecting the holding falls to be made. There will not necessarily be an apportionment where there has been a disposition.

An apportionment required by sub-s. (2) or (3) may be made on some future occasion, *e.g.*, when a payment is to be made under this Part (Part I). An application for a certificate as to the unexpended balance, under s. 48, *post*, can be made at any time to the Central Land Board but, if there are outstanding claims under Part I or V, it will be difficult thus to obtain an effective apportionment. The apportionment may often have to be carried out when a payment is to be made under this Part, or when compensation is claimed under Part V, *post*. It may then, if need be, be disputed before the Lands Tribunal as provided under s. 13, *post*; or s. 45, *post*, applying s. 27, *post*.

If there is no payment to be made under this Part, and no claim under Part V, the apportionment required by sub-s. (2) or (3), *supra*, will probably fall to be made under Part II or IV, *post*, or s. 48, if in fact it is ever made at all.

When an apportionment required by sub-s. (3), *supra*, is made, for any of the purposes of the Act, directions to the authority, or the Lands Tribunal on appeal, are to be found in this subsection.

(1) The total of the values of all claim holdings are not to exceed the amount of the established claim from which they are derived.

(2) Where a claim holding has been pledged to the Central Land Board, and a deduction has to be made by reference to a development charge, the value of the holding shall not be taken to be less than the amount credited to the holding.

(3) Where there has been a disposition of part of the benefit of the established claim in circumstances in which the benefit of the claim and the interest in

the land are not intended to relate to one another, the value of the claim holding will be that part of the amount of the established claim which the disposition purported to grant. The area of such a claim holding will be the original claim area less the area of any claim holding where the interest and the holding are intended to relate to one another.

(4) Where a person is entitled to a claim holding representing part of the benefit of the established claim and to an interest in land which is part of the original claim area, and the holding and interest were acquired in circumstances which show that the holding and claim were intended to be related, then (however the disposition was expressed) the value of the claim holding should be taken to be that part of the amount of the established claim that might have been attributed to the interest if the claim had been apportioned in the manner of the original determination. This means that, so far as possible, the interest in land will carry the " properly attributable " amount of the claim, as defined in sub-s. (4), *supra*.

Sub-s. (4) explains that where a reference in the Act is made to the fraction of the value of a holding which attaches to part of the area of the holding it means, *prima facie*, so much of the value of the established claim relevant to that holding as would be " properly attributable " to that part of the area. However, if the claim holding is of a greater or a less value because a claim holding is to be treated as reduced or sub-divided, the amount of the fraction is to be increased or reduced proportionately. " Properly attributable " means such as would have been attributed to the part of the area if the principles of Part VI of the Act of 1947 as to determination applied, and part of the claim had on these principles to be apportioned to the part. The provisions for varying the " properly attributable " amount were, in the Bill as first introduced [Bill 72], contained in the Fourth Schedule thereto. That draft Schedule may throw some light on the calculations required by sub-s. (4), *supra*. Cf. the note, " The Bill and Hansard ", at the beginning of this book.

In Part I, generally, references to the value of a claim holding are to the value immediately before the commencement of the Act, that is, after the machinery of s. 2 has operated. The date is not applicable to this section.

When part of the benefit of an established claim becomes a separate holding, the interest to which it related will, if the claim related to the fee simple, be taken to have been the fee simple of the area of the claim holding; if the claim related to a leasehold, it will be that leasehold so far as it subsisted in the area of the holding.

The holder of a claim holding means the person for the time being entitled. It does not include mortgagees unless the mortgage is by way of assignment. As to certain assignees, etc., see also s. 9, *post*, and as to protection given to mortgagees, see s. 66, *post*, and the regulations thereunder (S.I. 1955 No. 38, *post*).

If there is a division of holdings the holder of a part will be regarded as having been the holder of the part at any time when he was the holder of the " parent holding ".

This section is of importance in understanding the scheme of the whole Act. It not only translates terms but also assists the process of changing the character of the established claim back from personal property to something of the nature of realty. Between the time of the original conversion of development value into a personalty claim and the now attempted restoration, however, many things have happened which cannot be undone; and it must be remembered that the Act proposes to return to the land (for purposes of most kinds of future compensation) only so much as has not already been paid or realised of the development value it was determined to possess, at 1st July 1948, by reference to prices at 7th January 1947 (see s. 61 of the principal Act (Hill, pp. 162–165 ; 48 Statutes Supp. 121–126)). This amount is usually added back to a current " existing use " or " restricted value "; the artificial aggregate value so formed will usually be less than, but may conceivably exceed, a current market value calculated on the assumption that planning permission would be available.

The claim holdings are intended to be, immediately before the commencement of the Act on 1st January 1955, those units of established development value which have each their own separate and uniform case history.

They have thereafter to be considered in relation to the effect of the provisions of Parts I and V, to see whether they are sub-divided, extinguished or reduced. If claim holdings continue to subsist, after the commencement of the Act, they provide the basis for determination of the unexpended balance of established development value; but since that concept involves the attachment to land of a monetary supplement, the machinery for division and apportionment must be retained.

Development value in land remains, for purposes of compensation, converted into a sum of money. It cannot now be disposed of away from the land; but when part of the land is disposed of, or some act or event affects part of the land, the method of apportionment under these provisions may have to be invoked.

Mineral land. Where the freehold interest in minerals in a claim area has been severed from the freehold as it subsists in the remainder of the land, see the Minerals regulations, made under s. 54, *post* (S.I. 1954 No. 1706, *post*), particularly reg. 13. Separate claim holdings are constituted thereunder, and these will not be merged again under s. 17, in Part II, *post*, in finding the unexpended balance on or after 1st

January 1955. Reg. 14 authorises certain deductions from payments under this Part (Part I) of the Act, similar to those under s. 14 (2), *post*. Regs. 15 to 18 make further modifications to this Part.

Sub-s. (1).

Subject to the provisions of this Act. *I.e.*, subject to any provision requiring the sub-division, reduction in value or extinguishment of a claim holding. Cf. the notes to ss. 15, 17 and 18, *post*. See also reg. 13 of the Minerals regulations (S.I. 1954 No. 1706), *post*.

Claim holding. *Prima facie*, the benefit of an established claim is a claim holding. Parts of the benefit of an established claim will be separate claim holdings where there has been a disposition of part of the benefit or where it is necessary for the purposes of the Act to divide the benefit of the claim, so that different histories of acts or events are not anywhere comprised in the same holding. It is always important to note at what time, and for what purposes, such adjustments are deemed to be made.

Area of claim holding. In the straightforward case the area of the claim holding is the claim area of the established claim. This also may be divided. The area of the claim holding may be the fee simple of the claim area or a leasehold interest in the claim area, according to the interest to which the established claim related (after any necessary redetermination required by s. 1, *ante*, and para. 11 of the First Schedule, *post*). Sub-s. (4), *supra*, provides for the division of the amount of the established claim which will attach to part of the area of the holding. See note, *infra*. As to mineral land, see reg. 13 of the Minerals regulations (S.I. 1954 No. 1706), *post*.

Value of a claim holding. *Prima facie*, the value of a claim holding is the amount of the established claim, of which it represents the benefit. But the value at any particular time must be determined subject to the provisions of this Act, so far as they have operated at that stage. Thus, in ss. 3–12, *post*, which deal with Case payments and certain other payments under this Part (Part I) of the Act, the value in question is the value immediately before 1st January 1955 (the commencement of the Act). To arrive at this value, regard must be had to sub-ss. (2), (3) and (4), *supra*. S. 15, *post*, will in turn affect the value at any subsequent time, *i.e.*, at the commencement (which is relevant in Part V, *post*) or thereafter (for the purposes of Parts II, III and IV) when claim holdings are considered as constituting the basis of the unexpended balance of established development value. S. 15, however, although it operates "immediately before the commencement", only so operates for its own purposes and those of the later Parts, *i.e.*, it does not affect the value as referred to in Part I.

The matters immediately to be taken into account, for the purposes of Part I, are the pledges of claims (dealt with by sub-s. (2) (*a*), *supra*, and the Second Schedule, *post*), the payments under the war damage scheme (dealt with by sub-s. (2) (*b*), *supra*, and the Third Schedule, *post*) and dispositions of part of the benefit of a claim (dealt with by sub-s. (3), *supra*). Development charge paid in cash, or secured otherwise than by pledge of a claim holding, will not yet have affected the value of a claim holding; it may lead to a Case A payment under this Part (Part I), see ss. 3, 4 and 9, *post*, or possibly a residual payment, under s. 11, *post*; if so, the claim holding will be affected by s. 15, *post*, for the purposes of later Parts of the Act.

Sub-s. (4), *supra*, will cover all cases where a claim holding is divided or where it becomes necessary to find a fraction of its value. Thereunder, the value of the claim is to be apportioned to parts of the claim area. The amount properly attributable to any part of the area is found by apportioning the value on the same principles as applied to its determination. This amount may have to be varied to find the amount which attaches, taking account of sub-divisions, reductions in value or the extinguishing of the original holding or any part. In finding values under this Part (Part I), this takes account of sub-ss. (2) and (3), *supra*, and also of reg. 13 of the Minerals regulations (S.I. 1954 No. 1706), *post*. In Part V, *post*, it will also take account of s. 15, *post*; and so on; cf. notes to ss. 15, 16, 17 and 18, *post*. It will be seen that the amount "properly attributable" takes account of the actual distribution of development value as at 1st July 1948; the fraction which attaches is this amount as affected, at any particular time, by the adjustments required by this Act.

Sub-s. (2).

Second Schedule. See that Schedule, *post*. A pledge means a transaction whereby a claim holding was mortgaged as security for a charge, or it was agreed that a charge should be set off against any payment that might become payable by reference to a holding, or the Central Land Board refrained from determining a charge in consideration of a mortgage of a holding. Generally the effect of that Schedule is that where a holding has been pledged in respect of a charge, and the charge area and the area of the holding are the same, the holding will be either extinguished or reduced by the amount of the charge. If the area of the holding is greater than the charged area, the holding will be divided into a holding consisting of the charged area and another comprising the residue, each having a value equal to the fraction of the value of the original holding which attaches to the part. The holding in the charged area will be applied first to the charge, and either extinguished or reduced, and any balance of the charge remaining outstanding will then reduce the value of the holding in the

residue of the area. Where several claim holdings have been pledged, and they comprise areas subject to charge, the holdings comprising areas subject to charge will be applied first to the reduction of the charge, and will be extinguished or reduced. Any outstanding charges remaining thereafter will be aggregated and will be deducted from the remaining holdings or reduced holdings.

Third Schedule. See General Note, *supra*, and that Schedule, *post*.

Section 59 of the principal Act. Hill, p. 159; 48 Statutes Supp. 118; and see the General Note, *supra*.

Sub-s. (3).

Date of the disposition. The holdings are to be regarded as having been divided from that date. Where the holding or part of it has also been pledged to the Central Land Board, the sub-divisions and reductions in value required by the Second Schedule, *post*, take effect from the date of the pledge, or the latest of several pledges. Where the approval of the Central Land Board was required, under s. 2 (2) of the Act of 1953 (Hill, 2nd Supp., p. B698; 78 Statutes Supp. 135), mainly applying to assignments after 17th November 1952, a disposition involving an apportionment, made or approved by the Board, will be a binding " previous apportionment "; see s. 69 (1), *post*.

Apportionment. Though the authority is to determine the matter, on any subsequent occasion, as is just and reasonable in the circumstances, they are here given certain principles which are applicable in order of priority. They will, however, also have to have regard to any previous apportionment and must follow it, so far as it dealt with the same matters (see, for example, s. 13 (4), *post*). Such apportionment may include one approved or made by the Central Land Board under the Act of 1953 (see previous note and s. 69 (1), *post*). The general principles applicable are discussed in the General Note, *supra*.

Authority making the apportionment. The authority concerned (subject to any appeal to the Lands Tribunal) may be:

(1) the Minister; see ss. 27, 40, 45, and (in special cases) 66, *post*, and the Regulations thereunder (S.I. 1954 No. 1600, and S.I. 1955 No. 38), *post*;
(2) the Central Land Board; see ss. 13 and 48, *post*, and the Regulations thereunder (S.I. 1954 Nos. 1599 and 1720), *post*;
(3) an acquiring authority; see s. 31, *post*, and see also S.I. 1955 Nos. 54 and 80, *post*;
(4) a local planning authority; see s. 39, *post*, and S.I. 1954 No. 1600, *post*.

Lands Tribunal. See the Lands Tribunal Act, 1949 (Hill, 2nd Supp., pp. B1–B24; 61 Statutes Supp. 32). Where findings are " referred " to the Tribunal the procedure, despite the word used here and in other sections and the Regulations thereunder, will normally be by way of an appeal against a determination, and not a reference. See the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. See however r. 9 thereof, enabling certain disputes under s. 31, *post*, to be heard on a reference.

Second Schedule, para. 2. This provision is concerned with the single plot holders' near ripe scheme. (See the Central Land Board's revised pamphlet, " House 2 "; Hill, 2nd Supp., pp. B569–B571; and the notes to s. 49 (4), *post*.)

Sub-s. (4).

Fraction of the value . . . properly attributable. The apportionment is to be made in accordance with the same principles as applied to the determination of the established claim. This would appear to mean in accordance with s. 61 of the Act of 1947 (Hill, p. 162; 48 Statutes Supp. 121) applying the Third Schedule to that Act as originally enacted and not as amended by this Act (see s. 71 (4), *post*).

The development value claim under Part II of the Act of 1947 was determined as the difference between the value of the interest in land as it existed on 1st July 1948, assuming that that Act had not been passed (the unrestricted value) and its value as it existed on that day assuming that planning permission would not be granted for anything other than development within the Third Schedule (as originally enacted) to that Act (set out in the notes to paras. 3 and 4 of the Seventh Schedule to the present Act, *post*). In both cases the values were to be calculated by references to prices prevailing immediately before 7th January 1947. Sub-ss. (6) and (7) of s. 61 of the principal Act (Hill, pp. 163, 164; 48 Statutes Supp. 122) make provision for the deduction of sums representing severance, injurious affection, and disturbance from the unrestricted value. Since the present application of the principles is an apportionment of a total already reduced it would seem that there is little scope for applying the deduction to the divided holdings so as to reduce their value or alter the apportionment *inter se*. S. 63, which excluded small claims, was not part of the principles for determining the amount of development value; it was only a direction excluding payment where the amount determined fell below certain limits.

Where the value of the claim holding is already greater or less than it would have been under the application of the original principles (by reason, for example, of a disposition of a greater part of the benefit of the established claim to one part of the claim area rather than another; or the disposal of part of the benefit away from the land altogether; or the sub-division or reduction in value of the claim holding, under the Second or Third Schedule or otherwise) the fraction properly attributable will be increased or reduced proportionately.

Sub-s. (5).

Commencement of this Act. 1st January 1955. See s. 72 (2) and the T. & C.P. Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598), *post*. This section is concerned with discovering what will be the value immediately before that date. Payments in respect of acts or events with which the remainder of this Part, *post*, is concerned will be by reference to the value of the claim holding immediately before that date, *i.e.*, as affected by the present section. The payments will then in turn have their effect on the holding, under s. 15, *post*, before Part V operates.

Sub-s. (6).

Fee simple; leasehold. Cf. notes to para. 11 of the First Schedule, *post*. If a claim related to more than one interest, it will be reassessed thereunder.

Sub-s. (7).

Treated as divided. Cf. notes to s. 17, *post*.

Sub-s. (8).

Mortgage. See s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. Mortgagees of claim holdings who have not taken an assignment are regarded, in this subsection, as " entitled " to the holding but are not to be within the definition of the " holder ". As to assignments, see the notes to s. 60, *post*. As to applications in certain cases where there is a mortgage of the holding by assignment, see s. 9 (*b*) (ii), *post*. See also s. 43 (2), *post*, in Part V.

3. Payment where development charge incurred by claim-holder or person from whom he derives title (Case A).—(1) The holder of a claim holding shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of that holding if either—

(*a*) he has incurred a development charge in respect of land to which this subsection applies; or

(*b*) he is entitled to an interest in land to which this subsection applies, and a development charge was incurred in respect of that land by a person from whom he derives title to that interest or whose interest has subsequently become merged in that interest.

(2) The preceding subsection applies to any land which constitutes the area of the claim holding, or part of that area, or which includes that area or part of that area.

(3) The principal amount of a payment made in respect of a claim holding by virtue of this section—

(*a*) if the development charge was incurred in respect of the whole of the area of the holding, or in respect of land which included the whole of that area, shall not exceed the value of the holding;

(*b*) if the development charge was incurred in respect of part of the area of the holding, or in respect of land which included part (but not the whole) of that area, shall not exceed that fraction of the value of the holding which attaches to that part of the area of the holding.

(4) Subject to the last preceding subsection, and to the two next following subsections, the principal amount of a payment made by virtue of this section by reference to a development charge shall be the amount of the charge.

(5) Where apart from this subsection a payment would be payable by virtue of this section by reference to a development charge, and by reason of the payment of that charge—

(*a*) compensation has become payable (whether before or after the commencement of this Act) under subsection (1) of section twenty-two of the principal Act (which relates to cases where planning permission is revoked or modified), or the amount of any compensation so payable has been increased; or

(*b*) in connection with a compulsory acquisition of land (whether before or after the commencement of this Act) the operation of subsection (4) of section fifty-one of the principal Act (which relates to planning permission granted before the notice to treat) has been excluded and the compensation payable in respect of the acquisition has been thereby increased; or

(*c*) on a sale to a public authority possessing compulsory purchase powers (whether before or after the commencement of this Act) the sale price has been increased by being calculated on the basis that the operation of subsection (4) of the said section fifty-one was excluded,

the Central Land Board shall reduce or disallow the payment as the Board or, where the Board's findings are referred to the Lands Tribunal under section thirteen of this Act, that Tribunal may determine to be appropriate, having regard to the compensation, or increased compensation, or increased price, as the case may be, payable by reason of the development charge.

(6) Where two or more payments are payable by virtue of this section in respect of different claim holdings but by reference to the same development charge, and apart from this subsection the aggregate of the principal amounts of those payments would exceed the amount of the charge, each such principal amount shall be reduced rateably so that the aggregate of them is equal to the amount of the charge.

(7) In the following provisions of this Act references to a payment under Case A are references to a payment by virtue of this section.

NOTES

This section provides for the making of Case A payments. The holder of a claim holding will be entitled to such a payment, in relation to land which is the area of the holding, or part of the area, or includes the area or part of it, in either of two events. The first event is where he has incurred a charge in respect of the land. In such case he may or may not have an interest in the land. In the straightforward case he incurred the charge and still retains his interest. He may, however, have accepted the liability for a charge and have sold the land with the benefit of planning permission in the open market retaining his claim. He may have paid the charge and carried out the development and thereafter have sold the developed land. There are other possible variants.

The second event is where the holder is entitled to an interest in the land and a charge was incurred by a predecessor in title or in a title which has merged in the holder's interest. In most cases where this circumstance applies consideration for the amount of the charge will have been received by the predecessor and an assignment of the claim taken on the disposition, *i.e.*, the burden of the charge has been passed on to the present claim holder.

The amount of a Case A payment will be whichever is the lesser of two amounts. It will be either the development charge; or the value of the holding, or, in a case where the charge was incurred in respect of land which is part of the area of the holding, the fraction of the value attaching to that part (see s. 2 (4), *ante*, and s. 15 (3), *post*).

This amount may be reduced, however, if planning permission has been revoked, or there has been a sale to a public authority either compulsorily or in circumstances where compulsory purchase powers might have been exercised; and the compensation or purchase price reflected the fact that a development charge had been paid.

Any dispute as to the amount deducted can be referred to the Lands Tribunal (s. 13, *post*). See also note, *infra*, to sub-s. (5).

If there are two or more payments in respect of different claim holdings by reference to the same charge, and the aggregate principal amount would exceed the charge, the payments will be reduced rateably so that the aggregate is equal to the charge.

Payment of charge by set-off, under s. 2, *ante*, and the Second Schedule, *post*, will already, in effect, have released a corresponding amount of the claim. For the purposes of this section, such a charge is treated as not having been incurred, see s. 49 (4) and (6), *post*, and a Case A payment will be excluded, *pro tanto*; see notes to s. 4, *post*.

Minerals. See, particularly, reg. 15 of the T. and C.P. Minerals Regulations, 1954 (S.I. 1954 No. 1706, *post*).

Sub-s. (1).

Holder. See s. 2 (8), *ante*. See also s. 9, *post*, where the holder derives title from a person who would have been entitled to payment if he had continued to be the holder, and S.I. 1955 No. 38, *post*, providing for applications by trustees of settled land.

Claim holding. See s. 2, *ante*. Section 2 (1) must be read subject to s. 2 (2) and (3), *ante*, and the Second and Third Schedules, *post* (but not subject, at this stage, to s. 15 (3), *post*).

Incurred a development charge. Means that the Central Land Board have determined that a charge was payable, and the whole or part of the charge has been paid or become payable. The person by whom the charge is incurred is the person who paid or on whose behalf the charge was paid or who undertook with the Central Land Board to pay the charge or the balance of the charge. See s. 4, *post*, and see also s. 49, *post*, whereunder certain charges are treated as not having been incurred, and cf. s. 69 (5), *post*.

Development charge. See ss. 69–74 of the principal Act (Hill, pp. 172–188; 48 Statutes Supp. 132–143). As to a payment in respect of the monopoly value of licensed premises, which may be regarded as including development charge, see s. 58 of this Act, *post*.

Interest in land. See s. 69 (1), *post*.

Sub-s. (2).

Applies to . . . land . . . the area of a claim holding. The land in respect of which the charge was determined must be either the area of the holding, or part of the area of the holding; or the area of the holding must be part of the land, or part of the area of the holding must be part of the land. Where the charge was incurred in respect of land, which was in the area of more than one holding, whether with or without other land (outside the area of any holding), see sub-s. (6), *supra*. The area of the holding is defined by s. 2 (1), *ante*, subject to s. 2 (2) and (3), *ante*, but not, at this stage, to s. 15 (3), *post*.

Sub-s. (3).

The value of the holding. See s. 2 (5), *ante*; and regs. 14 and 15 of the Minerals regulations (S.I. 1954 No. 1706), *post*.

Fraction of the value of the holding. Where part of the area of a claim holding is land in respect of which a charge has been incurred, and part not, the payment is limited to the fraction of the value of the holding which attaches to the part included in the determination of the charge, as defined by s. 2 (4), *ante*, *i.e.*, after the operation of s. 2 (2) and (3). Any sub-division, reduction in value, or extinguishment, of a holding required to take account of another Case A payment, or a payment under any other case, will not have operated at this stage; see s. 15, *post*, which operates only for the purposes of the later Parts of the Act.

Sub-s. (4).

Payment . . . shall be the amount of the charge. The principle of the Case A payment is to secure the repayment of the development charge; but it is only to be repaid to the extent that there is a relevant claim holding out of which it can be paid, and if a holding includes other land than the charged land it is only the value of that part of the holding which attaches to the charged land which is available; see sub-s. (3), *supra*. The amount of the charge is the amount " incurred " which by s. 4, *post*, is normally the amount " determined ", but see the notes to that section. Where land included in the determination of the charge lies partly outside the area of one particular claim holding, it may fall wholly or in part into the area of another claim holding; in such a case, see sub-s. (6), *supra*, which limits the aggregate of the payments to the amount of the charge.

Sub-s. (5).

S. 22 (1) of the principal Act. Hill, p. 88; 48 Statutes Supp. 61. Under s. 22 (1) proviso (*a*), where a development charge had been paid, compensation under that section will have included compensation in respect of depreciation in value of any interest in land caused by the revocation or modification, thereafter, of the planning permission in respect of which the charge was payable. Under the Act of 1947 the development charge was intended to represent the value added to the land by the grant of planning permission (s. 70; Hill, p. 177; 48 Statutes Supp. 136). Payment on a depreciation basis for a revocation of permission should therefore have roughly represented the amount of the development charge. Compensation under s. 22 would, in addition, be payable in respect of certain expenditure rendered abortive, and would take account of any action taken by the Central Land Board in relation to the charge under s. 74 of the Act of 1947 (Hill, p. 186; 48 Statutes Supp. 140), see sub-s. (4) of that section, by way of variation or release. It may also be that compensation was paid for modification, and was therefore merely part repayment of the development charge. To the extent that compensation for depreciation did not represent a repayment of the charge, the claim holder is still entitled to a Case A payment. Where the payment is reduced or disallowed, the claim holding remains in existence; see, further, the notes to s. 43 (1), *post*.

The repeal of the proviso to s. 22 (1) of the principal Act, by s. 71 and the Seventh Schedule, *post*, is not to affect compensation in respect of any order under s. 21 of the principal Act made before the commencement of the present Act; see s. 71 (6), *post*.

S. 51 (4) of the principal Act. See Hill, p. 145; 48 Statutes Supp. 106. This provision had a similar effect to that of s. 22 (1) of that Act. S. 51 (4) (*b*) requires the value of the interest to be calculated having regard to any planning permission, granted before the notice to treat, where a development charge has been paid. Since the land has been acquired and the owner will normally have simply received back his charge under s. 51 (4) (*a*), provision for repayment might have been left under this case (Case A), as it would have been apart from this provision. Payment is made instead, however, under Case B (ss. 5 and 6, *post*). This is done under the definition of " existing use value " in s. 6 (1) (*a*), *post*. A payment will be made, under Case B, where the price paid fell short of the value of the holding and the existing use value of the interest. S. 6 (1) (*a*) defines " existing use value " by reference to a payment under s. 51. A

payment to which s. 51 (4) (*a*) applies is still a payment under s. 51. The s. 51 (4) (*a*) payment should return the development charge. And under s. 5, *post*, since that payment itself should be less than that payment plus the value of the holding, a Case B payment will be made.

Lands Tribunal. As to reference of disputes to the Lands Tribunal, see s. 13, *post*, and regs. 6 and 7 of the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *post*. See also the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

Determine to be appropriate. For Parliamentary discussion, see H. of C. Official Report, S.C.C., 4th May, 1954, cols. 145–164, discussing cl. 4 (5) of the original Bill [Bill 72]. See also notes, *supra*, on the effect of ss. 22 (1) and 51 (4) of the Act of 1947. *Semble*, the decision of what is appropriate is to be reached by considering (1) the general purpose of this section which is to secure repayment to claim holders of development charge paid by them, or in effect passed on to them by a predecessor in title to an interest in land, and (2) the extent to which it may be said that repayment has been made already as part of the compensation on a revocation, modification, or compulsory purchase, or as part of the price on a quasi-compulsory sale. If such repayment has been made, wholly or in part, on a revocation or modification, the claim holder's loss of development value will be regarded as having been suffered at that stage, *i.e.*, there may be a claim under Part V, *post*; see note, referring to s. 22 (1) of the Act of 1947, under s. 43 (1), *post*. If such repayment has been made, wholly or in part, on an acquisition or purchase, see Case B, ss. 5 and 6, *post*.

Sub-s. (6).

Different claim holdings. This subsection is made necessary by the wording of sub-ss. (2) and (3), *supra*. Payment thereunder may be made by reference to land, partly outside the area of any one claim holding, which may be, wholly or in part, within the area of another claim holding. The present subsection limits the Case A payment to the amount of the charge, which might otherwise be exceeded.

4. Supplementary provisions relating to development charges.—(1) For the purposes of this Part of this Act a development charge shall be taken to have been incurred in respect of any land if the Central Land Board have (whether before or after the commencement of this Act) determined that the charge was payable in respect of the carrying out of operations in, on, over or under that land, or in respect of the use of that land, and the whole or part of the charge has been paid or has become payable.

(2) For the purposes of this Part of this Act the person by whom a development charge was incurred shall be taken to be the person by whom or on whose behalf the charge was paid or, if the charge was not paid in full in the first instance, the person who undertook with the Central Land Board to pay the charge or the unpaid balance thereof.

(3) For the purposes of this Part of this Act the amount of a development charge—

(*a*) in a case where the Central Land Board determined that amount as a single capital payment, shall be taken to be the amount so determined;

(*b*) in a case where the Board determined that amount otherwise than as a single capital payment, shall be taken to be the amount of the single capital payment which would have been payable if the Board had determined the amount as such a payment.

NOTES

This section states when, for the purposes of this Part, a development charge is to be taken to have been incurred. This is taken to have happened if the Central Land Board have, before or after the commencement of this Act, determined that a charge was payable and the charge has been paid or become payable. As to treating as charges the payments made for the monopoly value of licensed premises, see s. 58, *post*. If the charge has been discharged by set-off against the claim holding under s. 2, *ante*, and the Second Schedule, *post*, and no sum has been paid to the Board the charge will be treated for the purposes of this Part of the Act as not having been incurred (s. 49, *post*). See also s. 69 (5), *post*. If any sum has been paid the amount of the charge will be treated as the amount paid excluding any interest.

The section also defines the person by whom the charge was incurred. This is the person by whom the charge was paid, or on whose behalf it was paid. If it was not paid in full, the person who undertook with the Board to pay is the person who incurred the charge.

Under s. 71 of the principal Act (Hill, p. 189; 48 Statutes Supp. 137) the Board could determine the charge as a single capital payment or as a series of instalments of capital or of capital and interest or as a series of periodical payments. For the purposes of the present Act it is necessary to regard the charge as a single capital payment. If it was otherwise determined it is to be the sum which it would have been if it had been determined as a single sum.

Sub-s. (1).

Development charge. See generally Part VII of the Act of 1947 (ss. 69–74; Hill, pp. 172–188; 48 Statutes Supp. 134–143); and ss. 1 and 3 of the Act of 1953 (Hill, 2nd Supp., pp. B695, B700; 78 Statutes Supp. 133, 136), which abolished the charge, with certain savings, in respect of development begun on or after 18th November 1952.

Incurred. See s. 49 (6), *post*, for special cases when a charge, paid by set-off, is deemed not to have been incurred. A similar effect (for present purposes) results where, under s. 49 (5) and (6), *post*, or s. 69 (5) (*a*), *post*, a charge is to be treated as if it had not been determined.

Central Land Board. See generally ss. 2 and 3 of the Act of 1947 (Hill, pp. 40–42; 48 Statutes Supp. 26–28); and s. 63 of this Act, *post*, whereunder the Board is to be dissolved. For the Board's functions as to development charge, see Part VII of the Act of 1947, *ubi supra*.

Determined. See the T. & C.P. Development Charge Applications Regulations, 1950 (Part II of S.I. 1950 No. 728; Hill, 2nd Supp., pp. B204–B207), and the earlier Regulations (regs. 3–6 of S.I. 1948 No. 711; Hill, pp. 737, 738), made under Part VII of the Act of 1947, *ubi supra*. The procedures for determination, confirmation or variation of charge are still available, where charge was payable. As to the effect of variation of the amount, and of the Act of 1953, see s. 69 (5), *post*, which provides also for disregarding determinations which ceased to have effect under s. 73 (2) of the Act of 1947 (Hill, p. 184; 48 Statutes Supp. 140), in cases where permission was revoked, and in other cases where the applicant was deprived of its benefit. Cf. s. 3 (5), *ante*, in cases where the applicant was allowed this benefit.

Operations; use. Have the same meanings as in the Act of 1947; see s. 69 (2), *post*, and cf. notes to s. 20, *post*.

Has become payable. See s. 69 (5) (*b*), *post*.

Sub-s. (3).

Otherwise than as a single capital payment. See s. 71 (1) of the Act of 1947 (Hill, p. 189; 48 Statutes Supp. 137) and the General Note, *supra*. As to " non-near-ripe " or " dormant " minerals, see para. 13 of the Central Land Board's Supplement to their Practice Notes (Hill, 2nd Supp., p. B596), and reg. 15 (2) of the T. and C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

5. Payment where land compulsorily acquired or sold at price wholly or partly excluding development value (Case B).—(1) The holder of a claim holding shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of that holding if, at a time when he was entitled in the same capacity both to the claim holding and to the interest in land to which the holding related, that interest—

(*a*) was compulsorily acquired by, or sold to, a public authority possessing compulsory purchase powers, in such circumstances that the compensation payable in respect of the acquisition of the interest, or the price at which the interest was sold, fell short of the sum of the value of the holding and the existing use value of the interest; or

(*b*) was sold, otherwise than to a public authority possessing compulsory purchase powers, at a price which fell short of the sum of the value of the holding and the restricted value of the interest.

(2) No payment shall be made by virtue of this section by reason that an interest in land was compulsorily acquired or sold as mentioned in paragraph (*a*) of the preceding subsection if the compensation payable in respect of the acquisition thereof, or the price at which the interest was sold—

(*a*) was calculated in accordance with the provisions of Part II of the Town and Country Planning Act, 1944 (which provided for compensation based on market value, by reference to prices current

at the thirty-first day of March, nineteen hundred and thirty-nine); or

(*b*) was compensation calculated on the basis of equivalent reinstatement, or a price agreed by reference to compensation so calculated.

(3) No payment shall be made by virtue of this section unless the transaction in question—

(*a*) if it was a compulsory acquisition, or a sale to a public authority possessing compulsory purchase powers, was effected in pursuance of a notice to treat served, or a contract made on or after the sixth day of August, nineteen hundred and forty-seven, and before the commencement of this Act;

(*b*) if it was a sale otherwise than to a public authority possessing compulsory purchase powers, was effected in pursuance of a contract made on or after the said sixth day of August and before the eighteenth day of November, nineteen hundred and fifty-two, or in pursuance of an option granted on or after the first day of July, nineteen hundred and forty-eight, and before the said eighteenth day of November,

and unless the acquisition or sale has been completed (whether before or after the commencement of this Act) at the time when an application is made to the Central Land Board for the payment.

(4) The principal amount of a payment made by virtue of this section in respect of a claim holding—

(*a*) in a case falling within paragraph (*a*) of subsection (1) of this section, shall be the value of the holding, reduced by any amount by which the compensation or sale price exceeded the existing use value of the interest;

(*b*) in a case falling within paragraph (*b*) of that subsection, shall be the value of the holding, reduced by any amount by which the sale price exceeded the restricted value of the interest.

(5) In the application of the preceding provisions of this section to a case where the interest compulsorily acquired or sold extended to land not included in the area of the claim holding—

(*a*) references to the compensation payable in respect of the acquisition of the interest, or to the existing use value of the interest, shall be construed respectively as references to so much of that compensation or value as might reasonably be expected to have been attributed to the interest in so far as it subsisted in land included in the area of the claim holding;

(*b*) references to the sale price shall be construed as references to so much of that price as the parties to the sale may reasonably be supposed to have attributed to the interest in so far as it subsisted in land so included; and

(*c*) references to the restricted value of the interest shall be construed as references to the restricted value of the interest in so far as it subsisted in land so included.

(6) In the application of the preceding provisions of this section to a case where the interest compulsorily acquired or sold did not extend to the whole area of the claim holding, references to the value of the claim holding shall be construed as references to that fraction of that value which attaches to the part of the area of the claim holding which was comprised in the acquisition or sale.

(7) Where an interest in land is the subject of a compulsory acquisition or sale such as is mentioned in subsection (3) of this section and—

(*a*) on or after the first day of July, nineteen hundred and forty-eight, but before the date of the compulsory acquisition or sale, another interest had become merged with that interest; and

(*b*) the person entitled to the interest compulsorily acquired or sold was at the date of the compulsory acquisition or sale entitled to a claim holding or claim holdings which related to either or each of the merged interests,

this section shall apply as if those interests had not merged but had been separately acquired from or sold by the person entitled to the interest acquired or sold; and the compensation payable in respect of the compulsory acquisition or, as the case may be, the sale price shall be treated as apportioned between those interests accordingly:

Provided that nothing in this subsection shall prejudice the operation of the proviso to subsection (4) of the next following section.

(8) Where two or more persons are jointly entitled to a claim holding, then, for the purpose of ascertaining whether or not those persons are entitled to a payment in respect of the holding by virtue of this section, any act or event by virtue of which the interest of any one or more of those persons in any of the area of the claim holding passed to any other one or more of those persons shall be deemed not to have occurred.

(9) The provisions of this and the next following section shall apply in relation to any interest in land vested in the British Transport Commission by subsection (2) of section forty-five of the Transport Act, 1947 (which relates to the acquisition of road haulage undertakings by the Commission) as if that vesting were a compulsory acquisition of that interest and as if the notice of acquisition served under Part III of that Act by virtue of which the interest was so vested were a notice to treat.

(10) Without prejudice to section ten of this Act, paragraph (*b*) of subsection (1) of this section shall not apply in relation to a sale in consideration wholly or partly of a rentcharge.

(11) In the following provisions of this Act references to a payment under Case B are references to a payment by virtue of this section.

NOTES

This section deals with entitlement to a Case B payment. These payments will be made to claim holders who sold the land, to which the holding relates, at a time when they were entitled, in the same capacity, to the holding and the land in the following circumstances:

1. Where the land was acquired from them compulsorily, or, by an authority who could have acquired compulsorily and the compensation or price (excluding any part representing disturbance or injurious affection; see s. 6 (1), *post*) was less than the sum of the value of the holding and the **existing use value** of the interest (*i.e.*, the amount payable in respect of the interest under s. 2 of the Act of 1919; (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977), as modified by ss. 51–55 of the principal Act (Hill, pp. 144–152; 48 Statutes Supp. 106–113); see s. 6 (1) (*b*), *post*).

2. Where the land was sold otherwise at a price which fell short of the value of the holding and the **restricted value** of the interest generally, *i.e.*, what would have been the restricted value under Part VI of the Act of 1947 (Hill, p. 155; 48 Statutes Supp. 121) if the date of the contract (s. 6 (5), *post*), had been substituted for the appointed day for the purposes of the Third Schedule to the Act of 1947; see s. 6 (2), *post*.

Thus, compensation on a compulsory purchase, or the price on a similar sale (under the shadow of compulsory powers), is compared with a current existing use value; other sale prices are compared with a current restricted value.

No payment will be made where the sale was under Part II of the Act of 1944, or on the basis of equivalent reinstatement under rule (5) of s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977). In the case of sales to public authorities the sale must have been on or after 6th August 1947 and before 1st January 1955.

In the case of sales other than to public authorities having compulsory purchase powers, the contract must have been made on or after 6th August 1947 and before 18th November 1952 or an option given after 30th June 1948 and before 18th November 1952. As to certain transactions after that date, see s. 43 (1) (*b*) (in Part V), *post*.

The sale will have to be completed at the time when application is made for the Case B payment.

The amount of the Case B payment will be the value of the holding reduced by any amount by which the compensation or price exceeded, in the case of acquisition by, or sales to, public authorities, the " existing use value " (see note *infra*) and, in the case of other sales, the " restricted value " (see note, *infra*).

Where the areas of the sale, or acquisition, and the holding are not coterminous it will be necessary to apportion either or both of the compensation, or price, and the value of the holding.

Where there has been a merger of interests after 30th June 1948, but before the sale, and the person entitled to the interest at the date of the sale was entitled to a claim holding or holdings which related to either or each of the interests, they are to be treated generally as not having merged for the purposes of this section.

Where there is a joint entitlement to a claim holding, as in the case of trustees, and the interest of any one or more in the area of the holding has passed to the others the act or event is assumed not to have occurred. This assumption, read with the previous one, will be seen to avoid unnecessary division and apportionment of holdings.

Special provision is made by this section to regularise the position of former haulage undertakings whose Part VI claims under the Act of 1947 were not acquired by the Transport Commission.

As to references to a contract, see s. 69 (6), *post* (in effect adapting the Statute of Frauds); as to transactions between associated companies, see s. 47, *post*.

As to claims under Case B, see also s. 9, and in special cases s. 66, and the regulations, as to applications by mortgagees and trustees (S.I. 1955 No. 38), *post*. For analogous cases, such as lettings at a restricted value, or sales in consideration of a rentcharge, see s. 10, *post*. As to interest on payments, see s. 14 (1), *post*.

Minerals. For modifications in respect of mineral land, affecting particularly sub-s. (4) (*a*), *supra*, and s. 6 (4) proviso, *post*, see s. 54, *post*, and regs. 13 and 16 (1) and (2) of the T. and C. P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*. In connection with private sales, as mentioned in sub-s. (1) (*b*), *supra*, see regs. 13 and 16 (3) and (4) of those regulations.

Sub-s. (1).

Holder of a claim holding. See s. 2 (8), *ante*, and cf. s. 66, *post*. As to claim holdings, see s. 2 (1), *ante*. See also s. 9, *post*, where the holder derives title from a person who would have been entitled if he had continued to be holder.

In the same capacity. See s. 69 (1), *post*.

Interest in land. See s. 69 (1), *post*, and cf. s. 66, *post*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*. The definition includes an authority who could have been authorised to acquire as well as one actually authorised.

Compensation. See s. 6 (1), *post*. The compensation or price excludes so much as is attributable to disturbance or to severance or injurious affection. See also reference to existing use in that subsection, *post*.

Value of the holding. In sub-s. (1) (*a*) and in sub-s. (4) (*a*) the value of the holding may be affected under s. 6 (4), *post*, where the restricted value of the interest under Part VI of the Act of 1947 (see s. 62 (4) of that Act; Hill, p. 165; 48 Statutes Supp. 126) was taken to be a minus quantity. In such case the value of the holding will be reduced by the minus quantity. If the liability giving rise to the minus quality has been discharged wholly or in part before the acquisition or sale, the Central Land Board or the Lands Tribunal may waive the reduction wholly or in part. As to value of the holding under sub-ss. (1) (*b*) and (4) (*b*), see notes, *infra*, to sub-s. (4). Apart from these adjustments, see s. 2 (5), *ante*; and regs. 13, 14 and 16 of the T. & C.P. (Minerals) Regulations (S.I. 1954 No. 1706), *post*.

Existing use value. The existing use value is defined for the purpose of this section in s. 6 (1) (*a*), *post*. It follows the general definition of " compensation on the basis of the existing use " in s. 69 (1), *post*. Since the present section is concerned with past acts and events, the reference is made to include also ss. 52 and 55 of the Act of 1947 (Hill, pp. 146, 151; 48 Statutes Supp. 108, 112), which are not referred to in the general definition. The definition ensures a case payment where land was acquired at a price which included the value of a planning permission under s. 51 (4) (*a*) of the Act of 1947 (Hill, p. 145; 48 Statutes Supp. 107), in cases where a development charge had been paid. See also s. 3 (5), *ante*, and note on " Restricted value ", *infra*. Both definitions have a wider meaning than the generally accepted meanings given to the same form of words in common usage under the Act of 1947.

Restricted value. This is the amount which would have been the restricted value under Part VI of the Act of 1947 calculated subject to the provisions of s. 6 (2), *post*.

As to restricted value in Part VI, see ss. 61 and 62 (Hill, pp. 162–166; 48 Statutes Supp. 121–126). Under s. 61 (2) (*a*), the restricted value was the value of the interest as it subsisted on 1st July 1948, calculated on the assumption that planning permission would be granted for development of any class specified in the Third Schedule to the Act of 1947, but would not be granted for any other development. Under s. 61 (5), the calculation was to be by reference to prices prevailing at 7th January 1947. Under s. 71 (4), *post*, the amendment of the Third Schedule to the Act of 1947 by the present Act is not (at any date) to have effect for the purposes of s. 61 of that Act.

Under s. 6 (2), *post*, the date of the sale (see s. 6 (5), *post*), is substituted for 1st July 1948, for the purposes of applying the Third Schedule, and for 7th January 1947, for the calculation of prices. Sub-s. (3) of s. 62 of the Act of 1947 is not to apply where

the land was sold subject to a mortgage (see also s. 66 (1), *post*). An acquisition of war damaged land which was held in requisition, and in respect of which a value payment has become payable under the War Damage Act, 1943 (7 Statutes Supp. 116), is to be treated as if at the date of the sale the land was in the state in which it would have been if the war damage had occurred immediately before requisition (see s. 6 (2) (*d*), *post*, s. 1 (6) proviso, *ante*, and para. 6 of the First Schedule, *post*). If in valuing the development value claim under Part VI of the Act of 1947, r. (3) of s. 2 of the Act of 1919, was disregarded by the Central Land Board, it is to continue to be disregarded notwithstanding s. 62 (1) of the Act of 1947.

Where land was sold with the benefit of a " dead ripe " certificate under s. 80 of the Act of 1947 (Hill, p. 199; 48 Statutes Supp. 152) the amount of the restricted value is to be increased by the development charge which would have been payable if the development had not been exempt and a charge had been determined at the date of the sale. This will enable a Case B payment to be claimed where the s. 80 development had not been carried out or had not realised the full development value in the land. This is taken care of, in a Case B sale to a public authority, by the definition of existing use. The s. 80 development is regarded under s. 51 (4) (*b*) (Hill, p. 163; 48 Statutes Supp. 107) for the purpose of calculating " existing use value "; but, for the purposes of " restricted value " calculations s. 80 (2) (*a*) of the Act of 1947 (Hill, p. 200; 48 Statutes Supp. 153) directs that no account shall be taken of the development to which the certificate relates (in calculating development value for the purposes of Part VI). Therefore, though it appears in the definition of existing use, by reference to s. 51 of the Act of 1947, it would not appear in a definition of restricted use by reference to s. 61 of that Act: hence the special adjustment made by s. 6 (2) proviso, *post*, for the case of private sales. See also note, *infra*, on " Value of the holding " in sub-s. (4) (*b*).

Sub-s. (2).

Part II of the Town and Country Planning Act, 1944. See s. 91 (4) (*c*) of the principal Act (Hill, p. 218; 48 Statutes Supp. 168). Under that provision a sale by agreement to a public authority, on a contract made after the passing of that Act but before 1st July 1948, could provide for the exclusion of the 1947 Act and for compensation to be paid on the 1944 Act basis. Where notice to treat was served before the passing of the Act of 1947 completion was deemed to have occurred before 1st July 1948 (s. 91 (1) of the Act of 1947). For the Act of 1944 as originally enacted, see Hill, p. 434; 28 Statutes Supp. 20.

Equivalent reinstatement. See s. 2 (5) of the Act of 1919 (Hill, p. 702; 3 Halsbury's Statutes (2nd Edn.) 977). Where land is devoted to a purpose for which there is no general demand or market compensation may be awarded on this basis if the tribunal is satisfied that reinstatement elsewhere is *bona fide* intended. See *London School Board* v. *South Eastern Ry. Co.* (1887), 3 T.L.R. 710, C.A.; 11 Digest (Repl.) 135, *192*; *A. & B. Taxis, Ltd.* v. *Secretary of State for Air*, [1922] 2 K.B. 328, C.A.; Digest Supp.; *Aston Charities Trust, Ltd.* v. *Stepney Borough Council*, [1952] 2 All E.R. 228; [1952] 2 Q.B. 642, C.A.; 3rd Digest Supp. See also s. 51 (1) and s. 56 of the Act of 1947 (Hill, pp. 144 and 153; 48 Statutes Supp. 106 and 113).

Sub-s. (3).

6th August 1947. Date of passing of the Act of 1947.

Commencement of this Act. 1st January 1955; see s. 72 (2), and the appointed day order thereunder (S.I. 1954 No. 1598), *post*.

18th November 1952. Date of publication of the Act of 1953 as a Bill. This was also the date of publication of the Government White Paper on the proposals to amend the financial provisions of the Act of 1947 (Cmd. 8699; Hill, 2nd Supp., p. B703). See also s. 43 (1) (*b*), *post*, as to certain later transactions.

1st July 1948. Appointed day under the Act of 1947; see s. 120 of that Act and S.I. 1948 No. 213 (Hill, pp. 266, 733; 48 Statutes Supp. 209, 294).

Sub-s. (4).

Principal amount of payment. In the case of an acquisition by a public authority the payment will be the value of the holding reduced by the amount by which the compensation or price (excluding so much thereof as is attributable to disturbance, severance or injurious affection) exceeds the existing use value of the interest (again excluding any compensation for disturbance, severance or injurious affection); see s. 6 (1), *post*. In the case of other sales the payment will be the value of the holding less the excess of the sale price over the restricted value of the interest. As to the meaning of " restricted value," see note to sub-s. (1), *supra*.

Value of the holding. In sub-s. (4) (*b*) and in sub-s. (1) (*b*), *supra*, the value of the holding is to be treated as increased by the amount of any deduction which would have been made from the unrestricted value under s. 61 of the Act of 1947 (Hill, p. 162; 48 Statutes Supp. 121) in respect of severance or injurious affection in calculating the development value, under Part VI of that Act, if the calculation had been made on the date of the sale. See s. 6 (3), *post*. Generally, as to the value, see s. 2, *ante*.

Sub-s. (5).

Compensation . . . attributed to the interest. The compensation, like the value of the holding, may have to be apportioned. The apportionment is to be on the

basis of what might reasonably have been expected to be attributed to any part of the land. Presumably some regard will be paid to the directions given in relation to the apportionment of values in relation to claim holdings.

Sub-s. (6).

Fraction of . . . value . . . of the claim holding. See s. 2 (4), *ante*.

Sub-s. (9).

S. 45 (2) of the Transport Act, 1947. See 49 Statutes Supp. 114. See also *Liss Transport Ltd.* v. *Road Haulage Executive* (Transport Arbitration Tribunal) (1950) Road Haulage Cases (H.M.S.O.); 1 P. & C.R. 404.

Sub-s. (10).

S. 10 of this Act. That section, *post*, makes provision for payments analogous to Case B payments. The cases where such payments may be made are, roughly, where there has been a letting at an " existing use " or " restricted " rent; a sale in consideration of an " existing use " or " restricted " rentcharge; where there has been a severance of land from other land sold to a public authority and the compensation or price failed to take account of the development value in any severance payment; and where compensation under the Compensation (Defence) Act, 1939 (Statutes Vol., p. 152) failed to take account of the development value in the land because of the provision of s. 10 of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21). See also s. 9, *post*, where the title to the claim holding has been derived from a person who would have been entitled to a Case B payment if that person had continued to be the holder.

6. Supplementary provisions relating to compulsory acquisitions and to sales.—(1) In the last preceding section—

(*a*) references to the compensation payable in respect of the acquisition of an interest, or to the price at which an interest was sold to a public authority possessing compulsory purchase powers, shall be construed as excluding so much (if any) of that compensation or price as was attributable to disturbance or to severance or injurious affection;

(*b*) references to the existing use value of an interest acquired by or sold to such a public authority are references to the amount of compensation (not being compensation calculated on the basis of equivalent reinstatement and excluding any compensation for disturbance or for severance or injurious affection) which was or would have been payable in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, as modified by sections fifty-one to fifty-five of the principal Act.

(2) Subject to the following provisions of this section, references in the last preceding section to the restricted value of an interest in land, in relation to a sale of that interest, are references to the amount which, for the purposes of Part VI of the principal Act, would have been taken to be the restricted value of that interest on the appointed day if—

(*a*) the date of the sale had been appointed as the appointed day for the purposes of the said Part VI and, so far as required for the purposes of that Part, for the purposes of the Third Schedule to the principal Act;

(*b*) references to the seventh day of January, nineteen hundred and forty-seven, in subsection (5) of section sixty-one of the principal Act (which requires values to be calculated by reference to prices current immediately before that day) were references to the date of the sale;

(*c*) in a case where the interest was sold subject to a mortgage, subsection (3) of section sixty-two of the principal Act (which requires a mortgaged interest to be valued as if the mortgage had been discharged) did not apply;

(*d*) in a case where the land was requisitioned land at the date of the sale and, by reason of a payment under the War Damage Act, 1943, the value of the claim holding referred to in subsection (1) of the last preceding section was affected by a redetermination of develop-

ment value under paragraph 6 of the First Schedule to this Act, the state of the land had been at the date of the sale what it would have been at the beginning of the period of requisition if the war damage had occurred immediately before the beginning of that period; and

(*e*) in a case where the value of the claim holding aforesaid was affected by reason of the fact that Rule (3) of the Rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, was disregarded as mentioned in paragraph 10 of the First Schedule to this Act, the reference in subsection (1) of section sixty-two of the principal Act to the said Rule (3) were omitted:

Provided that where the Minister issued in respect of that land or any part thereof a certificate under section eighty of the principal Act (which relates to land ripe for development before the first day of July, nineteen hundred and forty-eight) and at the date of the sale the development specified in the certificate had not been completed, then—

(i) that certificate shall be deemed not to have been issued; but

(ii) the said references in the last preceding section shall be construed as references to the amount aforesaid increased by the amount of any development charge which, in the opinion of the Central Land Board, would have been determined to be payable in respect of so much of that development as had not been completed if it had been completed and if the certificate had not been issued and the charge had fallen to be determined at the date of the sale.

(3) Where, in determining the development value of the interest in land to which the claim holding related, a deduction was made in accordance with subsection (6) of section sixty-one of the principal Act (which requires certain amounts prospectively payable as compensation for severance or injurious affection to be deducted in computing the unrestricted value of an interest) or where, in the opinion of the Central Land Board or, where the Board's findings are referred to the Lands Tribunal under section thirteen of this Act, of the Tribunal, if the development value of the interest had fallen to be determined such a deduction would have been made, then, for the purposes of paragraph (*b*) of subsection (1) and paragraph (*b*) of subsection (4) of the last preceding section, the value of the claim holding shall be treated as increased by the amount which would have been the amount of the deduction under the said subsection (6) if the date of the sale had been appointed as the appointed day for the purposes of Part VI of the principal Act.

(4) Where, in determining the development value of the interest in land to which the claim holding related, the restricted value of the interest on the appointed day was taken to be a minus quantity, or where, in the opinion of the Central Land Board or, where the Board's findings are referred to the Lands Tribunal under section thirteen of this Act, of that Tribunal, if the development value of the interest had fallen to be determined the restricted value of the interest on that day would have been a minus quantity, then, for the purposes of paragraph (*a*) of subsection (1) and paragraph (*a*) of subsection (4) of the last preceding section, the value of the claim holding shall be treated as reduced by the amount of that minus quantity:

Provided that where the whole or part of any liability or prospective liability which was or, as the case may be, would have been taken into account in calculating that restricted value had ceased to exist before the date of the compulsory acquisition or sale, the Board or, as the case may be, the Lands Tribunal may, if they think it just and proper so to do, waive in whole or in part, as may appear to them appropriate, any reduction otherwise falling to be made under this subsection.

(5) For the purposes of this Part of this Act a compulsory acquisition or sale of an interest in land shall be taken to have occurred on the date of

service of the notice to treat or, as the case may be, on the date of the making of the contract of sale, or, in the case of the exercise of an option, the date on which the option was granted.

NOTES

This is an interpretation section for the purposes of s. 5, *ante*, which deals with Case B payments. The scope of s. 5 is widened by s. 9, *post* (persons deriving title to claim holdings, in certain circumstances, from the person who would have been entitled to claim under the Case); and analogous payments may be made under s. 10, *post* (transactions similar, or related, to compulsory acquisitions or sales, but not covered by Case B). Residual payments may in some cases be payable under s. 11, *post*. Special provision as to mortgages, etc., is made by the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

The general effect of the present provisions has been mentioned in the notes to s. 5, *ante*: the ancillary provisions relating to Case B, mentioned *supra*, may help to explain why the particular definitions in the present section have been chosen, and how they are likely to operate. For example, sub-s. (1) (*b*), *supra*, defining existing use value, which is relevant where there has been a compulsory acquisition or quasi-compulsory sale to a public authority, and sub-s. (1) (*a*), *supra*, defining the compensation or price which must be compared with that existing use value, both exclude from consideration so much of the value, compensation or price in question as was referable to severance, other injurious affection, or disturbance. This is more readily understood if it is remembered that severance and injurious affection of land not acquired, though not disturbance, may give rise to an analogous payment under s. 10, see s. 10 (2) (*c*), *post*, where such matters were dealt with on an existing use basis (as formerly required by s. 119 (4) of the Act of 1947).

Existing use value. See the general explanation in the notes to s. 5 (1), *ante*, and the note, " Public and private sales ", *infra*.

Sub-ss. (1) and (4), *supra*, are concerned with existing use value (relevant in s. 5 (1) (*a*) and (4) (*a*), *ante*). Sub-s. (5), *supra*, defines the date which is relevant.

Where the acquisition was strictly compulsory, the compensation paid should have been calculated, in most cases not excluded from s. 5, *ante*, in accordance with the Act of 1919 (Hill, pp. 701–711; 3 Halsbury's Statutes (2nd Edn.) 975), as modified by ss. 51–55 of the Act of 1947 (Hill, pp. 144–152; 48 Statutes Supp. 106–113). The only adjustment required by sub-s. (1), *supra*, should be to disregard disturbance, severance and other injurious affection, as reflected both in the compensation and in the existing use value. This should not affect the amount of the payment under Case B in respect of the interest in land actually acquired. The question arising under s. 5 (1) (*a*) and (4) (*a*), *ante*, is whether the compensation or price exceeded an existing use level. In practice, particularly where compensation was paid by a local authority with the assistance of a Government grant under some statute, it will usually be the case that the authority were advised on value by the district valuer, who is hardly likely to wish to re-open the transaction now by suggesting that an excessive sum was paid in compensation. Where the compensation was depressed by the operation of other statutory provisions (*e.g.*, s. 40 of or the Fourth Schedule to the Housing Act, 1936; 11 Halsbury's Statutes (2nd Edn.) 489, 598, or by para. 9 of the Fifth Schedule to the Act of 1944; Hill, p. 340; 48 Statutes Supp. 276) it is quite possible that the actual compensation may have been assessed on a basis less favourable than that of existing use.

Existing use value is also relevant where there was a sale to an authority possessing compulsory purchase powers (see s. 5 (1) (*a*) and (4) (*a*), *ante*, and s. 69 (1), *post*). In some such cases, an express authorisation to purchase compulsorily may have been conferred (*e.g.*, by statute, or by a compulsory purchase order) and the sale may then have proceeded by agreement under that authorisation. In other cases, an alternative power of purchase by agreement may have been invoked. Some powers of the latter kind, such as that under s. 40 of the Act of 1947 (Hill, p. 126; 48 Statutes Supp. 91), require the consent, for their exercise, of a Minister or Government department. Others, however, can be exercised from time to time without further authorisation or any Ministerial consent. In such cases, perhaps, authorities may have paid more than a strict existing use value. If so, under s. 5, *ante*, the transaction is in effect re-opened, as is the case with private sales, in favour of a purchaser who agreed to pay too much, and of the Central Land Board who are primarily liable to meet payments out of public moneys. The Case B payment will be reduced (see also s. 52, *post*, as to the ultimate liability of the acquiring authority, etc.).

The White Paper (Cmd. 8699; Hill, 2nd Supp., pp. B703–B715), foreshadowed the provisions of Case B in para. 47, and the provisions of Part III, *post*, in para. 30. By an administrative arrangement, under Ministry of Housing and Local Government Circular 41/53, dated 2nd July 1953 (not published by H.M.S.O.), the Minister was prepared to consider approving payment, by way of a supplement to an existing use price, of a sum not exceeding the amount of an established Part VI claim on the interest acquired, together with interest at 3½ per cent. from 1st July 1948 to the date of acquisition. This arrangement could be operated if an interest in land was acquired

by agreement, where compulsory powers were available, from an owner who also held the Part VI claim, provided the district valuer advised that the amount of the Part VI claim was clearly known and the case involved no difficult apportionment or other complications. The acquiring authority were advised to take an assignment of the claim.

Circular 40/54, dated 5th May 1954 (H.M.S.O., 2*d.*) amended the arrangements by substituting certain lump sums representing interest (less tax) instead of an amount of interest calculated at 3½ per cent. The arrangements applied to sales by agreement, although notice to treat had in fact been served, so long as a strictly compulsory assessment was not required by either party to the sale.

In such cases of sales to public authorities the provisions of Case B have been anticipated. Even where the authority took no assignment of the Part VI claim, s. 5 (4) (*a*), *ante*, may be expected to exclude (or reduce) a Case B payment, in view of the fact that the price will have exceeded the existing use value.

Sub-s. (4), *supra*, will operate in practice where a public authority paid a nominal consideration for land when the strict existing use value was a minus quantity. It is enacted because, on a compulsory purchase, compensation would not be assessed at less than nothing, *i.e.*, the authority will not have been paid for taking a burdensome interest off the owner's hands. The development value, if wholly or partly dependent on a restricted value which was a minus quantity, as at 1st July 1948, would in most cases be an unduly generous payment to make now, under Case B, to supplement the compensation or price paid. A deduction is therefore to be made. Where, however, by the time of the acquisition or sale, some burdensome liability has ceased to affect the interest, the deduction required by sub-s. (4), *supra*, may be waived. The amount of any such deduction is one of the matters which may, on an appeal, be reviewed by the Lands Tribunal.

Restricted value. See the general explanation in the notes to s. 5 (1), *ante*, and the note, " Public and private sales ", *infra*.

Sub-ss. (2) and (3), *supra*, define the restricted value which is relevant, in s. 5 (1) (*b*) and (4) (*b*), *ante*, in the case of a private sale. Sub-s. (5), *supra*, defines the time which is to be taken as the date of the sale; it is when the contract was made, or an option granted.

Sub-s. (2) (*c*) provides for the case of a sale of an interest in land subject to a mortgage; see the notes to that paragraph, *infra*. Sub-s. (2) (*d*) and (*e*) make adjustments to the restricted value, which correspond with the practice which operated under the principal Act, by virtue of certain Treasury instructions. Those instructions anticipated provisions which were thought to be needed to modify that Act; see the notes, *infra*, to sub-s. (2) (*d*) and (*e*).

There is no provision for adjusting the price paid in the case of a private sale so as to disregard any amount which had the nature of compensation for severance, injurious affection, or disturbance; *i.e.*, there is nothing in sub-s. (2), *supra*, to correspond with sub-s. (1) (*a*). The comparison required by s. 5 (4) (*b*), *ante*, will be based on the actual sale price in money. (In the analogous cases, in s. 10, *post*, other forms of consideration may be considered; as to sales wholly or partly in consideration of a rentcharge, see s. 10 (3) (*b*), *post*. Exchanges of land, and other transactions analogous to sales, appear to be excluded altogether from Case B. In the case of leases, however, see s. 10 (3) (*a*), which allows regard to be had to the capital value of any consideration for the grant, renewal or continuance of a tenancy.)

One might expect the restricted value to be adjusted, for the purpose of comparison with the sale price (or other consideration in the analogous cases falling within s. 10, *post*), by adding to it an amount representing compensation for severance and injurious affection and, possibly, for disturbance, so that it would be comparable with the sale price. Ss. 61 (6) and (7) and 62 (1) of the principal Act (Hill, pp. 163–165; 48 Statutes Supp. 122, 126) must, however, be considered. Those provisions show that the restricted value under that Act was not depressed by reference to these matters. S. 62 (1) of that Act may have increased the restricted value, but was in practice often ignored; if so, it will be disregarded now under sub-s. (2) (*e*), *supra*. S. 61 (6) and (7) also required amounts to be deducted from the unrestricted value, and thereby the Part VI claim was reduced. Sub-s. (3), *supra*, in effect reverses this last process, by adding back this deduction to the claim holding, subject however to certain qualifications. First, the adding back is only of deductions in respect of severance and injurious affection; disturbance (dealt with by s. 61 (7) of the principal Act) is not here referred to. Secondly, if the effect of the original deduction was to exclude the claim from the prospect of payment, under s. 63 of that Act (Hill, p. 166; 48 Statutes Supp. 126) there will now be no claim holding to which the addition can be made, see s. 1 (3), *ante*, and no Case B payment; and thirdly, the deduction to be added back is not the actual deduction under the principal Act, but a notional one at the date of the sale, and referring, possibly, to a different area.

The restricted value is found, under sub-s. (2), *supra*, and subject to other particular adjustments mentioned in this section by reference to the state of the land at the date of the sale (as defined in sub-s. (5), *supra*). This involves reading Part VI of the Act

of 1947, and the Third Schedule thereto (Hill, pp. 155–172, 271; 48 Statutes Supp. 115–132, 214) with the date of the sale substituted for references to the appointed day under that Act. Prices also are to be taken as at the day of the sale. Development for which permission was granted and which had been " paid for " by way of charge would be included in existing use value by virtue of s. 51 (4) (*a*) of the Act of 1947 (Hill, p. 145; 48 Statutes Supp. 107); but it will not be included in restricted value unless it had been carried out at the date of the sale.

Special provision is made, by sub-s. (2) proviso, *supra*, for the case of land in respect of which the Minister issued a " dead-ripe " certificate under s. 80 of the Act of 1947 (Hill, p. 199; 48 Statutes Supp. 152). If the development was carried out before the sale, it will be taken into account in determining the restricted value; but, if not carried out, it would not be regarded, the restricted value would be too low, and the vendor would appear to have charged too much. The restricted value is therefore increased, for the purposes of s. 5 (4) (*b*), *ante*, by adding in the value of the certificate, would have been payable. This covers a rather special type of case. In many " dead-ripe " cases, the certificate will have covered virtually all the development value of the land and there will be no Part VI claim, see s. 80 (1) (*a*) and (2) (*a*) of the Act of 1947 (Hill, pp. 199, 200; 48 Statutes Supp. 153), and no Case B payment.

Where development charge was paid, and development carried out, before the date of a private sale, and the restricted value is thereby increased when calculated as required by sub-s. (2), *supra*, the vendor, if he paid the charge and is still the claim holder, may be entitled to payment both under this Case (Case B, s. 5 (1) (*b*) and (4) (*b*), *ante*) and under Case A (ss. 3 and 4, *ante*). There is no provision, such as s. 3 (5) (*b*) or (*c*), *ante* (which apply only to acquisitions by, and quasi-compulsory sales to, public authorities), whereunder his Case A payment will be reduced or disallowed. Presumably s. 12, *post*, covers this situation; *i.e.*, the authority determining the two payments will apportion them to parts of the area of the holding and reduce them rateably so that they do not, in aggregate, exceed the value of the holding attached to any particular part. It seems that the authority must discover the " different " parts of the area, as is thought proper. Where both payments relate to the whole of the area, it is still assumed that the authority can find " the different parts ", mentioned in s. 12, *post*, which otherwise could not operate to prevent double payment.

Public and private sales. It may be useful to compare some of the provisions of Case B relating to public acquisitions (whether compulsory or under the shadow of compulsion) with those relating to private sales, in the light of the detailed definitions of existing use and restricted values in this section. In the following list, which is not exhaustive, transactions which might give rise to a Case B payment under s. 5 (1) (*a*), *ante*, are called public sales; and those which might give rise to a Case B payment under s. 5 (1) (*b*), *ante*, are called private sales.

(1) In public sales, an artificial existing use value is relevant; sub-ss. (1) and (4), *supra*. In private sales, comparison of the price is made with an artificial restricted value (sub-ss. (2) and (3), *supra*) which resembles an existing use value in principle, but differs in many details.

(2) The relevant time in the case of a public sale may be the time of notice to treat (if it was a strictly compulsory acquisition) or of the contract or option; see sub-s. (5), *supra*. It is possible that in some cases a notice to treat was served, but that a contract was subsequently made in the ordinary form. This may give rise to a doubt about the relevant date, particularly as the imperfect contract (which may be said to arise on the service of notice: see Fry on *Specific Performance*) may not be evidenced in writing sufficiently to satisfy s. 69 (6), *post*. This particular difficulty will not arise in considering private sales.

(3) In public sales, both the consideration and the existing use value (with which it is to be compared) ignore severance, etc., but some provision is made by s. 10, *post*, if there is a claim holding on the land injuriously affected. In private sales, the provision made by sub-s. (3), *supra*, for adding back an amount to the claim holding is basically different in form, and may sometimes be more generous in operation. The amount added back represents an element of what might have been included in an unrestricted value but for s. 69 (6) of the principal Act, and is not derived from a claim holding on the affected land. The restricted value may be reduced in accordance with sub-s. (2) (*c*), *supra*.

(4) In public sales, the value of the claim holding may be based on an adjusted Part VI claim; see s. 91 of the principal Act (Hill, p. 217; 48 Statutes Supp. 167) and s. 1 (6) of this Act, *ante*, and the First Schedule, *post*. In private sales, the adjustments under the principal Act and under paras. 1–4 of the First Schedule do not apply. Special adjustments to the restricted value are, however, required by sub-s. (2) (*d*) and (*e*), *supra*, and to the claim holding by sub-s. (3), *supra*.

(5) In public sales, existing use value will take account of development charge incurred before purchase. In private sales, payment of charge will be reflected in restricted value only in so far as development had been carried out.

(6) In public sales, there is a provision, in s. 3 (5), *ante*, apparently designed to prevent overlapping payments under Cases A and B. In private sales, it seems that s. 12, *post*, is relied on to prevent double payment.

(7) In public sales, the authority will not normally have taken an assignment of the Part VI claim (except as suggested in Circulars 41/53 and 40/54, *ubi supra*). In private sales, however, it is important to note that Case B will not benefit a vendor who assigned his Part VI claim with the land. Such a vendor will not be a claim holder now. If part of the interest in land, as it subsisted in the claim area, was sold with the benefit of part of the claim, s. 2 (3) (*d*), *ante*, will normally preclude him from a Case B payment, *i.e.*, he may continue to be a claim holder of some other land, but not a claim holder in respect of the part sold. The purchaser who, on a private sale, took an assignment of the claim may, of course, have some right of his own to apply for a payment under this Part (Part I) of the Act; *e.g.*, under s. 3 (1) (*b*), *ante*, where the burden of a development charge was passed on to him in the sale price.

(8) It should perhaps be added that public sales (before July 1953, when Circular 41/53, *ubi supra*, was sent to local authorities) should normally, if they give rise to a Case B payment at all, give rise to a payment equal to claim holding on the land acquired. In private sales giving rise to a payment, there is more likelihood that the payment will be reduced under s. 5 (4) (*b*), *ante*, in view of the price charged, *i.e.*, the bargain is re-opened, in effect, by enquiring whether the price exceeded a current restricted value. There is, of course, no question of re-opening the bargain where land was sold with the benefit of the Part VI claim; though there may be disputes about apportionments, under s. 2 (3), *ante*, where part of the benefit of a claim was assigned with part of the land.

Mineral land. Special provisions apply to mineral land; see s. 81 of the Act of 1947 (Hill, p. 201; 48 Statutes Supp. 154); s. 31 (2), (3) of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B64; 74 Statutes Supp. 69), relating to the non-" specified " minerals of the National Coal Board; and s. 54 of this Act, *post*. The original Minerals regulations made under the Act of 1947, except so far as they are revoked, are consolidated with those made under s. 54 of this Act; see the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*. Particular reference should be made to reg. 7 (existing use value); reg. 8 (modifications of Part VI of the principal Act, including ss. 60–63); reg. 9 (assessment of development charge); reg. 13 (mineral claim holdings); reg. 16 (Case B payments); and reg. 18 (analogous Case B payments). Reg. 7 is not in the same terms as the regulation it replaces; see notes to reg. 7, *post*.

Sub-s. (1).

Acquisition; sale. See note, " Existing use value ", *supra*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*. This means an authority which was or could have been authorised to acquire compulsorily for the purpose in question. It also may include a parish council.

Disturbance. For consideration of this head of compensation, see *Horn* v. *Sunderland Corpn.*, [1941] 1 All E.R. 480; [1941] 2 K.B. 26, at p. 41, C.A.; 2nd Digest Supp. It is not to be assumed that the seller has moved out voluntarily to give vacant possession to the acquiring authority. See also, however, s. 119 (4) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205), repealed by s. 71 and the Seventh Schedule, *post*. The difference between the compulsory purchase price of land held for development and the cost of obtaining new premises could not be made up under this head. Cf. also s. 36 (1) (*b*), *post*, as to disturbance on acquisitions in pursuance of a notice to treat served after the commencement of this Act on 1st January 1955.

Severance or injurious affection. See ss. 49, 63 and 68 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes, 2nd Edn., 913, 917, 919). Under the 1845 Act compensation is payable not only for the value of the land but also for injury caused to other land of the same owner by severing it from the land taken or otherwise affecting it, either by any works on the land taken or any use of such land thereafter. Compensation is also payable to adjoining owners for injurious affection to their lands (though no lands are taken from them) but in such case the compensation is limited to the physical damage caused by actual works. Compensation (in such case) is not payable in respect of future use unless such use could be restrained by such adjoining owner were it not for the statute empowering the acquisition. See *Hammersmith & City Ry. Co.* v. *Brand* (1869), L.R. 4 H.L. 171, H.L.; 38 Digest, 24, *132; Buccleuch (Duke)* v. *Metropolitan Board of Works* (1872), L.R. 5 H.L. 418, H.L.; 11 Digest (Repl.) 143, *228*; *Cowper Essex* v. *Acton Local Board* (1889), 14 App. Cas. 153, C.A.; 11 Digest (Repl.) 143, *229* and *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437, C.A.; 11 Digest (Repl.) 157, *320*. Cf. also s. 36 (7), *post*, restating the law on this aspect, for the purposes of Part III, *post*.

Equivalent reinstatement. See r. (5) of s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes, 2nd Edn. 977), and s. 56 of the Act of 1947 (Hill, p. 153; 48 Statutes Supp. 113).

Ss. 51 to 55 of the principal Act. See Hill, pp. 144–152; 48 Statutes Supp. 106–113. The existing use value is in effect such compensation as was strictly payable having regard to the provisions of Part V of the principal Act (except s. 56); or which would have been payable if the sale had been compulsory. In the definition of " compensation on the basis of existing use ", in s. 69 (1), *post*, no reference is made to s. 52 or s. 55 of the Act of 1947. Both are now spent provisions but may have affected past acts or events, and are therefore mentioned in the present definition. Attention is directed to s. 91 (3) of the Act of 1947 (Hill, p. 217; 48 Statutes Supp. 167) and s. 1 (6), *ante*, and para. 5 of the First Schedule, *post*, in relation to possible adjustment of the Part VI claim.

For example, if the site of a building, destroyed by war damage, was acquired, compensation would be assessed, under s. 53 of the Act of 1947 (Hill, p. 148; 48 Statutes Supp. 109), as if the war damage had been made good. S. 91 (3) (*a*) of that Act will have required an adjustment to the calculation of the restricted and unrestricted values taken for the Part VI claim, which may thereby have been extinguished or reduced. Under Part III of this Act, *post*, this adjustment would not be required; see para. 5 of the First Schedule, *post*.

Sub-s. (2).

Part VI of the principal Act. As to the original determination of restricted value under Part VI of the Act of 1947, see particularly ss. 61 and 62 of that Act (Hill, pp. 162–166; 48 Statutes Supp. 121–126). Paras. (*a*)–(*e*), *supra*, modify those sections for present purposes. See General Note on " Restricted value ", *supra* (p. 25), and notes to s. 5 (1), *ante*. See also s. 5 (5) (*c*), *ante*. As to minerals, see the note, " Mineral land ", *supra*.

Date of the sale. See sub-s. (5), *supra*. The substitution of this date for the appointed day under the Act of 1947 allows for any change in this value occurring between the two dates.

Third Schedule to the principal Act. See Hill, p. 271; 48 Statutes Supp. 214. The Third Schedule is also reprinted, *post*, in the notes to the Seventh Schedule to this Act. See also s. 71 (4), *post*, which excludes the amendments effected by the Seventh Schedule, *post*, for the purposes of s. 61 of the principal Act (Hill, p. 162; 48 Statutes Supp. 121).

7th January 1947. Date of publication of the principal Act as a Bill. Under Part VI of the principal Act, restricted and unrestricted values were calculated by reference to prices current immediately before that date; see s. 61 (5) of that Act (Hill, p. 163; 48 Statutes Supp. 122).

Interest . . . subject to a mortgage. The position of the mortgagee under the principal Act in relation to a claim would have been dealt with in the Treasury Scheme; see s. 58 (4) (*a*) (Hill, p. 157; 48 Statutes Supp. 116). It will now be dealt with under s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. S. 62 (3) of the Act of 1947 (Hill, p. 165; 48 Statutes Supp. 126), required restricted and unrestricted values to be computed as if the mortgage had been discharged. That provision is inappropriate here, if the land was sold subject to the mortgage, because s. 5, *ante*, is concerned to see whether the price was too high for what was sold.

Para. 6 of the First Schedule. Under that provision, *post*, where a value payment under the War Damage Act, 1943, has become payable the development value is to be calculated as if the land had been in its war damaged state at the commencement of the requisition. Many restricted values were calculated, under the principal Act, on this basis in anticipation of the provision now made by the First Schedule, *post*. This will have affected the value of the established claim and, under this Act, of the claim holding. The same adjustment is now made to the restricted value, relevant in s. 5 (4) (*b*), *ante*.

S. 2 of the Act of 1919. S. 2 of that Act (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977) provides a number of rules to which regard is to be had in assessing compensation for the compulsory acquisition of land. Rule (3) excludes the taking account of special suitability for a purpose which requires statutory powers and the needs of a special purchaser. S. 62 (1) of the Act of 1947 (Hill, p. 165; 48 Statutes Supp. 126) applied rr. (2), (3) and (4) of the Act of 1919 to the calculation of restricted and unrestricted values; cf. s. 65 (1) of this Act, *post*. Rule (3), combined with the provisions of s. 61 (6) of the Act of 1947 (Hill, p. 163; 48 Statutes Supp. 122) relating to severance and other injurious affection produced certain anomalies, mentioned in Hill, 2nd Supp., p. B636. With Treasury consent, the Central Land Board in practice ignored r. (3), and this is regularised by para. 10 of the First Schedule, *post*.

S. 80 of the principal Act. Hill, p. 199; 48 Statutes Supp. 152. The effect of a dead ripe certificate under that section was to make the development certified free of charge and to exclude any regard being had to such development in calculating the development value. The benefit of such a certificate would not be included in the restricted value, but for the proviso to the present subsection, except in so far as the development had been carried out before the sale; see the General Note on " Restricted

value ", *supra* (at p. 26). If s. 80 of the principal Act had said that the development value covered by the certificate should be added to the restricted value, the present proviso would not have been needed.

In the opinion of the Central Land Board. The Board are to determine what charge would have been payable, under Part VII of the Act of 1947 (Hill, pp. 172–188; 48 Statutes Supp. 132–143). This, in effect, measures the value of the exemption from charge conferred by the certificate. *Semble*, the Board's views on this are not subject to appeal to the Lands Tribunal; compare the wording of para. (ii) of the proviso to this subsection with that of sub-ss. (3) and (4), *supra*. If so, it is an unfortunate provision; no actual charge is in question, and the parties to a sale may have had their own ideas about the value of the exemption conferred by the certificate. Applicants for a payment under Case B will be well advised to give the Board detailed information before the Board's findings are issued.

Sub-s. (3).

S. 61 of the principal Act. Hill, pp. 162–165; 48 Statutes Supp. 121–126. Sub-s. (6) of that section required the amount of any severance or other injurious affection which would be suffered by other land of the owner, in realising any development upon which the unrestricted value might be based, to be deducted from that value. The present subsection provides for the adding back of a similar sum to the claim holding for the purposes of s. 1 (1) (*b*) and (4) (*b*), *ante*. This is not expressed, however, to affect s. 12, *post*, which provides a limit upon payments under this Part (Part I) of the Act, where two or more fall to be made in respect of one claim holding. Perhaps it is there assumed that the Case B payment, in cases affected by this subsection, will not in fact exceed the ordinary value of the claim holding.

S. 13 of this Act. That section is concerned with the making of applications for payments and provides for appeals to the Lands Tribunal where the applicant wishes to dispute the findings of the Central Land Board. Provision is also made for persons to appeal if they are entitled to any interest in land which is substantially affected by any apportionment included in the Board's findings.

The value of the claim holding. See s. 2 (5), *ante*, for the value as referred to in s. 5 (1) (*b*) and (4) (*b*), *ante*, subject to the modification required by the present subsection, and s. 5 (6), *ante*. As to mineral land, subject to a mining lease, see regs. 1 (3), 8, 13 (1) and 16 (3) of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*. Note also reg. 14 thereof.

Sub-s. (4).

Interest in land. The interest in land to which the claim holding related is defined in s. 2 (6), *ante*. S. 60 (3) of the Act of 1947 (Hill, p. 161; 48 Statutes Supp. 120) provided for making Part VI claims in respect of any interest in land being either an interest in fee simple or a leasehold interest as defined by that Act (s. 119 (1); Hill, p. 259; 48 Statutes Supp. 203) in terms very similar to the definition of " tenancy " in s. 69 (1) of this Act, *post*. Certain claims on " mixed " interests are required to be re-assessed; see s. 1 (6), *ante*, and para. 11 of the First Schedule, *post*. The benefit of some claims will have been split into separate holdings by sub-divisions required by s. 2 (2) or (3), *ante*.

Appointed day. This means the appointed day under the Act of 1947, as mentioned in Part VI of, and the Third Schedule to, that Act; see s. 69 (2), *post*. The present Act also commenced on an appointed day, but this is always referred to as " the commencement of this Act ", to avoid confusion under s. 69 (2), *post*, which gives the same meaning, in this Act, to terms used in the principal Act. Cf. the note to s. 72 (2), *post*.

Minus quantity. The restricted value, or the unrestricted value, or both, might be minus quantities, see s. 62 (4) of the Act of 1947 (Hill, p. 165; 48 Statutes Supp. 126), which declared this to be possible. A minus restricted value would arise from some burdensome liability affecting the interest.

S. 13 of this Act. Cf. note to these words in sub-s. (3), *supra*; and s. 13, *post*.

If the . . . value . . . had fallen to be determined. Where the claim holding represents the whole benefit of an established claim, and the whole interest in land (so far as it subsisted in the claim area) was acquired, regard can be had to the actual Part VI determination under the principal Act. But the claim may have been divided into separate holdings (see the note, " Interest in land ", *supra*) or the sale may have been a sale of part of the land (see s. 5 (6), *ante*). If, under s. 2 (6), *ante*, the claim holding is said to have related to an interest in part of the original claim area, its development value will not have been determined under the principal Act. Provision is now made for the Central Land Board to find what would have been the minus restricted value of the interest, subject to a right of appeal to the Lands Tribunal.

The value . . . shall be reduced. As to the value of the claim holding, apart from this provision, see ss. 2 (5) and 5 (6), *ante*. S. 2 (6), *ante*, mentioned in the previous note, is not quite apt, in cases where the interest acquired did not extend to the whole area of the claim holding, as s. 5 (6) does not actually require the sub-division of the holding in such cases. But it seems a proper inference, in such a case, that only an appropriate part of the minus quantity will fall to be deducted.

If they think it just and proper. The purpose of allowing a waiver, wholly or in part, of the deduction is explained in the note " Existing use value ", *supra*. Special provision for mining leases is made by regulations under s. 54, *post*; see particularly regs. 1 (3) and 16 (1), (2) and (5) of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

Sub-s. (5).

Date of service of notice to treat. This seems to be relevant only where there was a strictly compulsory acquisition; see the General Note on " Existing use value ", *supra*, and para. (2) of the note on " Public and private sales ", *supra*. See also ss. 30 (1) and 37 (4), *post*. The purpose of this provision is to declare the law as to the date when a compulsory sale is to be deemed to take place, and to avoid any doubt which might arise from the power in certain cases to withdraw the notice under s. 5 of the Act of 1919 (Hill, p. 707; 3 Halsbury's Statutes (2nd Edn.) 980). For cases (before the Act of 1919), see *Penny* v. *Penny* (1868), L.R. 5 Eq. 227; 11 Digest (Repl.) 136, *198*; *Tyson* v. *London Corpn.* (1871), L.R. 7 C.P. 18; 11 Digest (Repl.) 294, *2000*; and *Bwllfa and Merthyr Dare Steam Collieries* (1891) *Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A.C. 426, H.L.; 11 Digest (Repl.) 136, *199*.

Contract of sale. As to the requirement of writing, see s. 69 (6), *post*, in effect re-enacting provisions similar to those of the Statute of Frauds. As to the analogy between a notice to treat and a contract of sale, see Fry on *Specific Performance* and *Haynes* v. *Haynes* (1861), 1 Drew. & Sm. 426; 11 Digest (Repl.) 189, *557*.

7. Payment where land disposed of by gift (Case C).—(1) The holder of a claim holding shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of that holding if, at a time when he was beneficially entitled both to the claim holding and to the interest in land to which the holding related or another interest in which that interest had merged, he made a disposition otherwise than for valuable consideration, being a disposition by virtue of which he parted absolutely with the whole of his beneficial interest in that land.

(2) No payment shall be made by virtue of this section unless the disposition was made on or after the first day of July, nineteen hundred and forty-eight, and before the eighteenth day of November, nineteen hundred and fifty-two.

(3) The principal amount of a payment made by virtue of this section in respect of a claim holding shall be the value of the holding.

(4) In the application of this section to a case where the disposition did not extend to the whole area of the claim holding, the last preceding subsection shall apply as if the reference to the value of the claim holding were a reference to that fraction of that value which attaches to the part of the area of the claim holding which was comprised in the disposition.

(5) Where, in determining the development value of the interest in land to which the claim holding related, the restricted value of the interest on the appointed day was taken to be a minus quantity, or where, in the opinion of the Central Land Board or, where the Board's findings are referred to the Lands Tribunal under section thirteen of this Act, of that Tribunal, if the development value of the interest had fallen to be determined the restricted value of the interest on that day would have been a minus quantity, then, for the purposes of this section, the value of the claim holding shall be treated as reduced by the amount of that minus quantity:

Provided that where the whole or part of any liability or prospective liability which was or, as the case may be, would have been taken into account in calculating that restricted value had ceased to exist before the date of the disposition in question, the Board or, as the case may be, the Lands Tribunal may, if they think it just and proper so to do, waive in whole or in part, as may appear to them appropriate, any reduction otherwise falling to be made under this subsection.

(6) In the following provisions of this Act references to a payment under Case C are references to a payment by virtue of this section.

NOTES

A Case C payment will be made where the claim holder has between 1st July 1948, and 18th November 1952, at a time when he was beneficially entitled to the holding

and the interest to which it relates, disposed of his beneficial interest in the land or a part of it otherwise than for valuable consideration.

The principal amount of the payment will be the value of the holding. Where the disposition did not apply to the whole area the payment will be the fraction of the value of the holding which attaches to the part which was the subject of the disposal. As to the addition of interest, see s. 14 (1), *post*.

Where the determination of the development value under the Act of 1947 involved the determination of the restricted value as a minus quantity the same rules will apply as in the case of Case B payments (ss. 5 and 6, *ante*). The amount of the minus quantity will be deducted from the claim holding but if the liability giving rise to the minus quantity had been discharged before the date of the disposition the Central Land Board, or the Lands Tribunal on appeal, may make such adjustment as appears appropriate to them.

As to the claims by certain person deriving title to the claim holding, see the extension of Case C by s. 9, *post*. As to mortgagees of the claim holding, by assignment, see s. 9 (*b*) (ii), *post*, and reg. 5 of the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, made under s. 66, *post*. As to trustees, see s. 9, *post*, and reg. 10 of the above-mentioned regulations.

As Case C is concerned with claim holders who have disposed of the land, no provision is made, under the above-mentioned regulations, for claims by mortgagees of land or rentcharge owners.

Mineral land. See s. 54, *post*, and the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, particularly reg. 17.

Sub-s. (1).

Holder. See s. 2 (8), *ante*. As to separate holdings resulting from a sub-division under that section, see s. 2 (7), *ante*. As to mortgagees and trustees, see notes to s. 9, *post*.

Claim holding. See s. 2, *ante*.

Beneficially entitled. These words were inserted, by an amendment of the Bill, in place of " in the same capacity ", a phrase defined in s. 69 (1), *post*. The word " beneficially " occurs in that definition, but is not itself separately defined.

Interest in land. See s. 69 (1), *post*.

To which the holding related. See s. 2 (6), *ante*.

Valuable consideration. See s. 69 (1), *post*. It is not to include marriage or a nominal consideration.

The whole of his beneficial interest. See sub-s. (4), *supra*, which shows that a Case C payment may be made when the land disposed of was part only of the area of the claim holding.

Sub-s. (2).

1st July 1948. Date of coming into operation of the Act of 1947.

18th November 1952. Date of publication of the Act of 1953 as a Bill, and of the White Paper.

Sub-s. (3).

Value of the holding. See s. 2 (5), *ante*.

Sub-s. (4).

Area of the claim holding. See s. 2 (1), *ante* (subject to any sub-division into separate holdings required by s. 2 (2) or (3), *ante*).

Fraction of . . . value which attaches. See s. 2 (4), *ante*.

Sub-s. (5).

Interest in land ; appointed day; minus quantity; etc. Cf. notes to s. 6 (4), *ante*.

8. Payment where claim holding purchased (Case D).—(1) The holder of a claim holding shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of the holding if—

(*a*) he became entitled to the holding under a disposition to which this section applies, or derives title to it from a person who so became entitled to it; and

(*b*) at no time since the date of that disposition has the same person been entitled in the same capacity both to the claim holding and to the interest in land to which the holding related.

(2) This section applies to any disposition for valuable consideration effected before the eighteenth day of November, nineteen hundred and fifty-two, or effected in pursuance of a contract of sale made before that

day or in pursuance of the exercise before the commencement of this Act of an option granted on or after the first day of July, nineteen hundred and forty-eight, and before the eighteenth day of November, nineteen hundred and fifty-two:

Provided that this section does not apply to mortgages.

(3) The principal amount of a payment made by virtue of this section in respect of a claim holding shall be the value of the holding or the amount of the consideration for the disposition, whichever is the less.

(4) For the purposes of the last preceding subsection, if the dispositions under which the holder, and any predecessors in title of his, became entitled to the holding include two or more dispositions to which this section applies, each of those dispositions other than the latest of them shall be disregarded.

(5) References in this Act to a payment under Case D are references to a payment by virtue of this section.

NOTES

Where the holder became entitled to a claim holding by a disposition for valuable consideration before 18th November 1952, or in pursuance of an option granted between 1st July 1948 and 18th November 1952, or derives title from a person who became so entitled, he will be entitled to a Case D payment.

The section will not apply in any case where, at any time since the disposition, the same person has been entitled in the same capacity to the claim holding and the interest to which it relates.

The section does not apply to dispositions by way of mortgages. In cases where there has been a disposition to which the section does apply and, thereafter, a mortgage of the holding, the mortgagee if he is the holder of the claim holding will derive title thereto from a person who became entitled to the holding under a disposition to which the section applies (see note on " Derives title ", *infra*).

Payments under this section will be the lesser of (*a*) the value of the holding or (*b*) the consideration given in the disposition to which the section applies (or the latest of them if there is more than one).

If a payment under this section is made, the claim holding will be extinguished; but where there are one or more payments in respect of a claim holding s. 15 (1), *post* (which provides for the extinguishment of the claim holdings where Case D payments are made) shall apply as if the claim holding had been divided under s. 15 (3), *post*, and the effect of the Case D payment will be to extinguish the separate claim holding to which the payment is related under s. 15 (3), *post*.

Sub-s. (1).

Holder. See s. 2 (8), *ante*. A mortgagee, otherwise than by assignment, cannot be the holder.

Claim holding. See s. 2, *ante*. This means the benefit of the established claim, as adjusted under s. 1 (6), *ante*, and subject to s. 2 (2) and (3), *ante*.

Became entitled . . . under a disposition. There is no definition of disposition, but it should be noted that sub-s. (2), *supra*, requires that the disposition should be in pursuance of a contract. See in this regard s. 69 (6), *post*, and note to sub-s. (2), *infra*.

Derives title. See s. 69 (7), *post*. If a predecessor has acquired title to the claim holding in accordance with the provisions of the section, that will entitle the claim holder to a payment. This seems to conflict in some ways with s. 60, *post*. Reference to a claim holding is a reference to the benefit of an established claim (see s. 2, *ante*). S. 60, *post*, limits the effect of any assignment of the benefit of an established claim. A holder who claims to have acquired title in accordance with the provisions of this section may also have to overcome the hurdle of s. 60. In the case of an imperfect assignment it may be necessary to obtain the assistance of the courts to secure that the holder makes an application on behalf of the assignee or otherwise makes good the benefit imperfectly assigned. It should be noted, also, that the proviso to sub-s. (2), *supra*, excludes the application of the section to mortgages. Where there is a disposition to which the section applies, followed by a mortgage by assignment of the claim holding, it would appear that the mortgagee of the claim holding will obtain payment under this section and that his payment will be limited to the amount of the last disposition to which the section applied. Such person will not be entitled to a payment under s. 9, *post*. Payments under that section are only available where a payment would have been made under Case A, B or C. See also s. 9 (*d*), which excludes cases where the holder is entitled to a payment under Case D.

In the same capacity. See s. 69 (1), *post*. The entitlement means in one only of the following capacities, that is to say, beneficially, or as a trustee of one particular trust, or as personal representative of one particular person. The use of the expression in this, and the next succeeding section, should be considered in relation to land which had been the subject of an act or event in relation to part of the land. For example,

part of the land may have been the subject of a compulsory purchase, and subsequently the remainder of the land and the whole of the claim holding may have been acquired by a purchaser. No interest in the compulsorily acquired part of the land is or has been vested in the claim holder, and he is the only holder since the disposition to him. When this provision is considered in conjunction with the effect of the same expression in the next succeeding section it would seem that there are grounds for arguing that it was not the intention of the Act to exclude a payment where only part of the interest in the land became vested in the same person along with the claim holding.

Interest in land. See s. 69 (1), *post*. Note particularly the definition of " tenancy " therein, which excludes mortgage terms and the interest arising in favour of a mortgagor by his attorning tenant to his mortgagee.

To which the holding related. Cf. s. 2 (6), *ante*, which defines the interest which is to be regarded in cases where the holding is a separate holding arising from a sub-division. *Quære*, as to the position of a holder of the claim holding who has at any time been entitled to an interest extending to part only of the area of the holding. See the note, " In the same capacity ", *supra*, and cf. s. 9 (*c*), *post*.

Sub-s. (2).

Valuable consideration. See s. 69 (1), *post*. It does not include marriage or nominal consideration.

18th November 1952. Date of publication of the Act of 1953 as a Bill.

In pursuance of a contract. See s. 69 (6), *post*. The reference is to a contract in writing, or one attested by a signed note or memorandum. Where land is conveyed without a contract the reference is to the conveyance or assignment. References to an option means to an option in writing or attested by a signed note or memorandum. The making of a contract or grant of an option means the execution thereof or the signature of the note or memorandum.

Option. See the previous note *supra*.

1st July 1948. Day appointed for the coming into operation of the Act of 1947.

Mortgages. See definition in s. 119 (1) of the principal Act (Hill, p. 258; 48 Statutes Supp. 202), and s. 69 (2), *post*. As to assignments, see notes to s. 60, *post*. As to which mortgagees of the benefit of a claim are claim holders, see s. 2 (8), *ante*. As to applications for payments under this Part, see also s. 66, *post*, but see reg. 3 of the Regulations thereunder, the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, excluding mortgagees of land from applying as such under the present section. But as to mortgagees of holdings deriving title to the holding, as mentioned in the latter part of sub-s. (1) (*a*), *supra*, see the note, " Deriving title ", *supra*.

Sub-s. (3).

Value of the holding. See s. 2 (5), *ante*.

Amount of the consideration. See also sub-s. (4), *supra*. It will be the amount of the consideration under the latest disposition (if there is more than one) to which the section applies, *i.e.*, the last before 18th November 1952. A later disposition may be relevant for finding who is the holder entitled to the payment, but is disregarded in determining the amount.

Sub-s. (4).

To which this section applies. See sub-s. (2), *supra*. This provision should be considered in the light of s. 1 (5) and s. 2, *ante*. Those sections are considered in some detail in the notes to s. 60, *post*, which relates to the effect of certain assignments of Part VI claims. S. 64 (2) of the principal Act (Hill, p 167; 48 Statutes Supp. 127) with the amendments thereto effected by s. 2 (2) and (3) of the Act of 1953 (Hill, 2nd Supp., p. B698; 78 Statutes Supp. 135), and s. 136 of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 715) are also mentioned in the notes to s. 60, *post*.

It would seem that certain dispositions, *e.g.* mortgages and gifts (without valuable consideration), if Part VI claims, will be relevant for the purpose of deriving title but will be excluded from the category of dispositions to which this section applies, *i.e.*, they will not be relevant in fixing the amount of a Case D payment.

9. Payment under Case A, B or C to person deriving title from original claim-holder.—The holder of a claim holding shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of the holding under Case A, Case B or Case C, notwithstanding that apart from this section he would not be entitled to a payment thereunder, if he—

(*a*) derives title to the claim holding from a person who would have been entitled to such a payment as aforesaid if that person had continued to be the holder of the claim holding; and

(*b*) became entitled to the claim holding—

(i) otherwise than for valuable consideration; or
(ii) as mortgagee; or
(iii) as assignee under an assignment made on or after the eighteenth day of November, nineteen hundred and fifty-two, which has been approved by the Central Land Board under subsection (2) of section two of the Act of 1953; and

(*c*) has not at any time been entitled in the same capacity both to the claim holding and to the interest in land to which the holding related; and

(*d*) is not entitled to a payment in respect of the holding under Case D.

NOTES

This section is concerned with the claim holder who has derived title from a person who would have been entitled to a payment under Case A, B or C, if that person had continued to be the holder. It is concerned with cases where the act or event giving rise to payment occurred in the time of a predecessor's title but where, at or after that time, the claim holding and the interest in land to which it relates have parted company and the claim holding itself has passed to a successor.

The section applies where the holder became entitled to the claim holding otherwise than for valuable consideration; or as mortgagee; or where the entitlement arose under an assignment made after 17th November 1952 (whether or not for valuable consideration) if it has been approved by the Central Land Board under the Act of 1953.

It will, however, be excluded if the holder has at any time been entitled in the same capacity both to the claim holding and the interest in land to which the holding related or is entitled to a payment under s. 8, *ante* (Case D).

Payment will be made under this section to a mortgagee of a claim holding if he is the holder of the claim holding; see s. 2 (8), *ante*; and see s. 66, *post*, and reg. 5 (*a*) of the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. Where a person (including, it seems, a mortgagee by assignment) derives title from a predecessor who would have been entitled to a Case D payment, however, the payment in such a case will be a Case D payment; see note " Derives title " to s. 8 (1), *ante*.

Trustees. See s. 66, *post*, and the Regulations thereunder (S.I. 1955 No. 38), *post*.

Associated companies. See s. 47 (2), *post*.

Holder. See s. 2 (8), *ante*. A mortgagee not by assignment cannot be the holder of a claim holding, although " entitled " to it.

Claim holding. See s. 2 (1), *ante*, subject to s. 2 (2) and (3). This means the benefit of the established claim as affected by s. 2 (2) or (3), *ante*. See also s. 1 (5), *ante*, as to what is to be regarded as " the benefit " of that claim at any time since 1st July 1948.

Case A. See ss. 3 and 4, *ante*.

Case B. See ss. 5 and 6, *ante*.

Case C. See s. 7, *ante*.

Para. (a).

Derives title. See s. 69 (7), *post*. See also the notes to s. 60, *post*, and the provisions there discussed.

Para. (b).

Valuable consideration. See s. 69 (1), *post*, which excludes marriage and nominal consideration.

As a mortgagee. See s. 2 (8), *ante*, and s. 66 (1), *post*. The regulations under s. 66 are the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. Reg. 5 (*a*) provides that, where the holder became entitled to payment, under the present section, as a mortgagee, he is to apply any payment as if it were proceeds of sale of an interest in land subject to a mortgage arising under a power of sale exercised on the date when payment is made.

Mortgagees of land are not here dealt with; as to the circumstances in which such mortgagees may apply for a payment under this Part (Part I) of the Act, except under ss. 3 and 8, *ante*, and s. 11, *post*, see s. 66, *post*, and reg. 3 of the above-mentioned Regulations (S.I. 1955 No. 38), *post*.

S. 2 (2) of the Act of 1953. See Hill, 2nd Supp., p. B698; 78 Statutes Supp. 135. That provision amended s. 64 (2) of the Act of 1947 (Hill, p. 168; 48 Statutes Supp. 127) and provided that, in general, assignments after 17th November 1952 should be ineffective unless approved by the Central Land Board.

For a discussion of the above-mentioned enactments, see the notes to s. 60, *post*. As to the creation of separate holdings where there was a disposition of part of the benefit of a claim, see s. 2 (3), *ante*, and cf. the definition of " previous apportionment " in s. 69 (1), *post*. Certain dispositions, which did not require approval under the Act of 1953,

because they did not operate to transfer any beneficial interest in the claim, may come within sub-para. (i) of this paragraph (" otherwise than for valuable consideration ").

Para. (c).

In the same capacity. See s. 69 (1), *post*. The entitlement means, in this case, in one only of the following capacities, beneficially, or as trustee of one particular trust, or as a personal representative of one particular person. Where a fee simple interest in land is the area of a claim holding, and part of the area has been compulsorily acquired, and the fee simple interest (in the severed remainder of the interest in the land) and the claim holding pass by operation of law into the same hands, it seems unlikely that this provision is intended to exclude payment in such circumstances. The interest in the part compulsorily acquired is not vested in the claim holder; and it is submitted that the remaining part is not the same thing as the " interest in land to which the holding related ". Cf. s. 2 (6), *ante*. S. 15, *post*, will eventually require a sub-division of the holding, if a Case B payment is made under ss. 5 and 6, *ante*, as extended by the present section, in such circumstances; but that sub-division is made only for the purposes of that section and the later Parts of the Act.

Para. (d).

Case D. See s. 8, *ante*.

10. Payments in cases analogous to Case B.—(1) The holder of a claim holding shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of that holding if the interest in land to which the claim holding related or another interest in which that interest had merged was affected by an act or event such as is mentioned in the next following subsection, and the Central Land Board or, where the Board's findings are referred to the Lands Tribunal under section thirteen of this Act, that Tribunal, having regard to the circumstances in which the act or event occurred, are satisfied that he would have been entitled to a payment under Case B if the interest so affected (in the next following subsection referred to as the " relevant interest ") had been compulsorily acquired, or sold, in comparable circumstances.

(2) The said acts and events are—

(*a*) the grant of a tenancy immediately out of the relevant interest, or the renewal or continuance of a tenancy so granted;

(*b*) a sale of the relevant interest or of that interest in so far as it subsisted in particular land, where the consideration for the sale consisted wholly or partly of a rentcharge;

(*c*) the compulsory acquisition of land other than the land in which the relevant interest subsisted, or the sale of such land to a public authority possessing compulsory purchase powers, resulting (in either case) in damage sustained in respect of the relevant interest by reason of the severance of the land acquired or sold from the land in which the interest subsisted, or by reason that the relevant interest was injuriously affected, being damage in respect of which compensation fell, or if the sale had been a compulsory acquisition would have fallen, to be assessed in accordance with the provisions of Part V of the principal Act (which provides for compensation on the basis of existing use value) as applied by subsection (4) of section one hundred and nineteen of that Act; and

(*d*) the occurrence of damage to the land in which the relevant interest subsisted, where the land was requisitioned land and the damage occurred during the period of requisition, being damage in respect of which compensation fell to be assessed in accordance with section two of the Compensation (Defence) Act, 1939, as modified by section ten of the Requisitioned Land and War Works Act, 1948 (which limits the compensation to an amount calculated on the basis of existing use value).

(3) In determining, for the purposes of subsection (1) of this section, whether the holder of the claim holding would have been entitled to a

payment under Case B as mentioned in that subsection, the Central Land Board or, as the case may be, the Lands Tribunal shall have regard in particular to the time at which the act or event occurred, and to the times specified in subsection (3) of section five of this Act, and—

(*a*) in the case of a tenancy, to the capital value of the consideration for the grant, renewal or continuance thereof;

(*b*) in the case of a sale falling within paragraph (*b*) of the last preceding subsection, to the capital value of the rentcharge or, as the case may be, to the aggregate consideration represented by the price paid and the capital value of the rentcharge;

(*c*) in the case of a compulsory acquisition falling within paragraph (*c*) of the last preceding subsection or in a case falling within paragraph (*d*) of that subsection, to the compensation paid or payable in respect of the damage referred to in that paragraph;

(*d*) in the case of a sale falling within paragraph (*c*) of the last preceding subsection, to the sale price in so far as it represented compensation in respect of the damage referred to in that paragraph,

and (in each such case) to the extent to which the consideration, rentcharge, compensation or price, as the case may be, failed adequately to reflect the development value of the interest in land to which the claim holding related, as measured by the value of the claim holding.

(4) In the case of the grant, renewal or continuance of a tenancy, a payment shall not be made by virtue of this section if the Central Land Board or, as the case may be, the Lands Tribunal are satisfied, having regard—

(*a*) to the duration of the term for which the tenancy was granted, renewed or continued; and

(*b*) to any restrictions on development subject to which the tenancy was granted, renewed or continued,

that the consideration could not reasonably be expected to have been greater if Part VII of the principal Act (which relates to development charges) had not been enacted.

(5) The principal amount of a payment made by virtue of this section shall be such amount as the Board or, as the case may be, the Tribunal may determine to be appropriate, having regard to the matters specified in subsection (3) of this section and to the provisions of subsection (4) of section five of this Act.

NOTES

Payments will be made to claim holders in the case of certain acts or events which are analogous to the circumstances in which payments are made under ss. 5 and 6, *ante* (Case B).

The circumstances must be such that the Central Land Board, or the Lands Tribunal on an appeal from the Board's findings, are satisfied that the holder would have been entitled to a Case B payment if the land had been sold in comparable circumstances.

The acts or events are:—

(*a*) a letting or a renewal of a tenancy at a rent which did not adequately reflect the development value of the interest,

(*b*) a sale in consideration of rentcharge which disregarded, wholly or partly, that value,

(*c*) a compulsory or quasi-compulsory acquisition where the compensation or sale price did not adequately provide compensation in respect of severance or injurious affection in relation to land other than the land acquired, because of the exclusion of development value then required by s. 119 (4) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205),

(*d*) where compensation in respect of damage to requisitioned land under s. 2 of the Compensation (Defence) Act, 1939 (31 Statutes Supp. 220), as amended by s. 10 of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21) similarly failed to reflect the development value.

In a case falling within (*a*), above, no payment will be made if the Board or the Tribunal are satisfied that having regard to the term and any restrictions on develop-

ment imposed in the letting the consideration could not have been expected to be greater if there had been no development charge.

The amount of any payment under this section will take account of the compensation or consideration paid in respect of the act or event and of the limits imposed on Case B payments under s. 5 (4), *ante*.

Mortgagees and trustees. See s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

Mineral land. See s. 54, *post*, and the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), particularly reg. 18, *post*.

Associated companies. See s. 47, *post*.

Sub-s. (1).

Holder of a claim holding. See s. 2, *ante*.

Interest in land. See s. 69 (1), *post*. Except where the context otherwise requires, an interest in land means only an interest in fee simple or a tenancy.

Central Land Board. See s. 63, *post*, and ss. 2 and 3 of the Act of 1947 (Hill, pp. 40, 41; 48 Statutes Supp. 26, 27).

Lands Tribunal. See the Lands Tribunal Act, 1949 (Hill, 2nd Supp., pp. B1–B24; 61 Statutes Supp. 32). As to reference of the Board's findings to the Tribunal, see s. 13 (3), *post*, and regs. 6 and 7 of the Regulations thereunder (S.I. 1954 No. 1599), *post*. As to procedure, see also the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

Relevant interest. This is the interest in the land which is affected by the act or event.

Sub-s. (2).

Tenancy. See s. 69 (1), *post*.

Rentcharge. See s. 69 (1), *post*. It includes any annual sum charged on land not incident to a reversion. Sales wholly or partly in consideration of a rentcharge do not fall within s. 5; see s. 5 (10), *ante*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*. This includes an authority actually authorised and one which could be authorised to purchase compulsorily for the purpose in question. It also includes a parish council, where the county council were or could be so authorised.

Severance. Severance and injurious affection on a compulsory or quasi-compulsory purchase would have excluded reflection of the development value in the severed or injuriously affected land. This provision enables a claim holder to obtain a rough equivalence, in the case of such sales, to that afforded to the vendor on a private sale under s. 6 (3), *ante*. See the note " Public and private sales ", to s. 6, *ante*.

S. 119 (4) of the principal Act. See Hill, p. 261; 48 Statutes Supp. 205. That provision required that compensation payable on acquisition should be construed as including compensation for damage caused by severance or other injurious affection and for disturbance. It is repealed by s. 71 and the Seventh Schedule, *post*; Part III, *post*, makes new provision for these matters. They were formerly dealt with on the same existing use basis as applied to the general measure of compensation under Part V of the principal Act.

Compensation (Defence) Act, 1939. See s. 2 (1) (*a*) and proviso (ii) thereto (31 Statutes Supp., 220, 221). The original proviso limited compensation to the compulsory purchase of the land at the date of requisitioning.

Requisitioned Land and War Works Act, 1948. 53 Statutes Supp. 5. This provision imposed an upper limit on the payment under the Act of 1939, *ubi supra*, by reference to the difference between the compulsory purchase values of the land in its damaged and undamaged state valued under the Act of 1947. See also in the case of land de-requisitioned between 19th February 1948 and 1st July 1948, para. 7 of the First Schedule, *post*. Cf. s. 53, *post*.

Sub-s. (3).

Have regard. Cf. *Cohen* v. *West Ham Corpn.*, [1933] Ch. 814; Digest Supp., *per* Lord Hanworth, M.R. (" loose and indefinite term ").

Time . . . the act or event occurred. See s. 5 (3), *ante*. In the case of compulsory or quasi compulsory sales the limits are between 6th August 1947 and 1st January 1955. In the case of private transactions the period is defined by reference to a contract made between 6th August 1947 and 18th November 1952, or in pursuance of an option granted on or after 1st July 1948 and before 18th November 1952. On the analogy with those provisions it would appear that tenancies and sales in consideration of a rentcharge must have been within the periods relating to private transactions, while in the case of compulsory or quasi-compulsory sales or de-requisitioning the notice to treat or contract or ending of requisition must be between 6th August 1947 and 1st January 1955.

Consideration for the grant. *Semble*, any form of consideration for the grant, renewal or continuance of the tenancy may be regarded and given a capital value.

Extent . . . consideration failed . . . to reflect the development value. The whole purpose of the case payments is to endeavour, in relation to past acts or events, to restore the element of development value to the transactions concerned subject to the upper limit of the established development value claim or what remains of it in the shape of the claim holding. It seems, however, that where the consideration on the past transaction reflected an extension in time of the 1947 Act existing use or restricted value, which would not have been justified if the development value could have been realised, notice may be taken of this. See s. 36, *post*, and *Horn* v. *Sunderland Corpn.*, [1941] 1 All E.R. 480; [1941] 2 K.B. 26; 2nd Digest Supp., which support the view that regard should be had to the fact that, in carrying out development, the existing use of land may have to be abandoned. The development value is the excess of the higher value over the lower, and not the whole of the higher value.

Sub-s. (4).

Duration; restrictions. These must apparently be regarded, although the parties may have agreed on both only because of the effect of the principal Act. The present subsection is, however, imperative in its terms (" a payment shall not be made ").

Part VII of the principal Act. For Part VII of the Act of 1947, see Hill, pp. 172, 188; 48 Statutes Supp. 132 *et seq.* The purpose here seems to be to exclude cases where it was never expected that development, involving liability to development charge, would be carried out during the term of the tenancy.

11. Residual payments in cases analogous to Cases A and B.—(1) A person (in this section referred to as " the applicant ") shall, subject to the provisions of this Part of this Act, be entitled by virtue of this section to a payment in respect of a claim holding of which he is not the holder if—

(*a*) the applicant is entitled to an interest in land which constitutes the area of the claim holding, or part of that area, or which includes that area or part of that area, and has incurred a development charge in respect of that land; or

(*b*) the interest in land to which the claim holding related or another interest in which that interest had merged was (as respects the whole or part of the area of the claim holding) compulsorily acquired by, or sold to, a public authority possessing compulsory purchase powers,

and the Central Land Board or, where the Board's findings are referred to the Lands Tribunal under section thirteen of this Act, that Tribunal are satisfied, having regard to the circumstances in which the development charge was incurred, or the interest was acquired or sold, as the case may be, that the applicant would have been entitled to a payment under Case A or Case B if he had been the holder of the claim holding at all material times.

(2) Except in a case falling within subsection (4) of this section, a payment shall not be made by virtue of this section unless it is shown—

(*a*) in a case falling within paragraph (*a*) of the preceding subsection, that the person incurring the development charge, or a person from whom he derived title, had previously purchased the interest in land to which the claim holding related (either as respects the whole or a part of the area of the claim holding) from the person who, at the time of the purchase, was the holder of the claim holding, or that he was the tenant under a tenancy created immediately out of that interest (either as respects the whole or a part of that area) by the person who was then the holder of the claim holding; or

(*b*) in a case falling within paragraph (*b*) of the preceding subsection, that the interest compulsorily acquired or sold had previously been purchased by the applicant, or a person from whom the applicant derived title, from the person who, at the time of the purchase, was the holder of the claim holding,

and (in either case) the Central Land Board or, as the case may be, the Lands Tribunal are satisfied that the consideration for the previous purchase, or the tenancy, as the case may be, did not wholly exclude the development value of the interest in land to which the claim holding related, as measured by the value of the claim holding.

(3) For the purposes of the last preceding subsection, a previous purchase shall be disregarded if it was a purchase by a public authority possessing compulsory purchase powers.

(4) The case referred to in the exception mentioned in subsection (2) of this section is a case where a person who died on or after the first day of July, nineteen hundred and forty-eight, and before the twenty-sixth day of February, nineteen hundred and fifty-four, was immediately before his death the holder of the claim holding and entitled to the interest in land to which the claim holding related, and by his will disposed of that interest and of the claim holding in such a way that the applicant—

(*a*) is entitled to that interest, or will (subject to the powers of personal representatives) be entitled to require that interest to be vested in him; but

(*b*) is not entitled to the claim holding or to any interest in that holding or in the proceeds of sale thereof.

(5) Subject to the next following subsection, the principal amount of a payment made by virtue of this section shall be such amount as the Central Land Board or, as the case may be, the Lands Tribunal may determine to be appropriate, having regard to the provisions of this Part of this Act relating to payments under Cases A and B.

(6) Where apart from this subsection a payment would be payable in respect of a claim holding by virtue of this section, and one or more payments in respect of that holding are payable under any of Cases A to D, or under the last preceding section, or the Central Land Board or, as the case may be, the Lands Tribunal are satisfied that one or more such payments would be or have been so payable if applied for, then for the purposes of this section the Board shall subtract from the value of the claim holding the amount or aggregate amount of the payment or payments which are so payable, or which in the opinion of the Board or, as the case may be, of the Tribunal would be or have been so payable, as the case may be, and shall treat that value as reduced, or the claim holding as extinguished, accordingly.

NOTES

This section provides for the making of residual payments to persons who are not claim holders but where by reason of the scaling down of case payments there remains some residual part of the claim holding which can be applied appropriately to mitigate the effect of the act or event on some person other than the claim holder.

Payments may be made where the applicant has incurred a development charge or has had the land acquired from him by compulsory or quasi-compulsory purchase.

The circumstances must be such that if he had been the holder the applicant would have been entitled to a Case A or Case B payment. Normally he must have obtained his interest, mediately or immediately, from a person who was the claim holder when that person disposed of the interest in the land and the consideration for the disposition reflected the development value of the interest as measured by the claim holding.

The applicant may also be entitled where he obtained the interest but did not obtain the holding under the will of a person, who was entitled to the interest and the holding immediately before death, and who died between 30th June 1948 and 26th February 1954.

The payment will be such as would be appropriate under Case A or B provided that if a case payment under A, B, C or D is payable (or under s. 10, *ante*) the holding will first be reduced or extinguished according to the effect of such payment.

Sub-s. (1).

Claim holding. See s. 2, *ante*. Subject to the provisions of that section it means the benefit of the established claim.

Interest in land. See s. 69 (1), *post*. Means only an interest in fee simple or a tenancy.

Incurred a development charge. See s. 4, *ante*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*. Means an authority so authorised or who could be authorised to purchase compulsorily.

Central Land Board. See s. 63, *post*, and ss. 2 and 3 of the Act of 1947 (Hill, pp. 40, 41; 48 Statutes Supp. 26, 27).

Lands Tribunal. As to appeals to the Lands Tribunal, see s. 13 (3) and (4), *post*.

Sub-s. (2).

Derived title. See s. 69 (7), *post*.

Tenancy. See s. 69 (1), *post*. Means one created (either immediately or derivatively) out of the freehold, whether by lease or underlease, by agreement for lease or underlease, or by a tenancy agreement, or in pursuance of any enactment, but does not include a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee. References to the granting of a tenancy are to be construed accordingly. Here, for the purpose of finding whether development value was or was not wholly excluded from the consideration, attention must be confined to the creation of a tenancy immediately out of the interest, to which the holding related, by the person who was then the holder.

Consideration for the previous purchase. The consideration which is to be looked at is that passing on the disposition which severed the claim holding and the interest in the land.

Sub-s. (3).

Purchase by a public authority. This subsection will operate to exclude payments to a public authority who acquired at a price in excess of " existing use " value and any person who derives title from that authority.

Sub-s. (4).

1st July 1948. Date of coming into operation of the Act of 1947.

26th February 1954. Date of publication of the present Act as a Bill.

Not entitled to the claim holding. This subsection anticipates the effect of Part II, *post*. Under s. 17, *post*, subject to any payment or other reduction under Parts I and V of the Act, the claim holding as it subsists immediately after the commencement of the Act will give rise to an unexpended balance of established development value.

The present subsection may seem a very drastic provision so far as a claim holder (who is not entitled to a case payment) is concerned. It is no more drastic, however, than the effect of Part II, *post*. These provisions may, however, have the effect of defeating the testator's real intention as to the destination of the value of the land. In a case where land had a high development value and little value in the existing use the claim holder may have been the testator's intended beneficiary for the value in the land.

Whether or not the value will in the circumstances return to the land to be enjoyed by the person entitled to the interest in the land is in itself, however, fortuitous. The claim holder, in the time he enjoyed the benefit of the established claim, may have pledged it to the Central Land Board to pay a development charge on other land, or may have sold it in circumstances which will give rise to a Case D payment. Either event may cause the holding to be extinguished.

Any interest in that holding. See s. 2 (3), *ante*. Where part of the benefit of an established claim is the subject of a disposition it will give rise to a separate claim holding. This provision seems to contemplate an after acquired interest in a claim holding which was not divided.

Sub-s. (5).

Subject to the next . . . subsection. The payment under this section is deferred to all other case payments and so much of the claim holding remaining when those payments have been provided for will be available for distribution having regard to the basis which would have applied to Case A or B payment (see ss. 3–6, *ante*) in so far as the Central Land Board, or the Lands Tribunal on appeal, determine to be appropriate. If there are two or more residual payments in relation to the same claim holding the aggregate is not to exceed the value of the holding as reduced; see s. 12 (2), *post*.

Sub-s. (6).

Apart from this subsection. If this subsection excludes or reduces the payment then any payment under the section will be excluded or reduced accordingly. Provision must be made for all other case payments in respect of the holding before any payment can be made under the present section. Payments under this section do not come into any apportionment under s. 12 (1), *post*.

12. Payments not to exceed value of claim holding.—(1) Where two or more payments are payable in respect of the same claim holding by

virtue of the preceding provisions of this Part of this Act, other than the last preceding section, the authority determining the amount of any such payment shall apportion that amount between the different parts of the area of the claim holding in such manner as appears to that authority proper, and if the aggregate of the portions of the principal amounts of the respective payments so apportioned to any part of the area of the claim holding would, apart from the provisions of this subsection, exceed the fraction of the value of the claim holding attaching to that part of the area thereof, those portions shall be reduced rateably so that the aggregate of them is equal to the said fraction, and the said principal amounts shall be treated as reduced accordingly.

(2) Where two or more payments are payable in respect of the same claim holding by virtue of the last preceding section, the aggregate of the principal amounts of those payments shall not exceed the value of the claim holding or, where that value is treated as reduced in accordance with subsection (6) of the last preceding section, that value as so reduced.

NOTES

Payments under this Part (Part I) of the Act will have to be scaled down where they would otherwise exceed the value of the claim holding by reference to which they are to be made.

In the various Cases, *ante*, the applicant will usually be the holder of the claim holding, as defined by s. 2 (8), *ante*; see, however, s. 66, *post*, and the Regulations thereunder (S.I. 1955 No. 38), *post*, as to persons claiming as mortgagees (where the mortgage was not an assignment of the holding), or as trustees. S. 9, *ante*, extends Cases A to C to provide for claims by certain persons deriving title to claim holdings; and s. 10 provides for cases analogous to Case B where, for example, the transaction was a lease or a sale in consideration of a rentcharge. In these cases also, subject to s. 66, the applicant will be the claim holder.

Sub-s. (1), *supra*, provides for reducing payments to match the claim holding if two or more payments are to be made under Cases A to D, or Cases A to C as extended by s. 9, *ante*, or the analogous cases in s. 10, *ante*. (These have precedence over residual payments dealt with in s. 11, *ante*; see s. 11 (6), *ante*, and sub-s. (2), *supra*.) For the purposes of sub-s. (1), *supra*, residual payments are ignored and payments of any other kind are to be apportioned between different parts of the claim area. Interest (as provided by s. 14 (1), *post*), is not taken into account at this stage. Where two or more amounts are apportioned to any part of the area, they must be aggregated and if they then exceed the claim value of that part they must be reduced rateably. The claim value of any part is the fraction of the value which attaches to that part, *i.e.*, the amount " properly attributable " as defined in s. 2 (4), *ante*, and adjusted as may be required by that subsection.

The process required will be seen to resemble that required by s. 25 (in Part II), *post*, except that it is not necessary to provide for competing interests as, under this Part (Part I), there will be a single applicant (subject, however, to s. 66). It will be noticed, also, that the earlier sections of this Part have already used the claim holding as an upper limit where only one payment falls to be made; this section applies where, for example, two separate development charges were incurred, as mentioned in Case A, or where payments can be claimed under more than one case. The process of dividing the area, and of apportioning the payment and the claim, may give rise to anomalies, and no guidance is given as to how it is to be done. The anomaly is similar to that noted under s. 25, *post*; *i.e.*, after division the payment and the value of the claim may be found to have been apportioned to some extent to different parts of the area, reducing what would have been the payment if only one had fallen to be considered.

Sub-s. (2), *supra*, provides the upper limit where two or more residual payments fall to be made. The claim holding will be reduced under s. 11 (6), *ante*, if any payment or payments (to the holder or under s. 66) have been or could have been claimed; the aggregate of the residual payments (apart from interest to be added under s. 14 (1), *post*), must not exceed the claim holding.

Persons other than the applicant for a payment may be affected by the apportionments required by sub-s. (1), *supra*, *i.e.*, by the apportionment of payments to parts of the area and by the corresponding apportionments of the claim holding under this section and s. 2 (4), *ante*. As to the right to dispute apportionments, see s. 13, *post*.

Sub-s. (1).

Two or more. If only one payment were in question, this section would be unnecessary; see ss. 3 (3), 5 (4), 7 (3), 8 (3) and 10 (5), *ante*.

Payments. *I.e.*, under Cases A (ss. 3 and 4); B (ss. 5 and 6); C (s. 7); D (s. 8); or Cases A to C as extended by s. 9; or cases analogous to Case B (s. 10), *ante*; but not under s. 11, *ante*, which provides for residual payments, here dealt with by sub-s. (2), *supra*.

Authority determining. The Central Land Board, or (on appeal) the Lands Tribunal; see s. 13, *post*.

Apportion. The apportionment of the payments is to be done as the authority think proper. This may enable the authority to avoid the anomaly mentioned in the General Note, *supra*. Apart from this consideration the authority may be guided by the nature of the parts and the effect on them of the act or event giving rise to the payment in question; cf. s. 25 (2) (iii), *post*. Payments may also have to be apportioned, for another purpose, under s. 15 (3), *post*, which is not, however, expressed to affect the present section. As to disputing apportionments, see s. 13, *post*. As to Case A payments, reference should be made to s. 3 (3) and (6), *ante*: the development charge or charges in question may have related to land partly outside the claim area.

Fraction . . . attaching. See s. 2 (4), *ante*.

Sub.-s. (2).

Last preceding section. S. 11, *ante*, provides for residual payments, to persons other than the claim holder, providing any value is left in the claim holding, if the applicant satisfies s. 11 (1) (*a*) or (*b*), which resemble (to some extent) Case A and Case B.

Value of the claim holding. This refers to the value immediately before the commencement of the Act (1st January 1955), see s. 2 (5), *ante*, *i.e.*, the value as affected by s. 1 and s. 2 (2) and (3), *ante*. S. 15 (3), *post*, which sub-divides certain holdings, is not expressed to affect the present section.

13. Applications for payments under Part I.—(1) No payment under this Part of this Act shall be payable unless an application for the payment is made to the Central Land Board in such manner, within such period (not being less than three months from the commencement of this Act), and accompanied by such particulars and verified by such evidence, as may be prescribed by regulations under this section, or as may be required by the Board in accordance with such regulations:

Provided that the Board may in any particular case (either before, on or after the date on which the time for applying would otherwise have expired) allow an extended, or further extended, period for making an application for such a payment.

(2) Provision shall be made by regulations under this section—

(*a*) for requiring applications for payments under this Part of this Act to be determined by the Central Land Board in such manner as may be prescribed by the regulations;

(*b*) for regulating the practice and procedure to be followed in connection with the determination of such applications;

(*c*) for requiring the Board, on determining any such application, to give notice of their findings to the applicant, and, if their findings include an apportionment, to give particulars of the apportionment to any other person entitled to an interest in land which it appears to the Board will be substantially affected by the apportionment.

(3) Subject to the next following subsection, provision shall be made by regulations under this section—

(*a*) for enabling the applicant, if he wishes to dispute the Board's findings, or any other person to whom particulars of an apportionment have been given in accordance with the last preceding subsection, or who establishes that he is entitled to an interest in land which is substantially affected by an apportionment included in the Board's findings, if he wishes to dispute the apportionment, to require the findings or, as the case may be, the apportionment to be referred to the Lands Tribunal;

(*b*) for enabling the applicant and, so far as the reference relates to an apportionment, every other such person as aforesaid to be heard by the Tribunal on any reference under this subsection; and

(*c*) for requiring the Tribunal, on any such reference, either to confirm or to vary the Board's findings or, as the case may be, the apportionment and to notify the parties of their decision.

(4) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment relates wholly or partly to the same matters as a previous apportionment and is consistent with that previous apportionment in so far as it relates to those matters, the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

NOTES

Payments, under this Part (Part I) of the Act, are made conditional upon the making of an application under the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *post*. Application should be made before 30th April 1955, as the power to extend time, under sub-s. (1) proviso, *supra*, may be sparingly used; it is desirable to ascertain the nature and effect of Part I payments as soon as possible, from an administrative point of view, so that the later Parts of the Act can be operated.

In some cases, however, the Board will, of its own motion, determine the amount although no application is made, and, in effect, have recourse to that amount in payment or part payment of outstanding development charges; see s. 14 (3), *post*; and, in other cases, will determine the amount of payments which would be or would have been payable under Cases A to D, including s. 9 or under s. 10 (analogous to Case B), before determining a residual payment under s. 11, *ante*.

Attention is drawn to the wide powers expressed to be conferred on the Board by the Regulations (S.I. 1954 No. 1599), *post*; in particular reg. 3 requires application to be made on a form supplied by the Board, and reg. 4 contains very wide requirements as to the provision of information and evidence. It will be safer to comply strictly with these requirements, and to avoid argument as to their validity (which is perhaps doubtful): cf. *Robertson* v. *Lord Advocate*, [1951] S.C. 88. That case was concerned with the procedure under Regulations, in Scotland, corresponding to the Claims for Depreciation of Land Values Regulations, 1948 (S.I. 1948 No. 902) under which Part VI claims were established; see particularly regs. 5 and 10 of the English regulations (Hill, pp. 743, 745).

It will be seen that sub-s. (1), *supra*, is similar in effect to s. 22 (1) to (3) in Part II, *post*; and that sub-ss. (2) to (4) correspond with minor differences to sub-ss. (1) to (3) of s. 27, *post*, which refers to the T. and C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*. The two sets of Regulations follow the same general pattern. One difference arises from the fact that, under this Part, there will be only one applicant in each case who can dispute the Board's general findings (though other persons substantially affected may dispute an apportionment); this applicant, except where a residual payment is claimed under s. 11, *ante*, and subject to s. 66, *post*, will be the holder of the claim holding. Under the other Regulations, so far as they relate to Part II cases, provision has to be made for cases where more than one claim is made and maintained in respect of the same planning decision. Sub-s. 3 (*a*), *supra*, and s. 27 (2) (*a*), *post*, accordingly are slightly different in wording.

Another difference is that, under this Part, there will be fewer " previous apportionments " to be followed.

It will have been noticed that certain adjustments to the value and areas of claim holdings are treated as having been made before a claim arises for determination under this section. S. 2 (2), *ante*, and the Second and Third Schedules, *post*, have the effect of reducing, extinguishing or sub-dividing holdings; and s. 2 (3), *ante*, makes adjustments where part of the benefit of the claim has been assigned. S. 2 (4) contains the general mechanism for finding how much of the value of a claim attaches to any part of the original claim area. Certain assignments approved by the Central Land Board under the Act of 1953 rank as binding previous apportionments as defined in s. 69 (1), *post*; but generally the adjustments to the claim holdings will not have been actually made when a Part I claim is to be determined. These adjustments may now fall to be made.

Where a payment becomes payable under this Part, this in turn will have its effect on the claim holding; s. 15, *post*, provides for reducing the value of the holding, or extinguishing it, or for treating it as divided into parts, immediately before 1st January 1955, for the purposes of later Parts of the Act.

As to the making of applications by certain mortgagees and trustees of settled land, see s. 66, *post*, and the T. and C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

Sub-s. (1).

Not . . . less than three months. The date prescribed is 30th April 1955; see reg. 3 of the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *post*.

Commencement of this Act. 1st January 1955, see s. 72 (2), *post*, and the appointed day order (S.I. 1954 No. 1598), *post*.

Regulations. See, generally, s. 68, *post*, authorising the making of Regulations by the Minister as a statutory instrument subject to annulment by either House of Parlia-

ment. For the Regulations so made, see S.I. 1954 No. 1599, *post*. The form of these Regulations has been criticised, but see General Note, *supra*. They should be read with those made under s. 66, *post*, as to applications and payments in the case of certain mortgages, and of settled land; see S.I. 1955 No. 38, *post*.

Sub-s. (2).

Give notice. See s. 67 (3), *post*, applying s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186) as to the manner of giving notice.

Applicant. *I.e.*, normally the claim holder; see s. 2 (8) and ss. 3 (1), (5) (1), 7 (1), 8 (1), 9 (1) and 10 (1), *ante*. But see also s. 11 (1), *ante*, and s. 66, *post*.

An apportionment. Persons other than the applicant will be informed of any apportionment which appears to the Board to affect substantially any interest in land to which such a person is entitled. Other persons may claim to be so affected and establish a right to dispute the apportionment under sub-s. (3), *supra*, although not given particulars by the Board. The extent of these rights depends on what is meant by an " apportionment."

Under s. 12, *ante*, payments which would fall to be made under this Part are to be apportioned in certain cases to parts of the area of a claim holding, so that they may be compared with the fractions of the value of the claim holding which attach to those parts, in order to ensure that any two or more payments in respect of any part of the area are limited to the claim on that part. This involves apportioning the payments, under that section, and the claim holding, under s. 2 (4), *ante*. Other apportionments of a claim holding are required in order to take account of certain past transactions; see s. 2 (2) and (3), *ante*, referred to in the General Note, *supra*. See also s. 15 (3), *post*, as to apportioning the effect of payments. A previous apportionment, as defined in s. 69 (1), *post*, will be binding in so far as it relates to the same matters; see sub-s. (4), *supra*.

Apportionments will be seen to relate principally to divisions of the value of an original Part VI claim under the principal Act, or of a claim holding derived from it. The word " apportion " is also used to describe the division or distribution of other sums of money or values; *e.g.*, in s. 12, *ante*, reference is made to apportioning the payments which would fall to be made. In s. 5 (7), *ante*, reference is made to apportioning a sale price or the compensation received on a compulsory purchase (cf. also, in Part II, *post*, the reference to apportioning compensation under s. 28 for the purpose of registration in a compensation notice). In certain other cases, where a similar calculation is involved, the word " apportion " does not appear in the provision in question; *e.g.*, s. 5 (5) *a*), *ante*, in effect requires an apportionment of the compulsory purchase compensation and of the existing use value of an interest in land, and uses words similar to those used in defining the properly attributable amount of a claim holding in s. 2 (4), *ante*, but does not use the word " apportion."

It is thought that all such calculations are " apportionments ". In one particular case in this Act, where under Part II, *post*, an amount falls to be deducted from an unexpended balance by virtue of s. 18 (4), which does not necessarily involve an apportionment (in the sense of a division or distribution of a larger amount or value), special provision is made by s. 48, *post*, for notifying persons affected by the " calculation " and giving them rights to dispute it. (See 189 H. of L. Official Report 1481; 535 H. of C. Official Report 915, 916; but cf. H. of C. Official Report, S.C.C., 13th May 1954, cols. 289 *et seq.*) Deductions not involving an apportionment will, under this Part (Part I), be notified to the applicant as part of the Board's findings; and the figures may have to be given to other persons if they affect some other calculation which is an apportionment.

Interest in land. See s. 69 (1), *post*. Particulars may in practice be given informally to mortgagees, but they will generally have no standing to enable them to dispute the apportionment. No provision is made for this by the T. and C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, except where a mortgagee may apply in default of the " original applicant ".

Appears to the Board. Cf. the note " Appears to the Minister " to s. 27 (1) (*c*), *post*.

Substantially. What this word may be supposed to mean is a point of law; but once a meaning is found the question whether the effect is substantial or not is one of fact. These questions will be decided, at this stage (under sub-s. (2) (*c*) for the purpose of giving particulars) by the Board. Under sub-s. (3), *supra*, they become questions for the Tribunal if a person is not given particulars but comes to know of the claim or proceedings and seeks to be heard. Similarly, the question of whether a person is entitled to an interest, or whether the interest is affected, or whether there is or is not an apportionment, may involve mixed points of fact and law; cf. the notes to s. 27 (1) and (2), *post*.

The apportionment. Particulars will be given to persons other than the claimant only where the Board think an apportionment is involved, and include it in their findings. No provision is made for giving particulars, or for any right of appeal, where the Board's findings should include an apportionment but do not; cf. the notes to s. 27 (1) and (2), *post*, and the note, " An apportionment ", to sub-s. (1), *supra*.

Sub-s. (3).

Regulations. See particularly regs. 6 and 7 of S.I. 1954 No. 1599, *post*.

Who establishes. A person who has been given particulars under sub-s. (2), *supra*, does not need to establish his right to be heard by the Tribunal as to the apportionment and may give notice of dispute or appear on any dispute " referred " by another person; see reg. 6 (1) and (3) of S.I. 1954 No. 1599, *post*. A person claiming that he is entitled to an interest substantially affected may give notice of a dispute; and can be heard on any dispute if he establishes his right to be heard. Disputes must be " referred ", within 30 days of the service of the Board's findings by giving notice of appeal in Form 1A of the Lands Tribunal Rules (inserted by S.I. 1955 No. 54, *post*). Persons other than the appellant may enter appearance in a dispute under r. 5A of the Rules (inserted by r. 5 of S.I. 1955 No. 54, *post*). An appellant or other interested person who received neither the findings nor particulars, will have to establish his right to be heard before the Tribunal.

Lands Tribunal. See previous note, and fuller note to s. 27 (2), *post*.

Sub-s. (4).

It is shown. This may give rise to considerable argument before the Tribunal; cf. note to the same words in s. 27 (3), *post*.

Previous apportionment. See s. 69 (1), *post*, and the General Note, *supra*. See also the note to s. 27 (3), *post*.

14. Payments to be made by Central Land Board.—(1) Subject to the provisions of this section, where a person is entitled to a payment in accordance with the preceding provisions of this Part of this Act, the Central Land Board shall pay to that person the principal amount of the payment together with interest thereon at the rate of three and one-half per cent. per annum from the first day of July, nineteen hundred and forty-eight, to the date of payment:

Provided that if the payment is made after the thirtieth day of June, nineteen hundred and fifty-five, the interest shall be calculated to that day instead of the date of payment.

(2) Where apart from this subsection a person would be entitled to a payment in accordance with the preceding sections of this Part of this Act, the Central Land Board may set off against the principal amount of that payment—

(*a*) any sum which, at the time when (apart from this subsection) that payment would be due to be made, is owing to the Board by that person in respect of a development charge; and

(*b*) any sum which is then due to become payable by that person in the future in respect of a development charge,

or, where the aggregate of any such sums is greater than the principal amount of the payment, a part thereof equal to that principal amount; and the principal amount of the payment to be made to that person shall for the purposes of the preceding subsection be treated as reduced accordingly, or, if the sums or parts of sums set off are equal to the principal amount of the payment which would have been payable apart from this subsection, the right of that person to receive any payment under the preceding subsection shall be extinguished:

Provided that for the purposes of paragraph (*a*) or (*b*) of this subsection so much of any such sum therein mentioned as is attributable to interest shall be disregarded.

(3) Where the Board are satisfied that (apart from the last preceding subsection) a person would have been entitled to a payment in accordance with the preceding sections of this Part of this Act if he had applied for that payment within the period prescribed under the last preceding section, then, if that person has failed to apply for the payment within that period or within any extended period allowed under the last preceding section, the Board may determine the principal amount of the payment to which he would have been so entitled, and the last preceding subsection shall apply as if he had become so entitled to the payment and the principal amount thereof had been the principal amount determined under this subsection.

NOTES

Sub-s. (1), *supra*, is authority for the making of payments by the Board, with interest. Sub-s. (2), *supra*, enables the Board to set off the principal amount of a payment against the principal amount of any outstanding liability for development charge, including charge payable at a future date. Sub-s. (3), *supra*, in effect enables the Board to make this form of set-off although no application has been made for a payment.

The following notes contain references to other provisions which should be read with the present section.

Cross-references.

Interest. As to the addition of interest, cf. s. 17 (2), *post* (adding a lump sum, calculated on a similar basis, to the unexpended balance), and s. 46 (1), *post* (providing for interest in Part V cases).

Liability for development charge. There will be an outstanding liability where charge was determined to be payable (or is retrospectively determined) and it has not been discharged, unless the determination, under the Act of 1947 or the Act of 1953, has ceased to have effect; see s. 69 (5) (*a*), *post*. The amount may have been varied under the principal Act, in which case references in this Act to its determination are references to the amount as varied; see s. 69 (5), *post*. Most provisions of this Act which afford a benefit to persons who have in effect bought back development value by way of development charge refer to the determination that charge is payable, not to actual payment; see s. 4 (1), *ante*, and s. 18 (4) proviso, *post*. A person is usually deprived of such a benefit only where charge is treated as not having been determined, by virtue of s. 49 (5) and (6), and s. 69 (5) (*a*), *post*. These cases, however, are limited to those where liability was avoided altogether; *e.g.*, where charges on agricultural dwellings are now waived, or where a determination ceased to have effect under the principal Act.

In other cases, where actual payment was postponed wholly or in part, the charge is nevertheless treated as having become payable; see s. 69 (5) (*b*).

In cases where claims were pledged to the Central Land Board as security for charge, payment was thus postponed, but the present Act provides a form of set-off, which will be deemed to have been made at the time of the latest pledge; see s. 2 (2) (*a*), *ante*, and the Second Schedule, *post*. This is quite distinct from set-off under the present section. Its effect, under s. 49 (4) and (6), *post*, is to reduce the amount of a Case A payment, or exclude it, by treating the charge as not having been incurred, and to reduce the oustanding liability for payment of the charge. (Treating the charge as not having been incurred does not involve disregarding it for other purposes, such as those of s. 18 (4) proviso, *post; i.e.*, it is not the same as treating it as never having been determined). The Second Schedule correspondingly affects the claim holding (by reducing its value or extinguishing or sub-dividing it); see s. 2 (2) (*a*), *ante*.

Liability for charge will be discharged, before the present section operates, where there has been actual payment or where s. 49 (4) operates to cancel liability in view of set-off under the Second Schedule. It will also be discharged in the special cases where the determination is deemed not to have been made. Liability will be reduced where there has been part-payment, or a reduction of liability under s. 49 (4), *post*.

Effect of set-off. The effect of set-off under the present section is likewise to cancel or reduce liability; see s. 49 (2) and (3), *post*; *i.e.*, set-off is for this purpose equivalent to payment. Under s. 18 (4) proviso, *post*, the benefit arising from the determination of charge is preserved. Under s. 15 (4), *post*, the claim holding will be reduced as if the Part I payment had been made or made without reduction.

As to the recovery of certain sums by the Board from acquiring authorities by reference to payments under this section, see s. 52, *post*. In connection with sub-ss. (2) and (3), *supra*, see s. 52 (4) (*b*) and (5), *post*.

Monopoly value. Although payment in respect of the monopoly value of licensed premises is for the purposes of the present Act dealt with as payment of development charge, s. 58 (4) (*b*) excludes sub-ss. (2) and (3) of the present section, *supra*; a different form of set-off may be operated under that section, *post*.

Person receiving payment or affected by set-off. The set-off provided by the present section may operate in respect of any liability for development charge of the person who would be entitled to a payment under this Part (Part I) of the Act. Usually this will be the holder of the claim holding as defined by s. 2 (8), *ante*, but see s. 11, *ante*, as to residual payments to other persons, and s. 66, *post*, as to certain mortgages (not involving an assignment of the claim holding) and settled land.

Time of set-off. Set-off may be made against liability for charge outstanding when a person becomes, or would apart from this provision become, entitled to a Part I payment. So far as the claim holding is concerned, however, it will be affected, under s. 15, *post*, as from a time " immediately before " the commencement of the Act on 1st January 1955.

Minerals. For special provisions as to mineral land (including power to vary charges, under the principal Act, in respect of minerals worked on or after 1st January 1955),

see s. 54, *post*. As to setting-off the development value of certain minerals worked before 1st January 1955, see particularly reg. 14 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

Sub-s. (1).

1st July 1948. The day appointed under s. 120 of the Act of 1947 (Hill, p. 266; 48 Statutes Supp. 209) for the general commencement of that Act. See S.I. 1948 No. 213 (Hill, p. 733; 48 Statutes Supp. 294). Interest would have run from that date if Part VI payments had been satisfied as intended under the principal Act; cf. note "Eight-sevenths" to s. 17 (2), *post*. For tax purposes interest will be treated as income of the current year, *i.e.*, the year in which it is received.

Sub-s. (2).

Any sum. The reference to a sum due in respect of development charge, is to the principal amount; see proviso to the present subsection, *supra*. If the payment would exceed the liability for charge, a reduced payment, with reduced interest, will be made under sub-s. (1), *supra*. If the liability is greater than the payment, no payment will be made, but the liability will be "modified accordingly" under s. 49 (3), *post*; *i.e.*, presumably the principal amount of the liability will be reduced and so will the interest thereon. In effect, therefore, any disparity in the rates of interest is ignored.

Development charge. See generally Part VII, ss. 69–74, of the Act of 1947 (Hill, pp. 172–188; 48 Statutes Supp. 132–143). Payment in respect of the monopoly value of licensed premises is not, for this purpose, regarded as a development charge; see s. 58 (4) (*b*), *post*. See also note "Cross-references", *supra*; particularly as to minerals.

Sub-s. (3).

If he had applied. See s. 13 (1), *ante*.

The Board may determine. The Central Land Board will determine the amount they would have determined under s. 13, *ante*. The present section makes no provision for appeal by the person who should have applied, nor for disputes as to apportionments by other persons affected. S. 15 (4), *post*, however, will nevertheless operate to reduce or extinguish the claim holding, as provided by that section, immediately before 1st January 1955. Persons affected by apportionments may thus be prejudiced by the failure of some other person to make an application (unless the Board give effect to their contentions on the subject of the apportionment) by losing their right to go to the Lands Tribunal.

15. Effect of payments on claim holdings.—(1) Subject to the provisions of this section, where in accordance with the provisions of this Part of this Act a payment becomes payable in respect of a claim holding, then, for the purposes of the following Parts of this Act—

(*a*) if the principal amount of the payment is not less than the value of the claim holding, the holding shall be deemed to have been extinguished immediately before the commencement of this Act;

(*b*) if the principal amount of the payment is less than the value of the claim holding, the value of the holding shall be deemed to have been reduced immediately before the commencement of this Act by the principal amount of the payment:

Provided that if in the case of any claim holding a payment becomes payable under Case D, then, regardless of the amount of that payment, that holding shall for the purposes of the following Parts of this Act be deemed to have been extinguished immediately before the commencement of this Act.

(2) The preceding subsection shall apply where two or more payments under this Part of this Act are payable in respect of the same claim holding, with the substitution for references to the principal amount of the payment of references to the aggregate of the principal amounts of the payments.

(3) Where one or more acts or events have occurred whereby in accordance with the provisions of this Part of this Act one or more payments become payable in respect of a claim holding (in this section referred to as "the parent holding") and any such act or event did not extend to the whole of the area of the parent holding, then, both for the purposes of the preceding provisions of this section and for the purposes of the following Parts of this Act—

(*a*) the parent holding shall be treated as having been divided immediately before the commencement of this Act into as many separate

claim holdings, with such areas, as may be necessary to ensure that in the case of each holding either any such act or event as aforesaid extending to the area of that holding extended to the whole thereof or no such act or event extended to the area of that holding;

(*b*) the value of each of the separate holdings respectively shall be taken to be that fraction of the value of the parent holding which then attached to the part of the area of the parent holding constituting the area of the separate holding;

(*c*) the authority determining the amount of any such payment shall apportion that amount between the areas of the separate claim holdings to which the act or event in question extended in such manner as may appear to that authority proper, and the portion of that amount apportioned to the area of any separate claim holding shall be taken to be a payment payable under this Part of this Act in respect of that claim holding.

(4) For the purposes of this section—

(*a*) a payment shall be treated as having become payable notwithstanding that the right to receive the payment has been extinguished by subsection (2) of the last preceding section;

(*b*) any reduction of the principal amount of a payment by virtue of that subsection shall be disregarded;

(*c*) where in accordance with subsection (3) of the last preceding section the Central Land Board have determined the principal amount of a payment, as being a payment to which a person would have been entitled as mentioned in that subsection, that payment shall be treated as if it had become payable and as if the principal amount thereof had been the principal amount so determined.

NOTES

The effect of a payment under this Part (Part I) of the Act is to reduce the value of the claim holding by reference to which it is made, or to extinguish the holding. Payments in respect of an act or event extending to part only of the area of the claim holding will require a division of the holding into separate holdings, *i.e.*, what is called for convenience, in the notes to this Act, a " sub-division " of the holding.

These adjustments are deemed to be made immediately before the commencement of the Act on 1st January 1955. Somewhat similar provisions will already have had their effect; see s. 2 (2) (*a*) and (*b*), *ante*, and the Second and Third Schedules, *post*, and (in the case of dispositions of part of the benefit of a claim) see s. 2 (3), *ante*.

Adjustments of this type, required under various provisions of the Act, are not normally carried out until some subsequent time when they become relevant. Under this section, however, a number of acts or events, extending perhaps to different or overlapping parts of the area of the holding, may have to be considered by reference to the same point of time, immediately before 1st Janaury 1955. If any of these acts or events requires a sub-division, this must be borne in mind in considering the other acts or events. The effect of a payment in respect of any other act or event extending wholly or partly to the same area but also to some different part of the area of the holding must consequently be considered by reference to the separate holdings arising from the sub-division. This will involve at least one apportionment, and this will actually be carried out, as required by sub-s. (3) (*c*), *supra*, at this stage.

Sub-s. (3) (*a*) requires the division of the claim holding into as many parts as may be necessary to ensure that each part has a uniform history, *i.e.*, all the same acts or events extended to the whole of that part, or none at all. To each part is attributed an appropriate claim value, under sub-s. (3) (*b*), being the fraction of the claim holding attaching to that part as defined by s. 2 (4), *ante*. These are then considered as separate holdings. Payments by reference to acts or events relating to one only of the parts are to be deducted from the separate holding on that part; payments in respect of acts or events extending also to some other part will be apportioned under sub-s. (3) (*c*), *supra*, as the determining authority (the Central Land Board or, on appeal, the Lands Tribunal) think proper, and the amount or amounts apportioned to the part in question will be deducted from the separate holding on that part. The actual deduction will not be made at this stage, but the necessary apportionment will have been made. As to the right to dispute apportionments, see s. 13, *ante*.

Where there is a payment under Case D (see s. 8, *ante*) to a person who bought a claim holding, or his successor in title to the holding, that payment will extinguish the holding, whatever its amount.

The payment to be deducted from the value of the holding is the principal amount, disregarding interest (added under s. 14 (1), *ante*); see sub-s. (1), *supra*; and where two or more payments are made the aggregate of the principal amounts will be deducted; see sub-s. (2), *supra*, and s. 12, *ante*. References to the value of the holding are references to the value immediately before 1st January 1955; see s. 2 (5), *ante*; *i.e.*, as affected by the earlier provisions of s. 2; and also, by virtue of sub-s. (3), *supra*, as affected by the sub-division of the holding under this section.

Payments affected by s. 14 (2), *ante*, are regarded as made without set-off, and payments similarly set-off although not claimed, under s. 14 (2) and (3), are similarly treated; see sub-s. (4), *supra*.

The present section does not affect the values relevant for the purposes of ss. 3–12, *ante*.

Sub-s. (1).

Subject to the provisions. See in particular the sub-division of claim holdings in certain cases under sub-s. (3), *supra*.

Becomes payable. See in particular ss. 13 and 14 (1), *ante*; as to set-off under s. 14 (2), or s. 14 (2) read with s. 14 (3), see sub-s. (4), *supra*. As to monopoly value of licensed premises, see s. 58 (7), *post*.

A claim holding. See s. 2 (1), *ante*, as affected by s. 2 (2) (*a*) and (*b*), *ante*, and the Second and Third Schedules, *post*, and by s. 2 (3), *ante*.

The following Parts. Part V, *post*, is the next to operate, and thereafter surviving claim holdings form the basis of the unexpended balance of established development value; see notes to ss. 16, 17 and 18, *post*.

The principal amount. Interest added under s. 14 (1), *ante*, is disregarded. Where two or more payments are made, the reference is to the aggregate of the principal amounts; see sub-s. (2), *supra*.

Value of the claim holding. The reference is to the value immediately before 1st January 1955, as affected by s. 2, *ante*, and sub-s. (3), *supra*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

Case D. See s. 8, *ante*. The holding which will be extinguished is the holding as defined in s. 2 (1), *ante*, subject however to the provisions of that section and of sub-s. (3), *supra*.

Sub-s. (2).

Two or more payments. See s. 12, *ante*, which operates to limit the aggregate amount. That section operates by reference to the value of the holding as affected by s. 2, *ante*, but before any sub-division required by sub-s. (3), *supra*. The aggregate amount here in question will, where there has been a sub-division, be the aggregate amount referable to each separate holding resulting from the sub-division.

Sub-s. (3).

One or more acts or events. The purpose of this subsection is to deal with cases where one or more acts or events have occurred, and any of them does not extend to the whole area, by splitting the holding. The reduction in value or extinguishment of the separate holdings so formed applies to each separately, under sub-s. (1), *supra*, after the sub-division. In this way surviving claims should enure, at or after the commencement of the Act, for the benefit of the proper claim holder for the purposes of Part V, *post*, or of the proper land under Parts II and III, *post*.

Did not extend to the whole. In general it will be possible to say to which part of the area an act or event is related with some certainty; but under s. 3 (3) and (6), *ante*, a Case A payment may arise partly in respect of land outside the area of the holding. It will also be seen that an act or event may theoretically relate to the whole or a large part of the area, but in substance arise out of a part or smaller part. This will be borne in mind for the purpose of an apportionment under para. (*c*) of this subsection.

As many separate parts. Each part must have a uniform history; see the General Note, *supra*. Any of the acts or events in question may be found to relate to one only of the parts; or it may be found to relate to more than one, in which case the resulting payment will be apportioned between the parts in question.

The fraction . . . which then attached. See s. 2 (4), *ante*; "then" means immediately before 1st January 1955, after the operation of s. 2 (2) and (3), *ante*.

Authority determining the amount. The Central Land Board or, on appeal, the Lands Tribunal; see s. 13, *ante*.

Shall apportion. Presumably this apportionment forms part of the findings or determination. As to giving notice and particulars of an apportionment, see s. 13 (2) (*c*), *ante*. As to the right to dispute apportionments, see s. 13 (3), *ante*.

As may appear . . . proper. Cf. s. 12 (1), *ante*. As to Case A, see s. 3 (3) and (6), *ante*. Under any of the Cases, the substantial effect of the act or event may be principally related to part of the area, and regard will be had to this. For example, if development charge was incurred in respect of one of two plots of land, there may be a payment under Case A. If the two plots formed the area of a single claim holding, the Case A payment will be limited to the fraction of the value attaching to that part which was included in the determination, *i.e.*, the plot which it was intended to develop. If the development was then carried out, and the whole land was later sold at a restricted value, a payment may be claimed under Case B. There should be no loss on the plot which was developed, but the Case B payment will apparently relate to both plots. Under s. 5, *ante*, the principal amount of the Case B payment is limited by s. 5 (4) to the value of the claim holding on both plots (as the present subsection has not yet operated). Under s. 12, *ante*, the Case B payment may be apportioned entirely to the undeveloped plot, and reduced if necessary so as not to exceed the fraction of the value of the claim holding attaching to that plot. If so, under the present subsection, each plot will form the area of a separate claim holding. The Case A payment will then be deducted from the holding on the developed plot, and the Case B payment from the other separate holding.

Shall be taken to be a payment. This is taken to be so for the purposes of sub-ss. (1) and (2), *supra*, and the following Parts of the Act.

Sub-s. (4).

Last preceding section. S. 14 (2) and (3) *ante*, relate to set-off of payments against outstanding liability for development charge. For present purposes such set-off is equivalent to payment. See also s. 58 (7), *post*, referring to a set-off under s. 58 (6), analogous to s. 14 (3), *ante*, in connection with monopoly value of licensed premises.

Part II

Compensation for Refusal, or Conditional Grant, of Planning Permission

16. Scope of Part II.—(1) The provisions of this Part of this Act shall have effect for enabling compensation to be claimed in respect of planning decisions made after the commencement of this Act whereby permission for the carrying out of new development of land to which this section applies is refused or is granted subject to conditions.

(2) This section applies to any land in respect of which planning permission is refused, or is granted subject to conditions, by a planning decision if, at the time of the planning decision, that land, or part of that land, has an unexpended balance of established development value.

(3) Where, on an application for planning permission for the carrying out of new development of land to which this section applies, a planning decision is made after the commencement of this Act whereby that permission is granted (whether unconditionally or not), and the Minister certifies that he is satisfied that particular buildings or works to which the application related were only included therein because the applicant had reason to believe that permission for the other development to which the application related would not have been granted except subject to a condition requiring the erection or construction of those buildings or works, then, for the purposes of this Part of this Act—

(*a*) the application shall be deemed to have included, in place of those buildings or works, such other development of the land on which the buildings or works were to be erected or constructed as might reasonably have been expected to have been included having regard to the other development to which the application related; and

(*b*) the permission shall be deemed to have been granted for the other development to which the application related subject to the condition aforesaid.

(4) In this Act, the expression " planning decision " means a decision made on an application under Part III of the principal Act (which relates to the control of development), and includes any decision deemed to have been so made by virtue of section seventy-seven of the principal Act (which relates to development authorised under interim development orders before the commencement of that Act) or of section seventy-eight of that Act (which relates to unfinished buildings), or by virtue of any of paragraphs 1, 2 and 3 of the Tenth Schedule to that Act (which relate to certain applications made under the Town and Country Planning Act, 1932), or by virtue of any regulations made under paragraph 13 of the said Schedule (which relates to certain applications under the Restriction of Ribbon Development Act, 1935).

(5) In this Act, the expression " new development " means any development other than development of a class specified in the Third Schedule to the principal Act (which relates to development included in the existing use of land); and for the purposes of this Act new development shall be taken to be initiated—

(*a*) if the development consists of the carrying out of operations, at the time when those operations are begun;

(*b*) if the development consists of a change in use, at the time when the new use is instituted;

(*c*) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times aforesaid.

NOTES

This section introduces Part II (ss. 16–29) of the Act, which provides for payment of compensation in some cases where planning permission is refused or granted subject to conditions by a decision on or after 1st January 1955. Where Part VI claims established under the Act of 1947 survive 31st December 1954, they are converted into an " unexpended balance " of established development value; and payments under this Part are made by reference to this balance (if any). Compensation on the revocation or modification of express planning permissions, or the withdrawal of permitted development under a development order, is payable under the Act of 1947, as amended and supplemented by Part IV of the present Act (ss. 38–41), *post*. Part V makes provision for all earlier and similar cases, *i.e.*, refusals, conditional grants, revocations and modifications of permission by decisions or orders on or after 1st July 1948, and before 1st January 1955. Logically, Part V might have been placed before Part II, but Part II serves as a model for subsequent Parts, and contains most of the machinery for tracing the life-history of claims as affected by the present Act. The balance of development value, as at 1st January 1955, is increased by an amount of one-seventh, representing interest, and thereafter no interest is added. The balance is reduced or extinguished when compensation is payable under this Part, and this Part also requires account to be taken of development value actually realised by carrying out development. Compensation is payable out of public moneys by the Minister, who has power to review the decision which gives rise to the claim. A compensation notice may be registered, as a local land charge, showing the amount of compensation paid; if development is subsequently permitted the compensation must usually be paid back, as a sort of development charge. Other Parts of the Act apply the book-keeping provisions of this Part, and contain similar provisions for reducing or extinguishing the unexpended balance. In certain cases, *e.g.* where compensation, registered in a notice, is repaid to the Minister, an amount is added back to the unexpended balance or is regarded as never having been deducted.

The present section indicates some of the limits on compensation under this Part, which applies only to development outside the Third Schedule to the Act of 1947, termed " new development ", and provides compensation only if, and so long as, there is an unexpended balance. Other sections in this Part, *post*, contain exclusions and restrictions, some of them absolute in operation, and others causing difficulty or delay. Compensation is excluded or reduced in amount in the following cases:

(1) This Part does not apply to Third Schedule development; see sub-s. (5), *supra*.

(2) No compensation is payable on a refusal of permission for development which " consists of or *includes* " making a material change of use; see s. 20 (1) (*a*), *post*, and particularly the notes thereto.

(3) Compensation is limited by the amount of the unexpended balance, and is excluded where the balance (if any) is exhausted. Intending claimants are affected by—

(*a*) failure to make a Part VI claim by a freeholder or any lessee or tenant under the Act of 1947, or the re-assessment of claims under paras. 6 to 12 of the First Schedule, *post;*

(*b*) exclusion of any claim under s. 63 of the Act of 1947; see s. 1 (3) (*a*), *ante;*

(*c*) pledging of any claim as security for development charge and consequent set-off under s. 2 (2) (*a*), *ante*, and the Second Schedule, *post*;

(*d*) payments in respect of certain war-damaged land made or to be made under s. 59 of the Act of 1947; see s. 2 (2) (*b*), *ante*, and the Third Schedule, *post;*

(*e*) payments under Part I, *ante*, under Cases A to D, or the analogous cases in ss. 9 and 10, or the residual cases in s. 11;

(*f*) payments made or to be made under Part V, *post*, in respect of orders or decisions before 1st January 1955;

(*g*) the value of any development required by s. 18 (4), *post*, to be taken into account by deducting it from the unexpended balance;

(*h*) payments already made under this Part;

(*i*) payments of compensation in connection with an acquisition of land as mentioned in Part III, *post*;

(*j*) payments of compensation for revocation or modification of permission after 1st January 1955, if these include compensation (such as is mentioned in s. 40, *post*) contributed by the Minister, *i.e.*, in effect compensation out of the unexpended balance for loss of development value;

(*k*) the adding back of development value in special cases; see ss. 29 (9) and 37 (3), *post*;

(*l*) any apportionments attributing development value to parts of the land; see ss. 17 and 18, and notes thereto, *post*;

(*m*) any modifications affecting minerals and mineral land; see s. 54, *post.*

(4) Compensation is payable under s. 22 of the Act of 1947, and not under this Part of this Act, where the refusal or conditional grant is treated as a revocation or modification, *i.e.*, where the development was permitted by a development order but the permission was withdrawn; see s. 19 (5), *post.*

(5) No compensation is payable for conditions imposed on mineral working; see s. 20 (2), *post.* The general scheme of this Part of the Act is also affected, in its application to mineral-bearing land, by the T. and C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, made under s. 54, *post*, and s. 81 of the Act of 1947.

(6) Land falls outside this Part in certain cases where it is or was local authority land, operational land of statutory undertakers or operational (*i.e.*, "specified") land of the National Coal Board; see s. 19, *post*, and notes thereto.

(7) Compensation is not payable for certain conditions relating to use, access, lay-out, disposition and design; see s. 20 (2), *post.*

(8) Some applications may be said to be premature and in effect postponed; see s. 20 (3), *post.*

(9) Compensation is excluded where land is said to be liable to subsidence or flooding; see s. 20 (4), *post.*

(10) Compensation is excluded where permission is regarded as available for certain other development; see s. 21, *post.* This may happen, for example, where the Minister reviews the decision under s. 23, *post.*

(11) Compensation may be reduced or excluded by the method of assessment under ss. 25–27, *post, e.g.*, by the assumption that previous decisions were "to the contrary effect", by disregarding past revocations or modifications or by following previous apportionments as binding.

(12) Compensation is not payable under this Part where the application was for advertisement consent; see s. 20 (1) (*b*).

(13) Compensation must be claimed in time; see s. 22, *post.*

The original unexpended balance of any land is derived from the Part VI claim or claims. Subject to the effect of the Minerals Regulations (S.I. 1954 No. 1706), *post*, the surviving claims are added together, and increased by one-seventh (see s. 17, *post*). This in itself may involve apportioning claims where there are one or more claims with areas which do not coincide either because different units were originally chosen or because one or more sub-divisions have been made already for the purposes of this Act, *e.g.*, under s. 15 (3), *post.* The largest basic unit is the largest area which has a uniform history. What this is, and what is the amount of the original unexpended balance attributable to it or any part of it, cannot be known for certain at first, but see s. 48, *post*, for the duty of the Central Land Board to give such information as is available from time to time. After 1st January 1955, there will be further sub-divisions of the original unit whenever an act or event affecting the amount of the balance does not relate to the whole area; see s. 18, *post.*

Where development of the land falls to be taken into account, under s. 18 (4), *post*, the potential value of the unexpended balance may be said to vary from day to day with changes in land values, as the assessment of the amount to be taken into account

does not take place until some subsequent time. This may cause some difficulty, particularly to intending purchasers, but see the notes to s. 48, *post*.

The unexpended balance enures for the benefit of persons from time to time having interests in the land. No assignment of the balance after the appointed day is possible (see s. 60, *post*). There will frequently be cases where the interests of persons entitled will conflict, and some provisions for this may have to be inserted in conveyances or leases. It is thought also that intending purchasers will normally wish to obtain express planning permission before entering into a binding contract, as without permission they cannot safely pay more than existing use value, plus whatever the hope of obtaining permission, or compensation under this Part instead, may be worth. The nominal value of the unexpended balance is not a reliable guide, in view of the exclusions from, and limits upon, compensation.

Sub-s. (1).

For enabling compensation to be claimed. For other and more general purposes of this Part, see the General Note, *supra*. As to claims, see s. 22, *post*, and the T. and C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

Planning decisions. See sub-ss. (2) and (4), *supra*. Principally, refusals or conditional grants on an application for express permission are intended. See also ss. 19 (5) and 20 (6), *post*.

Commencement of this Act. 1st January 1955; see s. 72 (2), *post*, and the T. & C.P. Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598), *post*.

Permission. Planning permission is defined by s. 119 (1) of the Act of 1947 (Hill, p. 260; 48 Statutes Supp. 202) as the permission for development required by s. 12 of that Act. As to the meaning in the present Act of expressions used in the Act of 1947, see s. 69 (2), *post*.

Development. See ss. 12 and 119 (1) of the Act of 1947 (48 Statutes Supp. 44, 202); and s. 69 (2) of this Act, *post*. By sub-s. (5), *supra*, a definition of " new development " is provided for this Act; see notes thereto, *infra*.

Refused. For power to refuse permission, see ss. 14 (1), 15 (2) and 16 (2) of the Act of 1947 (Hill, pp. 71 *et seq.*; 48 Statutes Supp. 48 *et seq.*). For the right to appeal where no decision is reached on an application within the time allowed, see *ibid.*, s. 16 (3) and the G.D.O. 1950, arts. 5 (8) and 11 (Hill, 2nd Supp., pp. B174, B180). A failure to decide is not, in itself a refusal; but see s. 69 (3) as to the time and effect of decisions, *post*. See, further, notes to sub-s. (4), *infra*.

Granted subject to conditions. See the Act of 1947, s. 14 (Hill, p. 71; 48 Statutes Supp. 48). Conditions may apply to " any land under the control of the applicant "; *ibid.*, s. 14 (2) (*a*), and as to who may apply, see *Hanily* v. *Minister of Local Government & Planning*, [1952] 1 All E.R. 1293; [1952] 2 Q.B. 444; 3rd Digest Supp. " Temporary " permissions, *i.e.*, permissions for a limited period only, are those with a condition for the removal of buildings or works, or for discontinuance of a use, and for any necessary reinstatement, at the end of a specified period; see the Act of 1947, ss. 14 (2) (*b*) and 119 (1) (Hill, pp. 71, 260; 48 Statutes Supp. 48, 202). There is little point in imposing conditions which cannot be enforced under *ibid.*, ss. 23 and 24 (Hill, pp. 91–96; 48 Statutes Supp. 64, 67). On the desirability of avoiding certain forms of condition, see paras. 10–18 of the Ministry Memorandum accompanying Circular 58/51 (Hill, 2nd Supp., pp. B386–B388). The time limit on the power of enforcing a condition is four years from the failure to comply (T. & C.P. (Amendment) Act, 1951; Hill, 2nd Supp., p. B36; 71 Statutes Supp. 94). Conditions should be clearly worded; see *Crisp from the Fens* v. *Rutland County Council* (1950), 114 J.P. 105, C.A.; 2nd Digest Supp. See, further, notes to sub-s. (4), *infra*.

Sub-s. (2).

Any land. Land here presumably means land in the physical sense; see definition as " any corporeal hereditament including a building as defined " in s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 202), and, for the availability of that definition in this Act, see s. 69 (2), *post*; and as to what is the largest basic unit of land in this Part of this Act, see the General Note, *supra*, and s. 17 (1), *post*, and notes thereto. Here the reference is to the land affected by the decision, which may include all or part of one or more such units.

Planning permission. See notes to sub-s. (1), *supra*, and sub-s. (4), *infra*.

Refused; Granted subject to conditions. See notes to sub-s. (1), *supra*, and sub-s. (4), *infra*.

At the time of the planning decision. As to what is a planning decision, see notes to sub-s. (4), *infra*. If a decision is given by the local planning authority or its delegate and there is no appeal, the time of the decision seems to be the date on which a decision is reached, but might be held to refer to the date of giving notice of the decision to the applicant; see s. 14 (3) (*d*) of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48) and art. 5 (8) of the G.D.O. (S.I. 1950 No. 728, Pt. I; Hill, 2nd Supp., p. B174). Time for appealing runs from the notification being received; see G.D.O. of 1950, art. 11

(Hill, 2nd Supp., p. B180). Where there is a decision followed by an appeal, the time of the decision is the time of the decision as made by the local planning authority; see s. 69 (2) (*d*), *post*. Where there is an appeal on the default of any notification in the time allowed by the G.D.O., art. 5 (8), *ubi supra*, the time of the decision is deemed to be the expiry of the time allowed; see s. 16 (3) of the Act of 1947 (Hill, p. 75; 48 Statutes Supp. 51) and s. 69 (2) (*c*) and (*d*) of the present Act, *post*.

Or part of the land. This phrase makes it clear that the land here referred to is the land affected by the decision, the whole or some one or more parts of which may have an unexpended balance; see the next note.

Has an unexpended balance. See the General Note, *supra*; and see s. 17, *post*, for the origin of the unexpended balance, and s. 18 and later sections, *post*, for its reduction, extinguishment, sub-division, etc., after 1st January 1955.

Sub-s. (3).

On an application. See note, *infra*, to sub-s. (4).

New development. By sub-s. (5), *infra*, this means development outside the Third Schedule to the Act of 1947; see notes to sub-s. (5), *infra*.

Land to which this section applies. See sub-s. (2), *supra*.

Planning decision. Principally this refers to refusals or conditional grants of permission on an application for express permission; see notes to sub-s. (4), *infra*. The other cases included in the definition are not likely to fall within the present sub-section.

After the commencement of this Act. That is, on or after 1st January 1955, the day appointed under s. 72 (2), *post*.

Satisfied. Cf. *Re City of Plymouth (City Centre) Declaratory Order*, 1946; *Robinson* v. *Minister of Town & Country Planning*, [1947] 1 All E.R. 851; [1947] K.B. 702, C.A.; 2nd Digest Supp. (decided on s. 1 of the Act of 1944; see Hill, pp. 437, 1296, 1300; 28 Statutes Supp. 22); *Re Beck and Pollitzer's Application*, [1948] 2 K.B. 339; 2nd Digest Supp.; and *Thorneloe & Clarkson, Ltd.* v. *Board of Trade*, [1950] 2 All E.R. 245; 2nd Digest Supp. The Minister should be given material on which he may be satisfied; his certificate, or refusal to certify, will be difficult or impossible to challenge.

Condition requiring the erection or construction. See s. 14 (2) (*a*) of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48).

In place of those buildings or works. The section contemplates that these buildings or works were included because it was clear to the applicant, *e.g.*, as a result of preliminary discussions with the authority or its officers, that permission would not otherwise be forthcoming. But for that inclusion, the applicant would have put something else, which he wanted, in place of the buildings or works, which the authority wanted. This subsection is also applied to past decisions by s. 42 (3), *post*. It puts the applicant in the same position, for the purposes of this Part of the Act (or Part V), as he would have been in if he had put in an application for what he wanted and had it granted subject to conditions requiring him to erect or construct the buildings or works desired by the authority. He need not therefore put in plans showing something he cannot hope to get, but can anticipate the authority's requirements without affecting the measure of compensation. As the Minister must then be asked to certify accordingly, the applicant will be wise to obtain a written acknowledgment from the authority in advance as to what are their requirements. This would seem to furnish adequate evidence of what the applicant " had reason to believe ".

The condition aforesaid. That is, the condition requiring the erection or construction of the buildings or works desired by the authority. In some cases, where not excluded under later provisions, compensation will be payable accordingly.

Sub-s. (4).

In this Act. Note that this is a general definition and is repeated by reference in s. 69 (1), *post*. Some of the " decisions " here mentioned have little or no relevance to this Part.

A decision. By sub-s. (2), *supra*, this Part of this Act deals with decisions refusing planning permission or granting it subject to conditions made on or after 1st January 1955. The decision in such cases is primarily to be made by the local planning authority; see next note. See, however, arts. 6–10 of the G.D.O. of 1950 (S.I. 1950 No. 728, Pt. I; Hill, 2nd Supp., pp. B177–B180) as to directions by the Minister or the Minister of Transport and Civil Aviation restricting the grant of permission, as to development not in accordance with the development plan, as to consultations and as to applications called in for decision by the Minister. In connection with art. 8 (development not in accordance with the development plan) see the direction in Circular 45/54 (H.M.S.O., 3d.). For the relevance of the development plan, see ss. 14 (1), 15 (2) and 16 (1) proviso of the Act of 1947 (Hill, pp. 71, 74 and 75; 48 Statutes Supp. 48 *et seq.*). See also *ibid.*, s. 36 (Hill, p. 119; 48 Statutes Supp. 85), and note the slightly different wording of s. 23 (5), *post*, relating to the Minister's review power.

On an application. These words distinguish between the two principal methods of obtaining planning permission. Development permitted by a development order is known as permitted development; see the G.D.O. of 1950 (S.I. 1950 No. 728, Pt. I), art. 3 and First Schedule (Hill, 2nd Supp., pp. B170 and B183–B202), and for this no application is necessary; see also *Godstone Rural District Council* v. *Brazil*, [1953] 2 All E.R. 763; 3rd Digest Supp. Express permission is sought by making an application in accordance with s. 13 (1) (*b*) of the Act of 1947 (Hill, p. 68; 48 Statutes Supp. 46) and art. 5 of the G.D.O. Applications are lodged, in counties, with the county district council (*i.e.*, the council of the non-county borough, urban district or rural district in which the land is situate), and, in county boroughs, with the county borough council. In London, applications in the City are lodged with the Common Council and other applications with the L.C.C. The decision of the local planning authority may be made by a local district council in accordance with a delegation agreement under s. 34 of the Act of 1947 (Hill, p. 115; 48 Statutes Supp. 83) or by the planning authority itself. As to the matters to be considered in reaching a decision, see previous note, *supra*, and cf. s. 23, *post*. In certain special cases a county or county borough council will not be the local planning authority, but may exercise delegated powers. Under s. 15 of the Act of 1947 (Hill, p. 74; 48 Statutes Supp. 50) the Minister may call in applications for decision in the Ministry. Under s. 16 of that Act there is usually a right of appeal to the Minister against the decision of the local planning authority, or its delegate, and against the failure to notify the applicant of a decision in the time allowed. The decision here referred to is the decision as altered on any appeal; see s. 69 (2) (*a*), *post*, but as to the time of its making, see note to sub-s. (2), *supra*, and s. 69 (2) (*d*), *post*.

There are other types of application under Part III of the Act of 1947, including:—

(1) An application under art. 5 (4) of the G.D.O. of 1950 (Hill, 2nd Supp., p. B173) for a determination, under s. 17 of the Act of 1947, whether operations or a change of use would involve or constitute development, and whether, if so, an application for permission is necessary.

(2) An application under art. 5 (3) of the G.D.O. for an approval after the grant of permission in outline (see Hill, 2nd Supp., pp. B173–B176).

(3) An application for some other sort of approval, e.g., that required by Condition 2 imposed on permitted development of Class XI of the First Schedule to the G.D.O. (Hill, 2nd Supp., p. B190), relating to restoration of war damage where it is proposed to alter the external appearance of the former building.

(4) An application for advertisement consent. Where consent is given by or under the Control of Advertisement Regulations of 1948 (as amended), see S.I. 1948 No. 1613 (Hill, pp. 842 *et seq.*, and Noter-Up in Hill, 2nd Supp., pp. B676 *et seq.*), amended by S.I. 1949 No. 1473 and S.I. 1951 No. 1038, then any necessary planning permission for development involved is deemed to be granted by s. 32 of the Act of 1947 (Hill, p. 113; 48 Statutes Supp. 81). No application for planning permission is needed (*ibid.*, s. 32 (1)), but the permission granted by the section is not deemed to be granted "on an application". The refusal or conditional grant of advertisement consent is, however, a decision made "on an application", and may be said to amount, though indirectly, to a refusal or conditional grant of planning permission. The exclusion of compensation in such a case is put beyond doubt by s. 20 (1) (*b*), *post*.

(5) An application under a tree preservation order. See s. 28 of the Act of 1947 (Hill, p. 103; 48 Statutes Supp. 73), as modified by the Forestry Act, 1951 (Hill, 2nd Supp., pp. B623–B625; 74 Statutes Supp. 2 *et seq.*).

(6) An application under a building preservation order; see ss. 29 and 30 of the Act of 1947 (Hill, pp. 105 *et seq.*; 48 Statutes Supp. 75 *et seq.*).

Of these, the types of application numbered (1), (4), (5), and (6) seem not to be relevant to the definition of planning decision in the present subsection, though they may give rise to problems in the assessment of compensation under this Part. The cases numbered (2) and (3), *supra*, are more difficult. An outline permission for the erection of buildings will normally be subject to general conditions appropriate at the stage of granting permission in this form, but the detailed effect of the permission is left to be determined at the later stage when approval is granted. Ministry of T. & C.P. Circular No. 87 envisages the imposition of further conditions, relevant to the matters reserved, at the approval stage (see Hill, 2nd Supp., pp. B346–B347). It is difficult to see how cases of this kind fit into the scheme of this Part of this Act.

As to cases where an industrial development certificate is required, see now s. 59, *post*.

Part III of the principal Act. The Act of 1947, ss. 12–36 (Hill, pp. 64–119; 48 Statutes Supp. 44 *et seq.*). See particularly ss. 13–16, mentioned in the previous note. S. 18 of that Act extends the power of granting permission for development to cover applications for the retention of buildings or works or continuance of a use (though retention and continuance are not "development" as defined in *ibid.*, s. 12). Ss. 75 and 76 in Part VIII of that Act (Hill, pp. 188–195; 48 Statutes Supp. 144 *et seq.*) further extend the powers given by Part III. There are adaptations of Part III

for special purposes, *e.g.*, for applying it to London, the Isles of Scilly, or development consisting of mineral working, and a variety of supplementary provisions, mostly in Part X of the Act of 1947. Attention is drawn also to s. 35 of, and the Fifth Schedule to, the Act of 1947 (Hill, pp. 116–119 and 274–277; 48 Statutes Supp. 84, 217) relating to land held by local authorities and statutory undertakers. Those provisions make many modifications to Part III; and in particular para. 1 (3) of the Schedule confers a right of compensation for the refusal or conditional grant of permission, with certain exceptions, for the development of operational land. Such compensation is not assessed under this Part of the present Act but is calculated on a special basis under the Fourth Schedule to the Act of 1944 (Hill, pp. 337–340), as modified by S.I. 1952 No. 161 (Hill, 2nd Supp., p. B287). Similar provisions are made for the National Coal Board by regulations under s. 90 of the Act of 1947 (Hill, p. 216; 48 Statutes Supp. 166).

So made. Grammatically this should refer to any decision deemed to be made on an application under Part III. Except as provided in s. 77 (3) of the Act of 1947, the permissions deemed to be granted under Part III by virtue of s. 77 or 78 of that Act were not deemed to be made " on an application ". They are clearly intended to be so regarded in the present subsection.

S. 77 of the 1947 Act. See Hill, p. 195; 48 Statutes Supp. 149. This made provision for treating interim development permissions granted under the old law between 22nd July 1943 and 30th June 1948 (both dates inclusive), as planning permissions under Part III of the Act of 1947. It did not apply to interim development permissions granted before 22nd July 1943, the date of the Royal Assent to the Town and Country Planning (Interim Development) Act, 1943 (repealed; see Hill, pp. 424 *et seq.*), nor to permissions, whenever granted, under an operative planning scheme under the old law. S. 77 only operated where any necessary permission under the Restriction of Ribbon Development Act, 1935 (repealed; see Hill, pp. 511 *et seq.*) had also been obtained. The deemed permission under s. 77 covered the development if and in so far as it had not been carried out before 1st July 1948, and was made subject to the conditions (if any) of both the interim development permission and the R.R.D. Act consent (if any). The deemed permission could be expressly revoked or modified under s. 21 of the Act of 1947, subject to compensation under s. 22 thereof (see Hill, pp. 87–91; 48 Statutes Supp. 60, 61) as if it had been granted " on an application " under Part III. S. 77 should not be confused with s. 76 of the Act of 1947 (Hill, pp. 192–194; 48 Statutes Supp. 147) relating to works and uses existing at 1st July 1948, which had been authorised subject to conditions as to time or otherwise under interim control or an operative scheme or under the R.R.D. (Temporary Development) Act, 1943 (repealed with savings; see Hill, pp. 510 and 537, and Hill, 2nd Supp., p. B291) or under an ordinary R.R.D. Act consent (see S.I. 1948 No. 1126, Hill, p. 778) or by a " deemed compliance " under the Building Restrictions (War-Time Contraventions) Act, 1946 (see Hill, pp. 573 *et seq.*; 36 Statutes Supp. 103, and *D'Alessio* v. *Enfield Urban District Council*, [1951] 2 All E.R. 754; 2nd Digest Supp.). The deemed permissions under s. 76 were for the retention or continuance of works and uses resulting from development before 1st July 1948. The deemed permission under s. 77 was for the carrying out or completion of development not started or not finished at that date.

S. 78 of the 1947 Act. See Hill, p. 196; or 48 Statutes Supp. 150. Though its marginal note was " unfinished buildings " its scope was somewhat wider; see *London County Council* v. *Marks & Spencer, Ltd.*, [1953] 1 All E.R. 1095; [1953] A.C. 535, H.L.; affirming the judgment in C.A. reported at [1952] 1 All E.R. 1150; [1952] Ch. 549; 3rd Digest Supp. Where any works for the erection or alteration of a building had been begun but not completed before 1st July 1948, permission was deemed to be granted under Part III of that Act for completion of the works, provided that the works at that time (immediately before 1st July 1948) could have been completed in conformity with the scheme or interim development control and that any necessary consent under the Restriction of Ribbon Development Act, 1935 (repealed; see Hill, pp. 511 *et seq.*; 25 Halsbury's Statutes (2nd Edn.) 384 *et seq.*) had been obtained. The deemed permission under s. 78 was subject to the conditions (if any) imposed by or under the planning scheme or by or under the interim development order and any conditions under the R.R.D. Act. Where ss. 77 and 78 of the 1947 Act overlapped, the deemed permission under s. 78 prevailed. Such permissions could not be revoked, or modified, under s. 21 of that Act.

Tenth Schedule to the 1947 Act. The Tenth Schedule (see Hill, pp. 302–310; 48 Statutes Supp. 242) was one of the Schedules introduced by s. 113, and contained transitional provisions and other provisions consequential on the repeal by that section and the Eighth and Ninth Schedules of nearly all the former planning Acts. **Para. 1** related to applications made but not decided under interim development or scheme control before 1st July 1948. These were deemed to be applications for planning permission made on 1st July itself to the local planning authority under the 1947 Act. **Para. 2** dealt with similar applications where there had been a decision before 1st July 1948, but there was still time to appeal. In these cases the decisions were treated for the purpose of enabling an appeal to be brought as if they were decisions of the local planning authority on an application for planning permission under the 1947 Act.

Para. 3 dealt with similar cases where an appeal had been brought before 1st July 1948 and was then pending. These were dealt with as appeals under the 1947 Act; and where there had been a hearing, the Minister was not bound to afford another opportunity of being heard. **Para. 4** dealt with certain directions calling in applications for decision in the Ministry, which were treated as similar directions under s. 15 of the 1947 Act; there is no need for an express mention of para. 4 in the present subsection, as the decision in such cases falls in the present definition of " planning decision " by virtue of para. 1 of the Tenth Schedule. The remainder of the Schedule is not relevant to the definition, except for **para. 13** mentioned, *infra*.

Restriction of Ribbon Development Act, 1935. For a general explanation of R.R.D. Acts and their continued importance (notwithstanding the repeal of most of their " planning " provisions), see Hill, pp. 509 *et seq*. For the Regulations under **para. 13** of the Tenth Schedule to the Act of 1947 (Hill, p. 305; 48 Statutes Supp. 244), see reg. 13 of the T. & C.P. (General) Regulations, 1948 (S.I. 1948 No. 1380; Hill, pp. 821, 822). This makes provision for treating applications for consent under those Acts, relating to works near roads and means of access, as applications for planning permission under the 1947 Act, and corresponds generally with paras. 1 to 3 of the Tenth Schedule, mentioned *supra*. Other transitional provisions, for the purposes of ss. 75 and 76 of the 1947 Act, were made by S.I. 1948 No. 1520 (Hill, p. 829), S.I. 1948 No. 1126 (Hill, p. 778) and S.I. 1952 No. 167 (Hill, 2nd Supp., p. B291), but these refer to things done on land before 1st July 1948; cf. note on s. 77, *supra*.

Sub-s. (5).

New development. This subsection defines new development as any development falling outside the Third Schedule to the Act of 1947 (Hill, pp. 271–273); see also the Use Classes for Third Schedule Purposes Order, 1948 (S.I. 1948 No. 955; Hill, pp. 753–757); s. 112 of the Act of 1947 (Hill, pp. 247–248; 48 Statutes Supp. 194); s. 1 (2) of the T. & C.P. (Amendment) Act, 1951 (Hill, 2nd Supp., p. B35; 71 Statutes Supp. 95), and the very important amendments effected by s. 71 of the present Act, *post*. The tolerances to the existing use allowed by the Third Schedule, as originally enacted, were specified in classes usually by reference to the condition or use of the land on 1st July 1948, or, in some cases, by reference to the period between then and 7th January 1937 (ten years before the introduction of the Bill for the 1947 Act). The effect of the amendments to the Third Schedule effected by the present Act is to bring in later development for certain purposes and within certain limits; see the notes to s. 71 and to paras. 3 and 4 of the Seventh Schedule, *post*. As to when references to the Third Schedule of the Act of 1947 are to the original or the amended Schedule, see ss. 69 (9) and 71 (4), *post*. As to when temporary or contravening development is within the Schedule, see para. 4 of the Seventh Schedule to the present Act, *post*.

Initiated. The purpose of this provision is to say when development begins, and the word " initiated " seems to be used in contrast to the expression " carried out ", which points to the completion of development. Operations may clearly have a beginning and ending, and perhaps even a change of use may take time; cf. *Burgess* v. *Jarvis & Sevenoaks Rural District Council*, [1952] 1 All E.R. 592; [1952] 2 Q.B. 41, C.A.; 3rd Digest Supp. (by s. 23 of the Act of 1947, Hill, p. 91; 48 Statutes Supp. 64, an enforcement notice thereunder is required to allow a period for steps to be taken to comply with it, including where appropriate the discontinuance of a use. Roxburgh, J., commented, " this Act is not concerned with metaphysical operations ".).

Consists both of . . . operations and of a change in use. Presumably this may be the case whether any reference to change of use is made in the permission or not. Section 18 (3) of the Act of 1947 (Hill, p. 80; 48 Statutes Supp. 55) provides that where permission is given to erect a building its use may be specified, and that if no use is specified the permission will include permission to use the building for the purpose for which it is designed. Section 78 (2) of that Act makes similar provision for permissions deemed to be granted for the completion of works for the erection or alteration of a building unfinished at 1st July 1948. Para. (*c*) of the present subsection will have to be construed consistently with whatever interpretation may be put on s. 20 (1) (*a*) of the present Act, *post*.

17. Unexpended balance of established development value.—(1) For the purposes of this Act land shall be taken to have an unexpended balance of established development value immediately after the commencement of this Act if there are then subsisting one or more claim holdings whose area consists of that land, or includes that land together with other land, and there is not then subsisting any claim holding whose area consists of part only of that land, whether with or without other land.

(2) Where subsection (1) of this section applies, there shall be attributed to the land referred to in that subsection—

(*a*) the value of any claim holding having an area consisting of that land; and

(*b*) such fraction of the value of any claim holding whose area includes that land as attaches to that land;

and the unexpended balance of established development value of that land immediately after the commencement of this Act (hereafter in this Act referred to in relation to that land as its " original unexpended balance of established development value ") shall be taken to have been an amount equal to eight-sevenths of the amount or aggregate amount so attributed.

NOTES

This section states the method of arriving at the original unexpended balance of established development value. The method is simply to add up the claims, or relevant fractions of claims, which survive the appointed day. No re-assessment on the basis of a freehold is attempted, although the balance is to be taken as attaching to the land itself.

The time referred to in the section is expressed to be " immediately after " 1st January 1955, so as to take account of the effect of Parts I, *ante*, and V, *post*. Part I, dealing with past events giving rise to payments thereunder, also provides for taking into account the pledging of claims to the Central Land Board and the payments under the War Damage Scheme under s. 59 of the Act of 1947, and deals with certain cases where Part VI claims were divided. In these cases claim holdings may fall to be treated as reduced in value, extinguished, or sub-divided " immediately before " the commencement of this Act, or at some earlier time. Part V, which provides for compensation for other past events by reference to a claim holding existing " at the commencement " of this Act, contains similar provision for treating claim holdings as reduced, extinguished, or sub-divided, " immediately before " the commencement. The following provisions effect sub-divisions:—

(1) Section 2 (2) (*a*), *ante*, and the Second Schedule, *post* (claims pledged to the Central Land Board); see particularly paras. 2 (2) and 5 (3) of the Schedule, *post*.
(2) Section 2 (2) (*b*), *ante*, and the Third Schedule, *post* (war damage scheme payments); see particularly para. 4 (1) of the Schedule, *post*.
(3) Section 2 (3), *ante* (dispositions of part of the benefit of a Part VI claim).
(4) Section 15 (3), *ante* (effect of payments under Cases A to D, analogous payments under ss. 9 and 10, and residual payments under s. 11).
(5) Section 46 (3), *post* (compensation paid under Part V).

The original claim areas of two (or more) claims whose areas included the same land may not have coincided. Sub-division of any claim holding, where there were two or more, even if they originally coincided, may also result in the existence of areas which do not coincide. The largest basic unit, *i.e.*, the largest area which taken as a whole has an original balance, is the largest area with a uniform claim history. Usually, where this unit is taken to have an original balance, any part of it, taken separately, is also regarded as having such a balance. However, this is not necessarily so, *i.e.*, there may be some part to which no portion of the claim holding or holdings in question is to be attributed. This would be the case where land included in a claim area need not have been included, *i.e.*, the authority determining the claim would, if it had been necessary to do so, have attributed no value to this part in an apportionment of development value as between that part and the residue of the claim area.

The basic unit referred to, *supra*, may be found, in a complicated case, by outlining the original claim areas on a map and indicating the lines of division in any case where sub-division is required under the provisions of this Act mentioned, *supra*. The lines drawn will wholly enclose a number of areas, and these, subject to the elimination of any where the claim holding or holdings are exhausted, will be the basic units. For example:—

(*a*) Two claims were made in respect of parts of Blackacre. One claim area was larger than, and wholly included, the other. There will be two basic units, one being the smaller claim area and the other the residue of the larger.
(*b*) Two claims were made in respect of Whiteacre, and their areas overlapped, *i.e.*, part, but not the whole, of each was common to the other. Here there will be three units, one being the common portion and the others being the residual parts of the two claim areas.

The original balance of any such unit, or any part of a unit, is found by adding together the claim holdings in so far as they attach to the land in question; see notes to sub-s. (2), *infra*. To this is added one-seventh as a lump sum roughly representing interest, less tax, since 1st July 1948. No further interest accrues.

After 1st January 1955 the original balance will be reduced or extinguished in accordance with this Act and, in exceptional cases, restored by adding back some or all of the balance. Under s. 37 (3), *post*, a balance is for a special purpose added back, or artificially created where there was none before; in that case a notional claim holding, with seven-eighths of the required value, is deemed to have existed " immediately after the commencement of this Act ", so that, when it is increased by one-seventh under

the present section, there will be an unexpended balance thereafter of the value required (*i.e.*, eight-sevenths of seven-eighths of £x equals £x). See also the comparable provision in s. 46 (2) proviso, *post*.

The present section may be varied, in its application to mineral land, by the Minerals Regulations made under s. 54, *post*; see particularly regs. 13, 14 and 19 of S.I. 1954 No. 1706, *post*. In certain cases, reg. 13 provides for separating mineral development value from other development value, and prevents the aggregation of claim holdings required generally by this section. Regs. 14 and 19 are concerned with deductions where minerals have been worked.

Sub-s. (1).

Commencement of this Act. 1st January 1955; see s. 72 (2), *post*, and the appointed day order (S.I. 1954 No. 1598), *post*.

One or more. For the claims which may have been made in respect of land, see Part VI of the Act of 1947. The interests in respect of which a claim might be made were an interest in fee simple or a leasehold interest; see s. 60 (3) of that Act (Hill, p. 161; 48 Statutes Supp. 120). A leasehold interest was defined by s. 119 (1) as the interest of a tenant under a lease including an underlease or an agreement for a lease but not an option to take a lease or a mortgage. In view of the method of assessment, it is unlikely that more than two claims will have been established in respect of substantially the same land, though " fringes " of claim areas may have overlapped. As to the reassessment of certain claims, see s. 1 (6) proviso, *ante*, and paras. 6–12 of the First Schedule, particularly para. 11, *post*, relating to " mixed " claims.

Claim holdings. By s. 2 (1), *ante*, repeated by reference in s. 69 (1), *post*, " claim holding " generally means the benefit of an established claim, as to which in turn, see s. 1 (5) and (4), *ante*. As to sub-division, see the General Note, *supra*; and cf. s. 2 (6), (7) and (8), *ante*, for other provisions (which apparently lose their importance under this Part of the Act). For other matters affecting the existence and amount of claim holdings, cf. the General Note to s. 16, *ante*, particularly the matters there numbered 3 (*a*) to (*f*). For an exceptional provision creating a deemed claim holding, see s. 37 (3), *post*.

Area. By s. 2 (1), *ante*, the area is *prima facie* the claim area, *i.e.*, the area in respect of which a claim was established, as to which in turn, see s. 1 (4) and (3), *ante*. As to sub-divisions, see the General Note, *supra*.

That land. This is the land which is to be taken to have an original unexpended balance, and is so defined that it can refer either to what is called, in the General Note, *supra*, the " basic unit " or to any part of such a unit (so long as it is a part to which any part of a claim holding is said to attach). The land affected by an act or event which will release a payment from the balance (*e.g.*, the land referred to in s. 16 (2), *ante*, as affected by a planning decision) is not known until the act or event occurs. When it is known, it will then have to be discovered whether any and, if so, what part or parts of it is land falling within the present section.

Sub-s. (2).

The value of any claim holding. Subject to the provisions of this Act, references therein to the value of a claim holding are references to the amount of an established claim; see s. 2 (1), *ante*. By reason of Part I or Part V of the Act, the claim holding as so defined may have been reduced in value or extinguished, or sub-divided; see General Note, *supra*, and General Note to s. 16, *ante*.

Such fraction . . . as attaches. This refers to the amount attaching to any part of an original claim area, being either what has been called, *supra*, a " basic unit " or part of such a unit. *Prima facie* it means the amount " properly attributable " to the land in question, *i.e.*, so much of the claim as might reasonably have been attributed to the land if the amount of the claim had been apportioned, by the authority determining the amount acting on the same principles as applied to the determination, as between that land and the residue of the claim area; see s. 2 (4), *ante*, and the proviso thereto, whereby the " properly attributable " amount may fall to be varied to take account of the reduction in value of a holding or its sub-division or both. This provision is so worded that it provides a method of sub-dividing the original unexpended balance automatically whenever this is necessary because some act or event affecting the balance does not extend to the whole of the basic unit. After such an act or event the land, taken as a whole, no longer forms a single unit, *i.e.*, the parts into which it must, thereafter, be regarded as divided will be taken to have had a separate original balance, made up of the value of so much of the value of the relevant holding or holdings as attached to each part, increased by one-seventh, and then the balance of each such part will be reduced or extinguished as may be required to take into account the act or event; see s. 18 (2), *post*. The amount to be deducted is likewise apportionable; see s. 18 (5), and cf. s. 28, *post*, as to apportionments in compensation notices.

Original unexpended balance. See the General Note, *supra*. As to certificates stating what the balance is (subject to outstanding claims under Part I or Part V), see s. 48, *post*.

Eight-sevenths. The increase by one-seventh is a rough capitalisation of interest from 1st July 1948, with tax deducted at the standard rate. By s. 65 (3) of the Act

of 1947 (Hill, p. 169; 48 Statutes Supp. 129) interest was to accrue at a prescribed rate until the date of satisfaction of the Part VI claim, when the claim would have been met by an issue of Government stock and the interest would have been paid in cash. This arrangement was one of the provisions repealed (with a saving declaration as to the intended effect of the present Act) by s. 2 (1) of the Act of 1953 (Hill, 2nd Supp., p. B697; 78 Statutes Supp. 135). As the date of satisfaction was intended to be in 1953, the present provision is substituted on the basis of a longer period (seven years at 3½ per cent. less tax); see para. 34 of the White Paper (Hill, 2nd Supp., p. B710) and the then Minister's explanation at 525 H. of C. Official Report 54.

Hansard. As to adding one-seventh, see note " eight-sevenths ", *supra*. Originally the one-seventh was to be added by other sections, *e.g.*, cl. 21 (2) (*b*) of Bill 72; as to this, see 530 H. of C. Official Report 305. For general purpose of this section, see H. of C. Official Report, S.C.C., 13th May 1954, col. 319 (references to cl. 18 and the Fourth Schedule of Bill 72, should now be to s. 17 and s. 2 (4), respectively).

18. Reduction or extinguishment of balance.—(1) Where in accordance with the last preceding section land has an original unexpended balance of established development value, then, subject to the next following subsection, the land shall be taken to have that balance at any time after the commencement of this Act except in so far as that balance is by virtue of any provision of this Act to be treated as having been reduced or extinguished immediately before that time.

(2) Where any land taken as a whole has an original unexpended balance of established development value, but at any time after the commencement of this Act an act is done or an event occurs in relation to any area consisting of, or including, part only of that land in consequence of which, by virtue of any provision of this Act, an amount would fall to be deducted from the original unexpended balance of that part of that land for the purpose of determining the unexpended balance thereof at any subsequent time, then, without prejudice to the operation of the preceding subsection with respect to any part of the land taken separately, the land taken as a whole shall be treated as not having any such balance at that subsequent time.

(3) Where compensation under this Part of this Act becomes payable in respect of the depreciation of the value of an interest in land by a planning decision, then, for the purpose of determining whether that land or any part thereof has an unexpended balance of established development value at any subsequent time, the amount of the compensation shall be deducted from the original unexpended balance of established development value of that land and the original balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.

(4) Where any new development of land is initiated after the commencement of this Act, or was initiated before the commencement of this Act but on or after the first day of July, nineteen hundred and forty-eight, being land which has an original unexpended balance of established development value, then, for the purpose of determining whether that land or any part thereof has an unexpended balance of established development value at any subsequent time—

(*a*) if the development related only to that land, the value of that development (ascertained, with reference to that subsequent time, in accordance with the provisions of the Fourth Schedule to this Act); or

(*b*) if the development related to that land together with other land, so much of the value of that development (so ascertained) as was attributable to that land,

shall be deducted from the original unexpended balance of established development value of that land and the original balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time:

Provided that this subsection shall not apply to any land in respect of any interest in which a payment under section fifty-nine of the principal

Act has become or becomes payable; and for the purposes of this subsection development initiated before the commencement of this Act shall be disregarded if—

(i) a development charge was determined to be payable in respect thereof, or would have fallen to be so determined but for any exemption conferred by regulations under Part VII of the principal Act, or by any provision of Part VIII of that Act; or

(ii) it has been certified by the Central Land Board with respect to that development under subsection (3) of section fifty-eight of this Act that a development charge could have been determined to be payable in respect thereof if the circumstances referred to in paragraphs (*a*) and (*b*) of subsection (1) of that section had not existed.

(5) Where an act or event has occurred in relation to any land in consequence of which any of the provisions of this Act requires an amount to be deducted from the original unexpended balance of established development value of that land or any part thereof, there shall be attributed to the various parts of that land so much of that amount as might reasonably be expected to have been attributed thereto if the authority determining the amount had been required to apportion it between those parts in accordance with the same principles as applied to its determination; and where two or more such acts or events have occurred in relation to the same land, those provisions shall apply cumulatively and the requisite deduction from the original unexpended balance of established development value of that land shall be made by reference to each of those acts or events.

NOTES

The original unexpended balance of established development value arises, under s. 17, *ante*, immediately after the commencement of this Act on 1st January, 1955. Subsequent acts or events may call for a reduction of the amount, or the extinguishment, of the balance. Payment of compensation under this Part, on the refusal or conditional grant of planning permission for new development, calls for such a deduction: sub-s. (3) of this section, *supra*; and sub-s. (4) requires the deduction of the value of development carried out, or begun (except in special cases mentioned in sub-s. (4) proviso). Similar provision is made in Parts III and IV, *post*, for deducting compensation paid thereunder by reference to the unexpended balance; see ss. 37 and 40 (2) (*d*) and reg. 11 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

The machinery of the present section is more complicated in operation than might be supposed. The land which has an unexpended balance, within the meaning of s. 17, *ante*, is not particularised at the commencement of this Act. There is no question of plotting it on a map and registering the amount of the balance against defined areas of land. The most that can be done is to choose an area, in respect of which the question of the existence and amount of the balance may become relevant, and work out, in the abstract, what the balance, if any, may be. Under s. 48, *post*, the Central Land Board will issue a certificate (for a fee) stating what the balance is, so far as it can be known, and adding, if the Board think fit, information about acts or events that will fall to be taken into account. One matter which will affect the balance at any future time is the initiation of new development, the value of which will be assessed, under sub-s. (4), *supra*, and the Fourth Schedule, *post*, only at a subsequent time when it becomes relevant; unlike development charge this deduction is "ambulatory" in operation, and is a sort of floating charge, of unascertained amount, to be set-off against established development value.

When an act is done or an event occurs, this section begins to operate, but cannot be seen fully at work until a second or third such act or event falls to be considered. The immediate effect of the first act or event is to modify the effect of s. 17, *ante*, in certain cases. If the act or event affects only part of what has been called, in the notes to that section, *ante*, a "basic unit" (*i.e.*, the largest area which, taken as a whole has an unexpended balance), the unit must be split. Thereafter, taken as a whole, it will not have a balance (sub-s. (2), *supra*) but, taken separately, some part or parts thereof may have a balance.

A planning decision giving rise to the payment of compensation under this Part of the Act, may affect land which, taken as a whole, has no unexpended balance; *i.e.*, the decision may affect more than one unit, or parts of more than one unit, which under s. 17, *ante*, can be regarded as having such a balance, or it may extend to land where there is no balance, or no balance left. In such a case the total depreciation of any

interest in land is apportioned, under s. 25 (2), *post*, between each part which, taken separately, can be said to have a balance, and the remainder of the land (if any). The deduction called for by sub-s. (3) of the present section is then to be made, at any subsequent time, by reference to each unexpended balance.

Similarly, new development initiated as mentioned in sub-s. (4), *supra*, may call for a deduction from more than one unexpended balance; para. (*b*) of sub-s. (4) in effect requires an apportionment of the value of the development between each separate part and any land which has no balance.

In either case (or on the happening of any other act or event which calls for a deduction from an unexpended balance) there is no actual book-keeping transaction at that time whereby the amount falling to be deducted will in fact be deducted. That will be done next time, and on every subsequent occasion; see sub-ss. (3) ("at any subsequent time"), (4) ("at any subsequent time"), and (5) (provisions affecting the balance are to apply cumulatively). On the subsequent occasion, if the land in question is exactly the same plot as was previously affected, the deduction from the balance can be made quite simply. If the land in question on a subsequent occasion has been previously affected only by the initiation of development, the value of that development will not yet have been assessed, and when it is assessed the amount attributable to the land in question on the later occasion will be ascertained (see sub-s. (4) (*b*), *supra*), and that amount will be deducted; or if more than one balance is then being considered, the requisite calculation is done in respect of each part which has a balance, and the appropriate amount is deducted from each balance. Similarly, where compensation has previously been paid, the land in question on a later occasion may not be the same, and this may call for an apportionment of the amount which, at the subsequent time, falls to be deducted. Under sub-s. (5), *supra*, it is required that such apportionment shall be made on the same principles as applied to the determination of the amount falling to be deducted.

Apart from the effect of sub-s. (2), *supra* (which may require parts of the land to be considered separately on subsequent occasions although, formerly, the land, taken as a whole, had an unexpended balance), the original unexpended balance of any land immediately after the commencement of the Act will continue until it is reduced or extinguished. If compensation under this Part is excluded for any reason, the balance will remain unaffected, and a subsequent act or event may give rise to a payment of compensation, unless, by the initiation of new development, the balance is exhausted. As the balance in effect enures for the benefit of the land, any person having an interest in the land may be affected by a claim made by any other such person. There will be cases where it is to the advantage of a claimant to attempt to apportion most of the value of a former claim holding to some part of the land rather than to another part, or similarly to apportion the effect of acts or events calling for a reduction of the balance; and there will be cases where a particular claimant has little concern with the making of apportionments which may, however, greatly affect other persons interested. Provision is made, in this Part, for allowing other persons interested in the land to intervene to some extent; see note "Cross-references", *infra*.

Cross-references. As to the position where the land affected by a planning decision giving rise to compensation under this Part does not, taken as a whole, have an unexpended balance, see s. 25 (2), *post*.

As to the duty of a claimant to furnish information about other persons' interests, see s. 22 (3) (*b*) and reg. 5 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, and cf. s. 48, *post*.

As to notice of the making of a claim being given to other persons, see s. 22 (5) (*b*), *post*, and cf. s. 48, *post*.

As to notice of the Minister's findings, see s. 27 (1) (*c*) and reg. 6 (4) of the above Regulations, *post*.

As to apportionments, see also the right of other persons to dispute them (s. 27 (2) and regs. 7 and 8 of the above Regulations, *post*), and the definition of "previous apportionment" in s. 69 (1), *post*.

As to the duty of the Minister, or the Lands Tribunal on appeal, to distribute compensation between parts of the land for the purpose of registration in a compensation notice, see s. 28, *post*. In default of express provision, such compensation is distributed over the land rateably according to area.

As to adding back to the unexpended balance, where registered compensation is recoverable, see s. 29 (9), *post*, and notes thereto, but see also sub-s. (4) of the present section.

As to the binding effect of apportionments, see s. 27 (3) and cf. s. 48 (5) and (6), *post*, and s. 13 (4), *ante*.

Sub-s. (1).

Unexpended balance. See s. 17, *ante*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the T. & C.P. Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598), *post*.

Reduced or extinguished. See sub-ss. (3) and (4), *infra*; and (in Part III) s. 37, *post*, and (in Part IV) s. 40 (2) (*d*), *post*. The last-mentioned provision and the application of sub-s. (3) of the present section by the Regulations (reg. 11 (1) of S.I.

1954 No. 1600), require the deduction of so much of the compensation payable on a revocation or modification of permission as was met by the exchequer contribution (paid to the compensating authority by the Minister by reference to the unexpended balance).

Immediately before that time. The deductions required to be made, by reference to an act or event, are not made at once but immediately before the subsequent time when the question of the unexpended balance next arises; see, for example, sub-s. (3) of this section. Where there have been two or more previous acts or events, the deductions are cumulative: see sub-s. (5) of this section.

Sub-s. (2).

Taken as a whole. See s. 17 (1), *ante*, and General Note to that section. The largest basic unit of land which, taken as a whole, has a balance on 1st January 1955, is the largest area with a uniform claim history till that date. Under the present subsection, when the history of the unexpended balance (after that date) ceases to be uniform, because an act or event extends to part only of such a unit, the land must be split. Taken as a whole, it no longer has a balance. Regarded separately, any part which still has a uniform history may still have a balance.

Sub-s. (3).

Under this Part. *I.e.*, Part II; but the present subsection is applied by reg. 11 (1) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, made under and for the purposes of Part IV of the Act; see s. 40 (2) (*d*), *post*. As to when compensation under Part II is to be paid, see s. 27 (4), *post* (the Minister is to pay it to the person entitled when it is determined under that section to be payable).

An interest in land. See s. 19 (1), and the definitions of " interest in land " and " tenancy " in s. 69 (1), *post*.

At any subsequent time. See General Note, and note, " Immediately before that time ", to sub-s. (1), *supra*. The deduction called for by the present subsection is made only at some subsequent time or times.

Or any part thereof. If, at a subsequent time, part only of the land is affected, the amount to be deducted will be apportioned; see sub-s. (5), *supra*.

Sub-s. (4).

Any new development. See s. 16 (5), *ante*, defining new development as development falling outside the Third Schedule to the Act of 1947 (as amended). Cf. also the note " Development " to s. 20 (1), *post*.

Is initiated . . . or was initiated. See s. 16 (5), *ante*. Note that the Third Schedule may apply differently at different dates, owing to the amendments made by s. 71 of this Act and paras. 3 and 4 of the Seventh Schedule, *post*. Some difficulty may arise, also, from the variation in the effect of the definition of development in s. 12 of the Act of 1947 (Hill, p. 65; 48 Statutes Supp. 44), (1) by the amendment relating to works for making good war damage (s. 1 (3) of the T. & C.P. (Amendment) Act, 1951, Hill, 2nd Supp., p. B36; 71 Statutes Supp. 95), and (2) by changes in the Use Classes Order made under s. 12 (2) (*f*) of the 1947 Act. The making good of war damage, however, will usually not be " new development " and as to (2), *supra*, the difficulty seems to be solved by the method of assessing the value of new development under the Fourth Schedule to this Act, *post*. Unless the development would still be development at the subsequent time it seems its value will not be assessed.

Commencement of this Act. 1st January 1955; see notes, *supra*, to sub-s. (1).

1st July 1948. The appointed day (in England and Wales but not the Isles of Scilly) for the general commencement of the Act of 1947, see s. 120 (2) (repealed) of that Act and S.I. 1948 No. 213 (Hill, pp. 266, 733; 48 Statutes Supp. 209, 294).

At any subsequent time. See General Note, and note " Immediately before that time ", to sub-s. (1), *supra*.

Related only to that land. This paragraph (para. (*a*)) deals with the simple case where the land developed has an unexpended balance and is the same land as falls to be considered at the subsequent time.

Fourth Schedule. The Schedule requires the value to be assessed by comparing two values of the land as it was before the development was begun, but by reference to prices current at the subsequent time in question, and in accordance with the rules, except r. (3), in s. 2 of the Act of 1919 (see Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977; and s. 65 of the present Act, *post*). The values to be compared are a " refusal value " and a " permitted value " of the land for the purpose of so much of the development as has been completed, with special provision for " temporary " and other conditional permissions.

Together with other land. Para. (*b*) deals with cases where the development extended to other land. If any part of the other land also had an unexpended balance, that will be considered separately. If none of the other land had a balance, the development of that other land will call for no deduction.

Section 59 of the principal Act. For s. 59 of the Act of 1947, see Hill, p. 159; 48 Statutes Supp. 118. As to payments thereunder, see the Planning Payments

(War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., pp. B94–B106), made by the Treasury under s. 59; and the Planning Payments (War Damage) Regulations, 1949 (S.I. 1949 No. 2255; Hill, 2nd Supp., pp. B106–B116). For an official explanation, see Form S.1.A (War Damage) issued by the Central Land Board (Hill, 2nd Supp., p. B569). Such payments are required to be set-off against claim holdings under s. 2 (2) (*b*) of the present Act, *ante*, and the Third Schedule, *post*. It is thought that most such claims will have been satisfied by a cash payment before the commencement of this Act. The Third Schedule, *post*, will in any case operate to reduce, extinguish or sub-divide claim holdings as from the date of the scheme, 12th December 1949. The unexpended balance of established development value will therefore be affected by the operation of the Third Schedule, and no further deduction is to be made, in respect of development initiated, under the present section. Special provision for the registration and recovery of s. 59 payments is made by s. 57 of the present Act, *post*.

Determined to be payable. See ss. 69 (5) and 49 (5) and (6) referred to in the next note, *infra*. Except in these special cases, see Part VII of the Act of 1947 and the Development Charge Applications Regulations, 1950 (Part II of S.I. 1950 No. 728, Hill, 2nd Supp., p. B204).

Part VII of the principal Act. That Part (ss. 69–74) of the Act of 1947 (Hill, pp. 175 *et seq.*; or 48 Statutes Supp. 132 *et seq.*) related to development charges. Subject to s. 3 of the Act of 1953, Part VII of the 1947 Act does not apply, and is deemed never to have applied, to operations begun or uses of land instituted after 17th November 1952; see s. 1 (1) of the Act of 1953 (Hill, 2nd Supp., p. B695; 78 Statutes Supp. 133). Sub-ss. (1) to (3) of s. 3 of that Act (Hill, 2nd Supp., pp. B700, B701; 78 Statutes Supp. 136, 137) preserved the effect of certain development charge exemptions arising under Part VIII of the Act of 1947. Section 3 (5) provided for the continuing liability for development charge necessary for the interim operation of the Mineral Set-Off Regulations, 1951 (S.I. 1951 No. 2156; Hill, 2nd Supp., p. B254). S. 1 (5) of that Act (Hill, 2nd Supp., p. B696; 78 Statutes Supp. 134) provided for repayment of charge paid in respect of development which escaped charge under that section. As to the effect of the Act of 1953, see s. 69 (5), *post*, which requires certain charges to be " deemed not to have been determined ". Under Part I of this Act, development charge may be set off against development value in two ways: (1) by s. 2 (2) (*a*) and the Second Schedule, a charge may be set off against a claim holding or holdings, and (2) under s. 14, a charge may be set off against a Part I payment or payments. Consequential arrangements are made by s. 49, *post*. For certain purposes, a charge paid by set-off is to be treated as " not having been incurred "; see s. 49 (6) (*a*), *post*. In certain special cases, where payment of charge was postponed under the arrangements as to houses for agricultural workers, the charge is to be treated as " not having been determined to be payable "; see s. 49 (5) and (6), *post*. Where charge has been paid by set-off, no further deduction is made under the present subsection; but in the case of houses for agricultural workers, where the charge is in effect waived, a deduction must now be made.

Determinations which ceased to have effect under s. 73 (2) of the Act of 1947 (Hill, p. 183; 48 Statutes Supp. 140) are also disregarded; see s. 69 (5), *post*.

Part VII of the Act of 1947 is not repealed, and when that Part applies the Applications Regulations thereunder (Part II of S.I. 1950 No. 728) are still available if a determination is required (see Hill, 2nd Supp., p. B204). *Quære*, as to the effect of charges determined on a temporary basis; it appears that the effect of s. 1 (3) and (4) of the Act of 1953 (Hill, 2nd Supp., p. B696; 78 Statutes Supp. 133, 134), relating to the continuance of uses or the retention of buildings or works, may be to bring such cases into the operation of the present subsection on the expiry of the period by reference to which development charge was assessed. If so, the value of this " development " may have to be taken into account (where it cannot be regarded as within the Third Schedule to the Act of 1947; cf. note, " Development ", to s. 20 (1), *post*, and see the new paras. 9 and 10 of the Third Schedule (as amended) to the Act of 1947, reprinted in the notes to the Seventh Schedule, *post*).

The exemptions from charge conferred by regulations under Part VII of the Act of 1947 were originally contained in the Exemptions Regulations of 1948 (S.I. 1948 No. 1188; Hill, pp. 779–783) and these were replaced on 25th July 1950, by the T. & C.P. (Development Charge Exemptions) Regulations, 1950 (S.I. 1950 No. 1233; Hill, 2nd Supp., pp. B223–B231). The 1950 Regulations were actually made on 11th July 1950 and the wider exemptions therein were, in practice, operated from an even earlier date, 13th June 1950, because the Minister directed the Central Land Board so to act.

Part VIII of the principal Act. That Part (ss. 75–92) deals with the application of the Act of 1947 to a wide variety of special cases (see Hill, pp. 188–220; or 48 Statutes Supp., 144–169). Some of the provisions conferring exemption from development charge in that Part are scarcely relevant here, because the land will often have no unexpended balance, or be excluded from the general scheme of this Part of the Act and Parts III and IV, *post*; see, for example, the position of local authority land, referred to in the notes to s. 19 of this Act, *post*. Exemptions under Part VIII arose

under s. 75 (7), 78 (3), 80 (2), 81 (2), 82 (3) and (4), 83 (2), 84 (2) and (3) and 85 (2) and (3) and, to some extent, ss. 87, 88 and 90. S. 80 dealt with " dead-ripe " land. S. 81 provided for the three-year " moratorium " for mineral development; as to this, see reg. 19 of S.I. 1954 No. 1706, *post*.

Section 58 of this Act. S. 58, *post*, is concerned with cases where development charge was, in effect, collected as part of the monopoly value of licensed premises.

Sub-s. (5).

Act or event. See the General Note, *supra*.

The same principles. This formula for apportionment should be compared with the latter part of s. 2 (4), *ante*, which defines what is meant by the " properly attributable " amount of a claim. Cf. also, s. 28, *post*.

19. Right to compensation in respect of planning decisions.—(1) Subject to the provisions of this Part of this Act, a person shall be entitled to compensation under this Part of this Act in respect of a planning decision such as is mentioned in subsection (1) of section sixteen of this Act if at the time of that decision he is entitled to an interest in any land to which the decision relates which has an unexpended balance of established development value, and the value of that interest, or, in the case of an interest extending to other land, the value of that interest in so far as it subsists in that land, is depreciated by the decision.

(2) Where an interest in land has (whether before or after the commencement of this Act) been compulsorily acquired by, or sold to, a public authority possessing compulsory purchase powers (not being statutory undertakers or the National Coal Board), that authority, and any person deriving title from that authority under a disposition made by that authority on or at any time after the first day of July, nineteen hundred and forty-eight, shall not be entitled to compensation under this Part of this Act in respect of a planning decision made after the service of the notice to treat, or after the making of the contract of sale, as the case may be, by reason that the value of that interest, or of any interest created (whether immediately or derivatively) out of that interest, is depreciated by that decision.

(3) The last preceding subsection shall apply to land which has at any time on or after the first day of July, nineteen hundred and forty-eight (whether before or after the commencement of this Act) been appropriated by a local authority for a purpose for which the authority could have been authorised to acquire the land compulsorily as it applies to land in which an interest has been acquired as mentioned in that subsection, with the substitution for the reference to the service of the notice to treat of a reference to the appropriation.

(4) Where any land is at the date of commencement of this Act, or at any date thereafter becomes, operational land of any statutory undertakers or land of the National Coal Board of a class specified in regulations made under section ninety of the principal Act, the statutory undertakers or, as the case may be, the National Coal Board, and any person deriving title from those undertakers or that Board, shall not be entitled to compensation under this Part of this Act in respect of a planning decision made after the relevant date aforesaid by reason that the value of any interest in that land is depreciated by that decision.

(5) A person shall not be entitled to compensation under this Part of this Act in respect of depreciation of the value of an interest in land by a planning decision if he is entitled to compensation under subsection (3) of section twenty-two of the principal Act (which relates to planning decisions following upon the withdrawal of permission granted by a development order) in respect of depreciation of the value of that interest by that decision.

NOTES

This section confers the formal right to compensation under this Part (Part II) of the Act in respect of such a planning decision as is mentioned in s. 16, *ante*. The decisions there mentioned are decisions (on or after 1st January 1955, on an application for permission for development outside the Third Schedule to the Act of 1947) whereby permission is refused or granted subject to conditions. Sub-s. (1) of the present section

allows such claims to be made by any person having an interest in the land to which the decision related, or part of it, at the date which is, or is taken to be, the time of the planning decision, if the land in which the interest subsists and to which the decision relates, or any part or parts of it, has at that time an unexpended balance of development value.

Sub-ss. (2) to (4) make exceptions in the case of local authority land, operational land of statutory undertakers (including the " specified " land of the National Coal Board) and other land acquired by public authorities. These have the effect of excluding from compensation under this Part not only the authorities and undertakers themselves in the circumstances mentioned, but also persons deriving title from them.

Sub-s. (5) excludes from the operation of this Part cases where permission is refused, or granted conditionally, for development formerly permitted by a development order (" permitted development ") where an application for express permission is made after the withdrawal of the development order permission. Compensation is payable, in such a case, under s. 22 of the Act of 1947 (Hill, pp. 88–91; 48 Statutes Supp. 61), as amended by Part IV of this Act, *post*.

The formal right to compensation, in sub-s. (1), *supra*, is subject to the various exclusions provided for by ss. 20 and 21, *post*, and to the other provisions of this Part (*e.g.*, it is dependent on making a claim in the time allowed by or under s. 22, *post*; cf. generally the notes to s. 16, *ante*). Sub-ss. (2) to (4), *supra*, should be read with s. 35 of, and the Fifth Schedule to, the Act of 1947 (Hill, pp. 116, 274; 48 Statutes Supp. 84, 217), and the Regulations thereunder, the T. & C.P. (Development by Local Planning Authorities) Regulations, 1951 (S.I. 1951 No. 2069; Hill, 2nd Supp., p. B249); and with ss. 82 to 84 and s. 90 of that Act (Hill, pp. 205–209 and p. 216; 48 Statutes Supp. 157–160 and 166) and the Regulations as to the specified land of the National Coal Board (S.I. 1951 No. 716; Hill, 2nd Supp., p. B237–B245). The Coal Board's non-specified land is not treated as operational land; see, for example, the Regulations as to Part VI claims in respect of such land under s. 60 of the Act of 1947 (S.I. 1951 No. 746; Hill, 2nd Supp., p. B245). The Fifth Schedule to the Act of 1947 modifies the provisions of Part III thereof in its application to operational land, and in particular provides for the payment of compensation to statutory undertakers where planning permission is refused, or granted conditionally, calculated, by reference to the effect on the carrying on of the undertaking, under the amended Fourth Schedule to the Act of 1944 (Hill, p. 337; 48 Statutes Supp. 273), as modified by S.I. 1952 No. 161 (Hill, 2nd Supp., p. B287).

As to disposals and appropriations of local authority land, reference may be made to s. 42 of the Act of 1947 (Hill, p. 128; 48 Statutes Supp. 93) and s. 19 of the Act of 1944, as amended by the Town Development Act, 1952 (Hill, p. 311 and Hill, 2nd Supp., p. B651; 48 Statutes Supp. 250 and 77 Statutes Supp. 200).

More general provisions as to disposals and appropriations are contained in the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 353), s. 163 (appropriation), ss. 164–166 (disposals), ss. 169 and 170 (parish councils) and s. 172 (corporate land of municipal boroughs); and in London similar provisions are contained in the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1073), ss. 106 to 109.

Comparison should also be made between sub-ss. (2) to (4), *supra*, and the special classes of land in the Sixth Schedule, *post*. S. 34, *post*, provides that planning permission granted for development of land in these classes may be taken into account in assessing compulsory purchase compensation under Part V of the Act of 1947 as modified by Part III of this Act, *post*. As to the financial liability of authorities which have acquired land at a restricted value or price, see s. 52, *post*.

The interests in land referred to in sub-s. (1), *supra*, do not include a mortgage term or the interest arising where a mortgagor has attorned tenant to his mortgagee. As to mortgages of an interest, see s. 65 (1) (*b*) and s. 66 and the Regulations thereunder, S.I. 1955 No. 38, *post*. As to claims by certain mortgagees of land, by rentcharge owners, and by trustees, see particularly regs. 4, 8 and 10 respectively of those Regulations.

Sub-s. (1).

Subject to the provisions of this Part. See, for example, ss. 20 and 21, *post*, and cf. notes to s. 16, *ante*.

Planning decision. See s. 16, *ante*, and the General Note to this section, *supra*.

At the time of that decision. See s. 69 (3), *post*, and cf. notes to s. 16 (2), *ante*.

An interest in any land. See the definitions of " interest in land " and " tenancy " in s. 69 (1), *post*. If the intending claimant has an interest in fee simple or a tenancy as defined, the land in which his interest subsists may not coincide with the area to which the decision relates, or with the area of any competing interest, or with any area which, taken as a whole, has an unexpended balance of established development value. As to the method of assessing and allocating compensation, see s. 25, *post*.

Unexpended balance. See ss. 17 and 18, and notes thereto, *ante*.

The value of that interest . . . is depreciated. See the method of measuring depreciation in s. 26, *post*, and note that the assumptions there required may exclude compensation in certain cases.

Sub-s. (2).

Interest in land. See definitions of " interest in land " and " tenancy " in s. 69 (1), *post*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day Order (S.I. 1954 No. 1598), Appendix, *post*.

Compulsorily acquired or sold. See definition of " compulsory acquisition " in s. 69 (1), *post*. In this context the word " sold " will not apply to every voluntary sale, but only to a sale by agreement to a person or body who could be or have been authorised to acquire compulsorily for the purpose for which the interest in land was bought.

Public authority possessing compulsory purchase powers. Means the acquiring authority where the purchase is compulsory, and in any other case a person or body who could be or have been authorised to acquire the interest compulsorily for the purpose in question. Where a county council could be or have been authorised to acquire compulsorily on behalf of a parish council or parish meeting the reference is to the parish council or meeting. This definition seems to include the case where an authority was in fact authorised to acquire compulsorily but the sale was effected by agreement under the authorisation so conferred (as well as purchases under an alternative authorising power, such as s. 40 of the Act of 1947, relating to sales by agreement). Cf. s. 69 (1), *post*. Where there was only a power to purchase by agreement, and no power to be authorised to acquire compulsorily, this definition will not apply.

Statutory undertakers. See notes, *infra*, to sub-s. (4), *supra*, which sufficiently deals with operational land.

Deriving title. Refers to any person who is a successor in title, whether deriving title immediately or indirectly; see s. 69 (7), *post*.

A disposition. In similar contexts, " disposal " in other statutes includes sale, exchange and lease or letting, and sometimes includes the creation of easements and rights. Gifts, mortages and charges are usually not included. Cf. statutes mentioned in the General Note, *supra*.

1st July 1948. The day appointed for the commencement of most Parts of the Act of 1947.

Notice to treat. See s. 119 (3) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205), requiring the inclusion of notices deemed to be served, *e.g.*, under the Sixth Schedule to the Act of 1944 (Hill, p. 342; 48 Statutes Supp. 277) or s. 19 of the Act of 1947 (Hill, p. 81; 48 Statutes Supp. 56). Notice to treat is the familiar name for the notice of intention to take lands mentioned in s. 18 of the Lands Clauses Consolidation Act, 1845 (Hill, p. 692; 3 Halsbury's Statutes, 2nd Edn., 902); but other analogous notices may also be referred to, if other statutes applied.

Sub-s. (3).

Local authority. See, by virtue of s. 69 (2), *post*, s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203).

Appropriated. An appropriation is a change in the purposes for which land is held by a local authority. It is effected by a resolution, usually requiring the consent of a Minister; cf. the General Note, *supra*.

Sub-s. (4).

Operational land. This is land which is used for the purpose of carrying on the undertaking, and land in which an interest is held for that purpose, other than land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of carrying on statutory undertakings; see s. 69 (2), *post*, and s. 119 (1) of the Act of 1947. Ss. 92 and 119 (2) of that Act (Hill, pp. 219, 261; 48 Statutes Supp. 169, 205), which relate to the determination of questions arising in relation to such land, are applied by s. 67 (4), *post*, to the similar questions arising under the Sixth Schedule to this Act; but are not thereby applied for the purposes of the present subsection.

Statutory undertakers. The persons authorised by any enactment to carry on a railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water; see s. 119 (1) of the Act of 1947 (Hill, p. 260; 48 Statutes Supp. 202).

National Coal Board. The Board was established by s. 1 of the Coal Industry Nationalisation Act, 1946 (16 Halsbury's Statutes (2nd Edn.) 276).

Specified. The specified land of the Board is defined by the T. & C.P. (National Coal Board) Regulations, 1951 (S.I. 1951 No. 716; Hill, 2nd Supp., p. B237), and roughly corresponds to operational land.

Section 90. For s. 90 of the Act of 1947, see Hill, p. 216; 48 Statutes Supp. 166.

Relevant date. *I.e.*, 1st January 1955, or the date thereafter when the land became operational, or specified, land.

Sub-s. (5).

Section 22 (3) of the principal Act. See notes to s. 38 (4) of the present Act, *post.*

20. Compensation excluded in respect of certain matters.—(1) Compensation under this Part of this Act shall not be payable—

(*a*) in respect of the refusal of permission for any development which consists of or includes the making of any material change in the use of any buildings or other land; or

(*b*) in respect of any decision made on an application in pursuance of regulations under section thirty-one of the principal Act for consent to the display of advertisements.

(2) Compensation under this Part of this Act shall not be payable in respect of the imposition, on the granting of permission to develop land, of any condition relating to—

(*a*) the number or disposition of buildings on any land;

(*b*) the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction;

(*c*) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land;

(*d*) the use of any buildings or other land; or

(*e*) the location or design of any means of access to a highway, or the materials to be used in the construction thereof,

or in respect of any condition subject to which permission is granted for the winning and working of minerals.

(3) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land if the reason or one of the reasons stated for the refusal is that development of the kind proposed would be premature by reference to either or both of the following matters, that is to say—

(*a*) the order of priority, if any, indicated in the development plan for the area in which the land is situated for development in that area;

(*b*) any existing deficiency in the provision of water supplies or sewerage services, and the period within which any such deficiency may reasonably be expected to be made good:

Provided that this subsection shall not apply if the planning decision refusing the permission is made on an application made more than seven years after the date of a previous planning decision whereby permission to develop the same land was refused for the same reason, or for reasons which included the same reason.

(4) Compensation under this Part of this Act shall not be payable in respect of the refusal of permission to develop land if the reason or one of the reasons stated for the refusal is that the land is unsuitable for the proposed development on account of its liability to flooding or to subsidence.

(5) In subsection (3) of this section, the reference to the development plan for the area in which the land is situated is a reference to the development plan for that area as approved by the Minister or, if the plan so approved has been amended by the Minister, to that plan as so amended.

(6) For the purposes of this section, a planning decision whereby permission to develop land is granted subject to a condition prohibiting development of a specified part of that land shall be treated as a decision refusing the permission as respects that part of the land.

(7) In this section the expression " means of access to a highway " does not include a service road.

NOTES

This is perhaps the most controversial section in this Act, both in its intention and in its interpretation (which gives rise to difficulty). It excludes compensation

in a number of cases under this Part of the Act, as envisaged in para. 35 of the White Paper (Hill, 2nd Supp., p. B711) on the principle of so-called good neighbourliness. Sub-ss. (1), (2), (6) and (7) are applied to past planning decisions by s. 43 (4), *post*. Precedent, of a sort, may be found in s. 19 of the Act of 1932 (see Hill, pp. 387–389; 48 Statutes Supp. 123, where s. 19 is printed in the notes to s. 61 of the Act of 1947) which permitted the inclusion of somewhat similar provisions in a planning scheme, if the authority and the Minister thought fit, subject to important safeguards in s. 19 (2) to (5) of that Act, which are now omitted. Similar exclusion of compensation, for the refusal of permission for Third Schedule development, is possible under s. 20 (5) of the Act of 1947 (Hill, p. 85; 48 Statutes Supp. 59) if it appears reasonable to the Minister to issue a direction to that effect. The more far-reaching provisions of the present section are not subject to or dependent on the exercise of a discretion, though planning authorities may feel inclined to omit conditions or reasons from their decisions to avoid hardship.

Sub-s. (1) (*a*) is intended to exclude compensation for refusal of change of use, but is unfortunately drafted. It is expressed to exclude compensation in respect of the refusal of permission for any development which consists of or includes the making of any material change in the use of any buildings or other land.

Under the Act of 1947, development for which permission is normally required by s. 12 (Hill, p. 65; 48 Statutes Supp. 44) is defined generally as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land; see s. 12 (2) of that Act, and cf. the notes to s. 16 of the present Act, *ante*. By s. 119 (1) of the Act of 1947 (Hill, pp. 257–261; 48 Statutes Supp. 202) land means any corporeal hereditament, including a building, which in turn is defined as including any structure or erection, or any part of a building as so defined, but not plant or machinery comprised in a building. When permission is sought for the carrying out of operations the applicant's proposal will frequently involve the institution of a new use on the land. By s. 18 (3) of the Act of 1947 (Hill, p. 80; 48 Statutes Supp. 55), the grant of permission for the erection of a building may specify the purposes for which the building may be used, and if no purpose is so specified the permission is construed as including permission to use the building for the purpose for which it is designed. Presumably such permission is required because the institution of the intended use is itself development, *i.e.*, the making of a material change in the use of any building or other land. If this were not so, presumably any use could be started in the building without fear of enforcement action under s. 23 of the Act of 1947 (which enables a local planning authority to serve an enforcement notice in certain cases where it appears that any development of land has been carried out without permission or that any conditions of a permission have not been complied with).

The typical case, often used in official pronouncements explaining the intended operation of this Part of this Act, is the case of an applicant for permission to build houses on agricultural or vacant land. The houses are intended to be inhabited, and permission is required to start using them, when built, for residential purposes. If permission is granted for the operations involved in the erection of any such building, permission for the institution of residential user will presumably be granted expressly or impliedly under s. 18 (3) of the Act of 1947. The development therefore appears to include the making of a material change in the use of the land on which each house is built. If the commencement of residential user is not a change of use it is difficult to see why permission is thought to be required for it under the Act of 1947.

The wording of para. (*a*) of sub-s. (1) appears, therefore, to exclude compensation in the very case which has been regarded as the typical one where compensation is payable. The present wording was substituted in Committee of the House of Lords for the original paragraph referring to refusal of permission for development which "does not consist in the carrying out of building, engineering, mining or other operations" (see [Bill 72] cl. 23 (1) (*a*), and 189 H. of L. Official Report 885–894 and 902–911). The Lord Chancellor, in reply to this point (see 189 H. of L. Official Report 1511–1512), gave the following explanation (*ibid.*, col. 1514):—

> "I would suggest that 'consists' means 'coextensive with'; and if it has that meaning . . . then a refusal of permission for a scheme of development which included an element of change of use was excluded from compensation under the old wording as it would be under the new. . . . But my comfort to the noble Lord is not quite so cold as that, and I suggest to him that the implications of the case are by no means so far-reaching as suggested. May I put this point to him? The form of words now in the Bill comes from the definition of 'development' in Section 12 of the 1947 Act. I suggest to the noble Lord that the word 'other' is, in fact, significant. There are two categories—building and other land—and we may have a change of use inside either. But, in my view, use of a building cannot be said to represent a use of the land different from the previous use of the site, because that involves a mixing of the two categories. As I say, I merely wish to bring that point before the noble Lord for his consideration. I think he will find it helpful in assuaging some of the doubts felt on the matter. I regret that, in the half-hour available, I have not been able to give him a lengthier discussion on the point."

This, presumably a considered explanation, was substantially repeated in the House of Commons (see 533 H. of C. Official Report 842–848). The Solicitor-General maintained (col. 846) that planning legislation had been working on the principle that the use of a building was distinct from a use of land, and that it was prescribed by statute (*semble*, by the definition of "use" in s. 119 (1) of the Act of 1947, Hill, p. 261; 48 Statutes Supp. 202) that putting up a building is not a use of land. He said that when a building is put up the land ceases to have a use as land. The building has no existing use, and s. 18 (3) bridges the gap by specifying, or impliedly specifying, how it should be used. Thereafter, once it has a use, any material change could be controlled as such under the 1947 Act. Nothing, he said, in s. 18 of that Act "advances at all towards the proposition that the use of a building, as a building, is a use of land. One would get the most absurd position if it did". He continued (cols. 847–848):—

> "What is excluded by the words [of para. (*a*)] are two categories of development, that which includes a material change in the use of the building and, a second category, development which includes a material change in the use of the other land, which means land other than buildings. The words come out of Section 12. What is not excluded is development which involves the change from one category to another—from the category of the use of land to the category of use of building. That is included.
>
> "When my hon. Friend . . . asks me the direct question whether compensation would be excluded by these words in the case of a developer who took, for instance, agricultural land and then built a cottage on the agricultural land and lived in it—he asked whether compensation would be excluded because there is involved in that process a change from agricultural land to a residence—the answer is, no. That is not excluded. It is not excluded by these words, because the use of the building is never a use of land in any sense. A use of a building for residence is not a use of the land. It would be contrary to all the principles by which this has ever been worked. The words do not have that effect."

With respect, this seems to be a novel and unacceptable interpretation of the Act of 1947; see notes, *infra*, to sub-s. (1). It is, however, likely that the present provision was drafted on this basis, and it is hoped that it will not be taken as a statutory recognition of the supposed effect of the 1947 Act. If it is, difficulty will arise under that Act. On the other hand, some interpretation must be found for the present provision which is consistent with the scope of this Part of this Act in so far as it may legitimately be inferred from its other provisions, including the remainder of the present section. It is doubtful whether the courts can make reference to Hansard (as cited, *supra*), but see *R.* v. *Oxford* (*Bp.*) (1879), 4 Q.B.D. at p. 550, C.A.; 16 Digest 277, *900*. If the words are read literally, the only cases for compensation under this Part where permission is refused will be those where the proposed development consisted entirely of carrying out operations without making a change of use, *e.g.*, extending a factory over land already having the required industrial user. It is suggested, however, that an acceptable meaning may be that compensation is not excluded where the only change of use involved is one necessarily resulting from the carrying out of operations, so that it can be said to result from rather than to be included in the development in question.

As to whether compensation under this Part may be payable for refusal or conditional grant of permission for the retention of buildings or works, or the continuance of a use, falling outside the Third Schedule to the Act of 1947 as amended, see the notes, *infra*, to sub-s. (1).

Sub-s. (1) (*b*) dealing with decisions made on an application for consent under the Control of Advertisement Regulations, makes it clear that compensation is not payable under this Part for a refusal or conditional grant of consent. This clarification is needed only because s. 32 (1) of the Act of 1947 (Hill, p. 113; 48 Statutes Supp. 81) provides that advertisement consent is deemed to carry with it any necessary planning permission for development which may be involved; so that, in a sense, it might be said that a refusal or conditional grant of such a consent is a refusal or conditional grant of the deemed planning permission under that section.

Sub-s. (2) excludes compensation for conditions under this Part where they relate to mineral working and other matters such as user, access to a highway (other than a service road), lay-out, or size, design and disposition of buildings. The possibility that such conditions would be imposed is also taken into account, in cases where compensation is payable, in the method of assessment under s. 26 (2) and (4), *post*.

Sub-s. (3) excludes compensation where permission is refused because development is said to be premature. In effect, where the proposal conflicts with a development plan indicating an order of priority for development or where there is a present deficiency of water supplies or sewerage services, compensation is delayed. The same reason for refusal will not exclude compensation after seven years, so that a further application can be made then or, indeed, earlier if the development would no longer be regarded as premature; and compensation will then be payable if, for some reason, permission is still refused. By a development plan is meant, not mere proposals intended to be inserted in a plan, or a plan or amendments to a plan submitted but not confirmed, but a plan as approved by the Minister or amended by the Minister.

Sub-s. (4) excludes compensation where permission is refused because the land is said to be unsuitable because of its liability to flooding or subsidence, but this is thought to be confined to cases where the liability already exists; *i.e.*, cases where some future works, such as mining destroying surface support, will make the land unsuitable may be proper cases for refusal of permission but compensation will not be excluded: the drafting " is directed to the liability of the land, in its existing state, to subsidence or flooding; it was not intended to refer to the land's liability, consequent on the proposed development, or indeed other development, to flooding or to subsidence " (189 H. of L. Official Report 1429).

Sub-s. (6) requires a condition prohibiting development of a specified part of the land covered by a permission to be treated as a refusal in respect of that part. If permission is granted in a form which merely has the effect of sterilising part of the land without expressly prohibiting development, that is not treated as a refusal (cf. an amendment rejected but discussed at 189 H. of L. Official Report 925–927; and see reg. 9 (3) of the revoked Mineral Set-Off Regulations, 1951, Hill, 2nd Supp., p. B265).

It will be seen that the effect of the exclusions is to prevent a payment out from the unexpended balance in respect of the matters mentioned. The balance accordingly remains available and may thereafter be paid out on some future act or event. No interest accrues during such postponement and in some cases there will be difficulty in claiming compensation for a later planning decision because of the method of assessment, which requires it to be assumed that any earlier decision giving rise to any compensation was " to the contrary effect ". Sub-s. (4) is also very drastic, and perhaps the only hope of obtaining payment of the unexpended balance attaching to land liable to subsidence or flooding is a future compulsory purchase under Part III, *post.*

Sub-s. (1).

Refusal. See sub-s. (6), *supra*, and generally, see s. 16 (2) and (4), *ante*. In Part II cases (but not Part V cases relating to compensation for refusals before 1st January 1955), see also s. 19 (5), *ante*, excluding from Part II compensation refusals on an application following the withdrawal of permitted development (granted by a development order); these are treated as revocations of permission and fall under Part IV, *post.*

Development. This Part (Part II) applies where application was made for " new development "; see s. 16 (2) and (5), *i.e.*, development other than that specified in the Third Schedule to the Act of 1947, as amended by s. 71 of this Act, and the Seventh Schedule, *post.* The Third Schedule has only a temporary or precarious application to some development; see paras. 9 and 10 thereof, inserted by para. 4 of the Seventh Schedule to this Act. It applies to " temporary " development only so long as it is covered by permission, and to contravening development if no enforcement notice is served. Such development, while the Third Schedule applies, is apparently not new development, but might be considered to be new development when the Third Schedule ceases to apply. If so, a claim might be made under this Part for the refusal or conditional grant of permission or further permission. Strictly it may be said that the retention of buildings or works constructed or erected without permission, or under an expired permission, or the retention of a use in similar circumstances, is not development at all (*i.e.*, it is not the carrying out of operations or the making of a material change in use) but s. 18 of the Act of 1947 (Hill, p. 80; 48 Statutes Supp. 55) provides that the power to grant permission to develop extends to such cases.

Includes. For the official explanation of what is not meant by this word, see the General Note, *supra*. On this view development consisting of the erection of a building cannot " include " the making of a material change in use, but see next two notes.

Material change. See s. 12 (2) of the Act of 1947 and the note thereto in Hill, pp. 65, 67; 48 Statutes Supp. 44, 45. For the former official view, see Ministry of T. & C.P. Circular 67 dated 15th February 1949 (Hill, pp. 1120–1121) and the Central Land Board's Practice Notes, paras. 7 and 101 (Hill, pp. 1247, 1267). See also *Holland* v. *Antrim County Council*, [1953] N.I. 1; 3rd Digest Supp. There are special cases where a change may be material but no permission is required; see s. 12 (5) and (3) (*b*) proviso; or where the change is not development; see s. 12 (2) (*d*) (*e*) and (*f*) (Hill, pp. 65, 66; 48 Statutes Supp. 44) and the Use Classes Order of 1950 (S.I. 1950 No. 1131; Hill, 2nd Supp., p. B214).

Buildings or other land. Land includes a building; see s. 119 (1) of the Act of 1947 (Hill, pp. 257 *et seq.*; 48 Statutes Supp. 202) applied by s. 69 (2) of this Act, *post.* The phrase is used in s. 12 of the Act of 1947 (Hill, p. 65; 48 Statutes Supp. 44) to replace that part of the similar definition in s. 53 of the Act of 1932 (repealed) (Hill, p. 406) which referred to making a use of " the land or any building thereon for a purpose which is different from the purpose for which the land or building was last being used "; cf. also the definition of " existing use " in that section (Hill, p. 407). As a building is now within the definition of land, the Act of 1947 proceeds to employ the phrase " use of land " to include use of a building, *e.g.*, in s. 12 (5) (Hill, pp. 66–67; 48 Statutes Supp. 45), and this has been accepted in the courts, *e.g.*, in *Pontypridd Urban District Council* v. *Max Stone, Ltd.* (1951), Estates Gazette, 5 (cited in Hill, 2nd Supp.,

p. B521). It appears from the transcript of the judgment of Lord Goddard, C.J., that use of a shop is a use of land for the purposes of s. 12. See also the Minister's decision in Bulletin of Selected Appeal Decisions XI/23 (Hill, 2nd Supp., p. B554), which proceeds on the assumption that if a building has no existing use the institution of any use is development requiring permission. It is suggested therefore that the official explanation of the words " building or other land ", in the General Note, *supra*, is without precedent and, with respect, erroneous. It is submitted—

(*a*) that a material change in the use of land is development, whether the land has a building on it or not;

(*b*) that land does not lose its existing use when a building is erected. A " building " can have an agricultural use; see s. 12 (2) (*e*) of the Act of 1947 (Hill, p. 66; 48 Statutes Supp. 44), which expressly refers to such a user; or be a minor structure or erection, such as a wireless mast or petrol pump; see *MacKenzie* v. *Abbott* (1926), 24 L.G.R. 444;

(*c*) that the making of a first use of a newly erected building is a material change in use, where the use in fact differs materially from the former use of the land. That is why s. 18 provides that the grant of planning permission shall specify a use or be so construed as to include permission for use for the purpose for which the building is designed;

(*d*) that if this were not making a material change in use it would not be development, and no enforcement notice could be served whatever first use of a building a developer might choose to make, unless there were an express condition restricting user. Under s. 18 such a condition is unnecessary;

(*e*) that s. 12 (2) uses the words " building or other land " as the shortest correct statement of what it intends. The phrase " building or land " would be incorrect and tautologous, and the phrase " land including a building " might be mis-read as excluding " land not including a building ". The subsection makes no distinction between use of a building and any other use of land, as appears from s. 12 (5) and other provisions of that Act.

(*f*) that the view expressed above is supported by all the earlier official explanations and cases.

It appears best, therefore, to accept that the employment of the word " includes " in the present subsection is a drafting error which must somehow be reconciled with the remainder of this Part of the Act. It is suggested that a change in use may sometimes be regarded as resulting from development rather than being part of the development itself, and that in such cases the present paragraph does not apply.

Regulations. The Town and Country Planning (Control of Advertisements) Regulations, 1948 (S.I. 1948 No. 1613) (Hill, pp. 842 *et seq.*), as amended by S.I. 1949 No. 1473 and S.I. 1951 No. 1038 (see Hill, 2nd Supp., pp. B676 *et seq.*).

Section 31. For the 1947 Act, ss. 31 and 32, see Hill, p. 110 *et seq.*; or 48 Statutes Supp. 79 *et seq.*

Consent for the display of advertisements. This is distinct from planning permission, though it carries with it, when granted, deemed permission for any development involved; see General Note, *supra*, and note, " on an application ", to s. 16 (4), *ante*, referring to s. 32 (1) of the Act of 1947.

Sub-s. (2).

This Part of this Act. *I.e.*, Part II, and see s. 43 (4), *post*, for the application of this and other subsections to Part V cases.

Imposition . . . of any condition. As to conditions imposed on the grant of planning permission, see notes to s. 16, *ante*. The conditions here mentioned are also taken into account for another purpose in s. 26 (2) and (4), *post*, which limits the measure of compensation, where payable.

Number and disposition. Cf. s. 19 of the Act of 1932 (repealed; Hill, p. 387) (which ought to have been considered when Part VI claims were assessed); s. 20 (5) of the Act of 1947 (Hill, p. 85; 48 Statutes Supp. 59); and see sub-s. (6) of the present section, *supra*.

Materials to be used. The provisions of the Public Health Act, 1936 (outside London), particularly s. 53, as modified by the Act of 1947 (Hill, p. 285), should not be overlooked (see Lumley's Public Health, 12th Edn., p. 2368; 19 Halsbury's Statutes (2nd Edn.) 350).

Loading, unloading or fuelling of vehicles. Cf. s. 17 (which is not repealed) of the Restriction of Ribbon Development Act, 1935 (Hill, p. 526; 25 Halsbury's Statutes (2nd Edn.) 385).

Use of any buildings or other land. Cf. General Note, *supra*, and notes to sub-s. (1).

Means of access. Cf. s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 202) defining " engineering operations " and " means of access ", but see sub-s. (7), *supra*, excluding a service road from the definition of " means of access ".

Winning and working of minerals. The total exclusion of compensation here is in marked contrast with the provisions of the revoked Mineral Set-Off Regulations, 1951 (S.I. 1951 No. 2156; Hill, 2nd Supp., p. B254), and the former practice in respect of assessing development charge on " non-near-ripe " or " dormant " minerals which fell outside the Regulations. See, particularly, reg. 19 of S.I. 1951 No. 2156; the Central Land Board's pamphlet, S.1A (Minerals), paras. 27 *et seq.*; and their supplementary practice notes on Minerals (Hill, 2nd Supp., pp. B275, B588 and B593). For the modifications of this Act, in its application to mineral land, see s. 54, *post*, and the Minerals Regulations (S.I. 1954 No. 1706), *post*.

Sub-s. (3).

Refusal. Note that this subsection applies to refusals, not conditional grants, of permission, and see sub-s. (6), *supra*.

The reason. This subsection mentions only one reason, prematurity, which may be arrived at by considering either or both of the matters mentioned in paras. (*a*) and (*b*). The seven-year delay cannot be operated twice.

Stated. *Prima facie*, this means a reason stated by the local planning authority (or its delegate; see s. 69 (4), *post*). Whether the Minister, on appeal, can uphold a decision but remove a stated reason is perhaps doubtful in view of s. 69 (3) (*b*), *post*, but perhaps this would be an " alteration " of the decision by " reversing or varying " part thereof; see s. 69 (3) (*a*), *post*.

Order of priority, if any. This is a vague phrase, presumably referring principally to the Programme Map. If no order is indicated, the proposed development cannot be judged premature by reference to it, as it does not exist.

Development plan. See sub-s. (5), *supra*.

Seven years. An effective application may be made before this period expires. If permission is still refused, but the reason is no longer stated, compensation can be paid despite this subsection.

Sub-s. (4).

The reason stated. Cf. notes to sub-s. (3), and the General Note to this section, *supra*. The present subsection may operate to exclude compensation for ever. *Semble*, if a reason were stated *mala fide*, as when the application related to land which was solid rock on top of a mountain, the courts might intervene to quash the reason, by *certiorari*, or it might simply be ignored as invalid.

Sub-s. (5).

Development plan . . . as approved. See generally Part II (ss. 5–11) of the Act of 1947 (Hill, pp. 46 *et seq.*; 48 Statutes Supp. 30 *et seq.*), and the Regulations thereunder. S. 36 of that Act (Hill, p. 119; 48 Statutes Supp. 85), containing temporary provisions pending the approval of plans, does not apply here. An approved plan must be available for inspection, and copies must be put on sale at a reasonable cost.

Sub-s. (6).

For the purposes of this section. *Semble*, this will affect other provisions applying sub-s. (2), *supra*; *i.e.*, if a condition is treated as a refusal as to part of the land, it should not be considered as a condition for the purposes of ss. 21 (2) and 26 (4), *post*.

21. Compensation excluded if certain other development permitted.—(1) Compensation under this Part of this Act shall not be payable in respect of a planning decision whereby permission is refused for the development of land if, notwithstanding that refusal, there is available with respect to that land planning permission for development to which this section applies:

Provided that where such permission is available with respect to part only of the land, this section shall have effect only in so far as the interest subsists in that part.

(2) Where a claim for compensation under this Part of this Act is made in respect of an interest in any land, planning permission for development to which this section applies shall be taken for the purposes of this section to be available with respect to that land or a part thereof if, immediately before the Minister gives notice of his findings in respect of that claim, there is in force with respect to that land or part a grant of, or an undertaking by the Minister to grant, planning permission for some such development, subject to no conditions other than such as are mentioned in subsection (2) of the last preceding section.

(3) This section applies to any development of a residential, commercial or industrial character, being development which consists wholly or mainly

of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination thereof.

NOTES

Compensation under this Part (Part II) of this Act is excluded if permission is regarded as available, within the meaning of this section, for development of a residential, commercial or industrial character. This section is applied to Part V cases by s. 43 (4), *post*, which, however, relates only to past planning decisions and not to orders revoking or modifying permission. S. 43 (4) proviso, *post*, modifies the present section, in those Part V cases where the claim holder cannot take advantage of such permission because he has sold the interest affected, as mentioned in s. 43 (1) (*b*), *post*.

Reference should also be made to s. 26 (2) (*b*), *post*, which requires permission which is "available" to be taken into account where compensation is payable; and to s. 43 (5), *post*, which makes similar provision in the case of orders modifying or revoking permission made before 1st January 1955 (again with a proviso for cases where the interest has been sold).

The development specified in sub-s. (3), *supra*, has been chosen, as proper for present purposes, because the Minister was advised that it could normally be regarded as reasonably remunerative development of any land, wherever situate. The Minister has power to review planning decisions; see ss. 23 and 24, *post*; and, furthermore, by s. 59, *post*, he can consider for this purpose certain applications which related to industrial development but were not supported by a Board of Trade industrial development certificate as required by s. 14 (4) of the Act of 1947 (Hill, p. 72; 48 Statutes Supp. 49). As to the review of past planning decisions, and past orders revoking permission, under Part V, see s. 45 (3) and (4), and s. 45 (5) applying s. 24 for the purposes of s. 45, *post*.

Cross-references.

As to "planning decision", "refused" and "planning permission", cf. the notes to s. 16, *ante*.

As to "interest in land", cf. the notes to s. 19, *ante*.

As to the Minister granting permission as respects part of the land, cf. s. 23 (2) and (4) (*a*), *post*.

Sub-s. (2).

Immediately before the Minister gives notice. See s. 27 (1) (*c*), *post*, or that provision as applied by s. 45 (1), *post*; and reg. 6 of S.I. 1954 No. 1600, *post*; notice is to be given to the claimant or claimants, and to persons interested in an apportionment. *Quære*, what date is to be taken for present purposes if all persons are not notified at the same time. As to certain Part V cases, see also the General Note, *supra*, and s. 43 (4) proviso, *post*.

A grant. This may arise, or have arisen already, on some other person's application; as well as under ss. 23 and 45 (3), *post*. An intending claimant should study the classes of permitted development granted, subject to any direction to the contrary, by the G.D.O. of 1950 (Part I of S.I. 1950 No. 728; Hill, 2nd Supp., pp. B163 *et seq.*); and should search the register of planning applications required by s. 14 (5) of the Act of 1947 (Hill, p. 72; 48 Statutes Supp. 49) to be kept by the local planning authority, as well as the local land charges register. See further art. 12 of the G.D.O. of 1950 (Part I of S.I. 1950 No. 728; Hill, 2nd Supp., p. B181). It may be important to consider the drafting of any conditions as to time imposed on former grants of permission, particularly where no steps have been taken to develop in accordance with such permissions. A grant of permission by or under the Act of 1947 may also arise in a number of special cases, without any application, *e.g.*, under s. 26 (6) (Hill, p. 99; 48 Statutes Supp. 70).

An undertaking . . . to grant. See ss. 23 (3) (*b*) and 45 (4), *post*. *Quære*, whether a direction under s. 19 (2) proviso (*b*) of the Act of 1947 (Hill, p. 82; 48 Statutes Supp. 56), to the effect that permission shall be granted if application is made, is an undertaking by the Minister to grant permission. See also ss. 22 (4) and 27 (3) of that Act (Hill, pp. 89, 101; 48 Statutes Supp. 62, 72) applying s. 19.

Sub-s. (3).

Houses, flats (etc.). All these expressions have been left intentionally vague. Some assistance may be derived from the definition of "industrial building", in s. 119 (1) of the Act of 1947, by reference to s. 15 of the Distribution of Industry Act, 1945 (see Hill, pp. 259, 263; 25 Halsbury's Statutes (2nd Edn.) 704), but the definitions in the Act of 1947 apply only where the context does not otherwise require; see s. 69 (2), *post*. Further guidance may be derived from the definition sections of the Housing Acts or the Factories Acts; or from the Interpretation articles of the General Development and Use Classes Orders, 1950 (Part I of S.I. 1950 No. 728; and S.I. 1950 No. 1131; Hill, 2nd Supp., pp. B167, B215).

22. General provisions as to claims for compensation.—(1) Compensation under this Part of this Act shall not be payable unless a claim for it is duly made in accordance with the provisions of this section.

(2) A claim for compensation under this Part of this Act shall not have effect unless it is made before the end of the period of six months beginning with the date of the planning decision to which it relates:

Provided that the Minister may in any particular case (either before, on or after the date on which the time for claiming would otherwise have expired) allow an extended, or further extended, period for making such a claim.

(3) Regulations made under this section may—

(*a*) require claims for compensation under this Part of this Act to be made in a form prescribed by the regulations;

(*b*) require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in the land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed.

(4) Any claim for such compensation in respect of a planning decision shall be sent to the local planning authority; and it shall be the duty of that authority, as soon as may be after receipt of a claim, to transmit the claim to the Minister, and to furnish the Minister with—

(*a*) any evidence or other information provided by the claimant in accordance with regulations made under this section; and

(*b*) such other information (if any) as may be required by or under regulations under this section, being information appearing to the Minister to be relevant to the exercise of his powers under the next following section.

(5) Where a claim is transmitted to the Minister under the last preceding subsection—

(*a*) if it appears to the Minister that the development to which the planning decision related was not new development, or that at the time of the planning decision no part of the land to which the claim relates had an unexpended balance of established development value, or that compensation is excluded by either of the two last preceding sections, the Minister shall notify the claimant accordingly, stating on which of those grounds it appears to him that compensation is not payable, and inviting the claimant to withdraw the claim;

(*b*) unless the claim is withdrawn, the Minister shall give notice of the claim to every other person (if any) appearing to him to have an interest in the land to which the planning decision related.

NOTES

Compensation under this Part (Part II) of this Act must be claimed as required by this section; the claim must be made within six months of the date of the decision, though the Minister may extend the time under sub-s. (2), *supra*.

The T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), Appendix, *post*, made under sub-s. (2), *supra*, prescribe the form of claim (see reg. 3 of and the Schedule to the Regulations). As to the information to be supplied to the Minister by the local planning authority, or its delegate, see sub-s. (4), *supra*; reg. 4 of the above Regulations; and Ministry Circular 78/54, dated 7th December 1954. As to information required of the claimant, see the prescribed form, and reg. 5, whereunder the Minister may issue a direction requiring evidence and further information.

Where a claim appears to the Minister to be excluded, because (1) it is not based on a decision affecting new development, (2) there is no unexpended balance, or (3) it comes within s. 20 or 21, *ante*, he may, in accordance with sub-s. (5), *supra*, invite the claimant to withdraw the claim, before the Minister notifies other interested persons. By withdrawing a claim, where other claims are maintained, a claimant may perhaps be placed in a difficult position on any appeal to the Lands Tribunal; see notes to s. 27, *post*.

The present section is applied with modifications to Part V cases by s. 45 (1), *post*. Claims in such cases are to be made in the same form within six months of 1st January 1955, or any extended time allowed by the Minister. Somewhat similar provision for Part I claims is made by s. 13 (1), *ante*, and the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599). The Minister has asked local authorities to advise

persons who, in Part I cases, mistakenly claim under the present section to write to the Regional Office of the Board. Leaflet Nos. COMP. 1B (Part II claims) and COMP. 1A (Part V claims) will be available for supply to the public.

Sub-s. (2).

Date of the planning decision. It is not clear whether the " date " of the decision is the same as the " time " of the decision as defined in s. 69 (3), *post*. If it is, there will be difficulty where an appeal is brought under s. 16 of the Act of 1947 (Hill, p. 75; 48 Statutes Supp. 51) as the appeal may not be decided before the expiry of six months from the time of the decision as defined. To avoid having to ask for an extension of time, the appellant in such a case may prefer to claim at once.

Sub-s. (3).

Form prescribed. See the Schedule to S.I. 1954 No. 1600, Appendix, *post*. Copies of the form will be available from local authorities concerned, who will receive stocks from H.M. Stationery Office. The Minister has asked local authorities to supply also the above-mentioned leaflets on Part II and Part V cases (see Circular 78/54). The claim need not be *on* the form so supplied so long as it is substantially *in* the prescribed form; see reg. 3 of the Regulations (S.I. 1954 No. 1600).

Sub-s. (4).

Local planning authority. *Semble*, by s. 69 (4) (*a*), *post*, this expression is taken to refer to the delegate authority when the decision was made by such an authority exercising powers on behalf of a local planning authority, and the Regulations are drafted on this assumption; see reg. 3 of S.I. 1954 No. 1600, Appendix, *post*. Delegate authorities are required to notify the local planning authority; *ibid.*, reg. 4. Reg. 4 (2) is expressed to require the local planning authority to furnish to the Minister a statement as to the provisions of the development plan and as to any suggested development for the purposes of s. 23 or, in Part V cases, s. 45, as well as any further information from time to time required for those purposes. The claimant's form and supporting documents, if any, with certain formal information will be transmitted to the Minister by the authority (which may be a delegate authority) receiving the claim.

Sub-s. (5).

Not new development. As to new development, see s. 16 (5) and notes thereto, *ante*; and cf. the note, " Development ", to s. 20 (1), *ante*; and see the notes to paras. 3 and 4 of the Seventh Schedule, *post*, where the Third Schedule to the Act of 1947 is set out with some explanation of when the amendments to the Third Schedule do or do not have effect.

Time of the planning decision. Cf. note, " Date of the planning decision ", to sub-s. (2), *supra*.

Unexpended balance. See notes to ss. 17 and 18, *ante*.

Compensation excluded. There are, in this Part, other exclusions of compensation, *e.g.*, in s. 19 (2)–(5), *ante*, but the common cases where a mistaken application can most easily be discovered at this stage will be those of exclusion by s. 20 or 21, here mentioned. Other exclusions, arising from the method of assessment of compensation, will be discovered later. Cf., generally, notes to ss. 16, 20 and 21, *ante*.

Appearing to him. The Minister is to decide who appears to have an interest in the land. He will rely, to some extent, on information supplied by the claimant and the local authority or authorities concerned. The use of the word " appearing " seems to be designed to prevent the suggestion that subsequent proceedings are invalidated by any omission to give notice. Cf. *Robinson* v. *Sunderland Corporation*, [1899] 1 Q.B. 751, 757; 38 Digest 154, *41*, and the note " Satisfied " to s. 16 (3), *ante*.

Interest in the land. See note, " An interest in any land ", to s. 19 (1) and General Note to that section, *ante*, and s. 69 (1), *post*.

23. Review of planning decisions where compensation claimed.—(1) The provisions of this and the next following section shall have effect where a local planning authority has transmitted to the Minister, in accordance with the last preceding section, one or more claims for compensation in respect of a planning decision, and the claim, or (if there is more than one) one or more of the claims, has not been withdrawn.

(2) If, in the case of a planning decision of the local planning authority, it appears to the Minister that, if the application for permission to develop the land in question had been referred to him for determination, he would have made a decision more favourable to the applicant, the Minister may give a direction substituting that decision for the decision of the local planning authority.

(3) If, in any case, it appears to the Minister that permission could properly be granted (either unconditionally or subject to certain conditions) for some development of the land in question other than the development to

which the application for permission related, the Minister may give a direction that the provisions of the principal Act and of this Act shall have effect in relation to that application and to the planning decision—

(*a*) as if the application had included an application for permission for that other development and the decision had included the grant of permission (unconditionally or subject to the said conditions, as the case may be) for that development; or

(*b*) as if the decision had been a decision of the Minister and had included an undertaking to grant permission (unconditionally or subject to the said conditions, as the case may be) for that development,

as may be specified in the direction.

(4) The reference in subsection (2) of this section to a decision more favourable to the applicant shall be construed—

(*a*) in relation to a refusal of permission, as a reference to a decision granting the permission, either unconditionally or subject to conditions, and either as respects the whole or as respects part of the land to which the application for permission related; and

(*b*) in relation to a grant of permission subject to conditions, as a reference to a decision granting the permission applied for unconditionally or subject to less stringent conditions.

(5) In giving any directions under this section, the Minister shall have regard—

(*a*) to the provisions of the development plan for the area in which the land in question is situated; or

(*b*) where a development plan has not yet become operative with respect to that area, to any directions which he may have given to the local planning authority as to the provisions to be included in such a plan and to any other provisions which in his opinion will be required to be so included for securing the proper planning of that area,

so far as those provisions are material to the development of that land, and shall also have regard to the local circumstances affecting the proposed development, including the use which prevails generally in the case of contiguous or adjacent land, and to any other material considerations.

NOTES

When a claim has been transmitted to the Minister, and the claim, or any one of several claims, in respect of the decision has not been withdrawn (see s. 22, *ante*), the Minister may review the decision. Before giving a direction under this section, the Minister must notify the claimant or claimants (except those whose claims have been withdrawn) and the local planning authority (see s. 24, *post*, which provides a right of objection; and consequential provisions as to claims where a direction is given). There is no provision requiring other persons interested to be notified at this stage.

The review power is not intended to alter the principles on which planning control has operated (see 525 H. of C. Official Report 42, 49–51 and 126; and for the origin of sub-s. (5), *supra*, see the amendments proposed, in clause 29 of [Bill 72], at H. of C. Official Report, S.C.C., 25th May 1954, cols. 470–473).

For the requirements of the Act of 1947 as to the decision of applications by a local planning authority, or the Minister, see ss. 14 (1), 15 (2), 16 (2), and 36 (Hill, pp. 71, 74, 75 and 119; 48 Statutes Supp. 48, 50, 51 and 85): in effect, regard must there be had to the development plan, or what is likely to go into the plan, and to any other material considerations. As to directions, and certain other limits on the local planning authority's powers, see s. 14 (3) and (4) of that Act, and cf. the note, " A decision ", to s. 16 (4), *ante*. S. 59, *post*, alters the effect of s. 14 (4) of the Act of 1947 in some cases where application was made for industrial development but was not supported by a Board of Trade industrial development certificate. Sub-s. (5), *supra*, is in terms borrowed from ss. 14 (1) and 36 of the Act of 1947, with the addition, however, that the Minister is expressly required to have regard to local circumstances " including the use which prevails generally in the case of contiguous or adjacent land ". The latter words are taken from ss. 82 to 85 of the Act of 1947 (Hill, p. 205 *et seq.*; 48 Statutes Supp. 157), and it might be said that they introduce the possibility of a considerable change in planning practice.

Under the present section, the Minister can alter a local planning authority's decision, although no appeal is brought; see sub-s. (2), *supra*; and can supplement its

effect by giving an undertaking under sub-s. (3) (*b*), *supra*, or actually granting permission which was not asked; see sub-s. (3) (*a*), *supra*. The Minister's own decision, where there was an appeal or the application was called in for decision in the Ministry, can be reviewed only as mentioned in sub-s. (3).

This section is not applied to Part V cases, but somewhat similar power is given by s. 45, *post*, which is somewhat different in scope, and may be less used in practice. Difficulty may arise from the use, in this section and s. 45, *post*, of the phrase " a decision more favourable to the applicant ", despite the definitions in sub-s. (4), *supra*, and s. 45 (3), *post*.

For example, it is not clear whether conditions must be considered objectively to see whether they would be " less stringent "; nor what can be done if a substituted decision would be " more favourable " to the applicant (for permission) but less favourable to other claimants; nor, if several persons joined in making an application, whether a more favourable decision must be more favourable to all of them.

For the purpose and effect of directions under this section, see s. 21, *ante*, excluding claims where certain development is " available ", and s. 26, *post*, providing the method of measuring " depreciation " where compensation is payable. Where a direction is given, a claim may be withdrawn, modified, or allowed to stand as if it referred to the decision as affected by the direction; see s. 24, *post*.

Sub-s. (1).

Next following section. S. 24, *post*, requires the Minister to give notice of his proposed action, provides certain rights of objection and also contains consequential provisions; the procedure resembles purchase notice procedure under s. 19 of the Act of 1947 (Hill, p. 82; 48 Statutes Supp. 56).

Local planning authority. Apparently this refers to a delegate authority where powers are exercised on behalf of the local planning authority: see note to the same words in s. 22 (4), *ante*.

One or more claims. There may be claims in respect of competing interests (*e.g.*, an interest in fee simple and one or more tenancies) subsisting in the same land; cf. s. 19, *ante*, and notes to s. 25, *post*. Similarly, the decision may extend to the adjoining lands of several owners or tenants, as where the application was made in respect of several plots, perhaps by an intending purchaser of all. These possibilities may be seen combined in quite common cases; *e.g.*, where several neighbouring tenants hold of one landlord who applied for permission in respect of all the land; but in view of of s. 20 (2), *ante*, there may be a tendency to apply separately for permission to develop each small plot.

Planning decision. See s. 16 (4), *ante*. The present section deals only with decisions within this Part (Part II) of the Act, made, or treated as having been made, on or after 1st January 1955. For corresponding provision in Part V cases, see s. 45, *post*.

Has not been withdrawn. Presumably, a claimant may withdraw if he pleases; under s. 22 (5), *ante*, the Minister may invite the claimant to withdraw in certain cases (which do not include all the cases where the claim is likely to fail, but only those where it will be readily apparent at this stage that the claim is misconceived).

Sub-s. (2).

Decision of the local planning authority. This subsection deals with cases where an application was decided by the local planning authority, or a delegate authority acting on its behalf, see s. 69 (4) (*a*) *post*. It does not apply where the decision was made by the Minister, *i.e.*, where the application was called in under s. 15 of the Act of 1947 (Hill, p. 74; 48 Statutes Supp. 50) or there was an appeal under s. 16 of that Act (Hill, p. 75; 48 Statutes Supp. 51); and s. 69 (3) (*b*), *post*, seems to be irrelevant in the present context. Where the application has already been considered by the Minister, the only review power is under the next subsection (sub-s. (3), *supra*); the position is different in Part V cases; see s. 45 (3), *post*.

Had been referred. *I.e.*, " called in " for decision in the Ministry under s. 15 of the Act of 1947 (Hill, p. 74; 48 Statutes Supp. 50), when regard would have been had, by the Minister in deciding, to the development plan and any other material considerations (see ss. 15 (2) and 14 (1) of the Act of 1947) or, where there was no plan, to the matters mentioned in s. 36 of that Act (Hill, p. 119; 48 Statutes Supp. 85). Despite sub-s. (5), *supra*, which is somewhat differently expressed, the present subsection can only be invoked where a more favourable decision would have been given by the Minister under the principal Act. Of this, however, the Minister is himself the judge; note the words, " if . . . it appears to the Minister ", and cf. notes to s. 16 (3) (" satisfied "), and s. 22 (5) (" appearing to him "), *ante*. Where he is so satisfied, then, in accordance with sub-s. (5), *supra*, he must further decide whether to issue a direction substituting his decision for that of the local planning authority or its delegate. *Semble*, there is no power, under the present subsection, to issue a direction without an industrial development certificate where one is required; cf. s. 59, *post*, and the notes, *infra*, to sub-s. (3).

A decision more favourable to the applicant. This expression is partly defined by sub-s. (4), *supra*. It is not clear whether the words, " to the applicant ", have

any force in cases where a decision favourable to one particular applicant would not be so to another claimant or potential applicant; cf., the General Note, *supra*. As to who may apply for permission, see *Hanily* v. *Minister of Local Government & Planning*, [1952] 1 All E.R. 1293; [1952] 2 Q.B. 444; 3rd Digest Supp.

May give a direction. The Minister *may* give a direction, and where he does so he *shall* give notice in accordance with s. 24 (2), *post*, and s. 105 of the Act of 1947 (48 Statutes Supp. 186; Hill, p. 240).

Sub-s. (3).

In any case. Contrast with the limited scope of sub-s. (2), *supra*. The present subsection allows the Minister to grant, or undertake to grant, permission which was not asked, and which the Minister could not grant on an appeal or reference to him.

Could properly be granted. Cf. sub-s. (5), *supra*.

The principal Act. The Act of 1947 (Hill, pp. 39–348; 48 Statutes Supp. 22). See also s. 59 (2), *post*, in relation to certain applications for industrial development which would be ineffective under s. 14 (4) of the Act of 1947 (Hill, p. 72; 48 Statutes Supp. 49) for want of a Board of Trade industrial development certificate. A direction under the present subsection can be given for development, other than that which was asked, without the need of such a certificate; and permission granted by the direction will be effective for the purposes of the Act of 1947. See, however, as to the limited scope of s. 59, the notes thereto, *post*. The general effect, where permission is granted under para. (*a*), is to modify the form of the application, and the local authority's register should presumably be amended accordingly.

An undertaking. For the effect of such an undertaking, see s. 21, *ante*, and s. 26, *post*. Cf., also, s. 19 (2) (*b*) of the Act of 1947 (Hill, p. 82; 48 Statutes Supp. 56).

Sub-s. (4).

Refusal; permission; decision; conditions. See generally ss. 12 to 18 of the Act of 1947 (Hill, pp. 65 *et seq.*; 48 Statutes Supp. 44–55) and the notes to s. 16 of the present Act, *ante*. As to the effect of this subsection, see the General Note, *supra*.

Sub-s. (5).

Development plan. See, generally, Part II, ss. 5 to 11, of the Act of 1947 (Hill, pp. 46–64; 48 Statutes Supp. 30–43) and the Regulations thereunder. The requirements of the present subsection generally resemble s. 14 (1) of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48), with a difference noted in the General Note, *supra*. Cf., also, s. 23 (1) of that Act (Hill, p. 91; 48 Statutes Supp. 64) and s. 20 (5) of the present Act, *ante*. In accordance with s. 10 of the principal Act, copies of the plan must be deposited for inspection and placed on sale.

Not yet . . . operative. A plan becomes operative (subject to a limited right of challenge within six weeks) when notice of its approval is first published under s. 11 of the Act of 1947 (Hill, p. 61; 48 Statutes Supp. 42). Para. (*b*) of the present subsection corresponds with the interim provisions of s. 36 of the Act of 1947 (Hill, p. 119; 48 Statutes Supp. 85), though the wording is different.

Use which prevails. Cf. the same words in ss. 82 (5) (*a*), 84 (4) (*a*) and 85 (3) of the Act of 1947 (Hill, pp. 205 *et seq.*; 48 Statutes Supp. 157 *et seq.*). The formula was there used to make applicable certain assumptions as to the value of certain types of land, popularly termed "prevailing use lands", belonging to local authorities, statutory undertakers and charities, and falling outside the ordinary financial provisions of that Act; cf. the notes to the Sixth Schedule to the present Act, *post*. "Use" in this context is apparently employed in a general sense, as in s. 5 of the Act of 1947, and not in a strict sense as defined by s. 119 (1) of that Act (see Hill, pp. 46, 261; 48 Statutes Supp. 34, 205). The adoption of this form of words may suggest that an applicant ought to be allowed to bring up the value of his land to correspond with prevailing use; indeed it suggests not merely that he should receive compensation if this is not permitted (which under this Part of this Act would very probably be insufficient) but that permission should actually be granted (in so far as the decision is to rest on this particular consideration). It is unfortunate that there is this confusion between what may be expected in terms of compensation and in terms of permission. In practice, the express mention of prevailing use may have little effect, as it might in any case be considered as one of the material considerations under the principal Act. It is suggested that "prevails generally" is intended to mean "is generally to be found" rather than "is generally of greater value", but see the Oxford English Dictionary.

Contiguous or adjacent. Either word alone might be understood as meaning either "near to, neighbouring" or "actually touching"; the employment of both is presumably intended, as in s. 5 of the Act of 1947 (Hill, p. 47; 48 Statutes Supp. 30), to show the first meaning is appropriate. The difficulty is to say how wide an area should be regarded. Cf. the cases cited in the note to s. 52 (2), *post*.

Material. This seems to mean "of some substance" or "fit to be considered", *i.e.*, the considerations should have some planning relevance and be of some importance. Cf. s. 14 (1) of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48) and the expression "material change" in use, in s. 12 (2) of that Act (Hill, p. 65; 48 Statutes Supp. 44)

mentioned in the notes to s. 20 (1) of this Act, *ante*. The considerations which are relevant must be gathered from the purposes of the planning Acts as a whole; cf. *Pilling* v. *Abergele Urban District Council*, [1950] 1 All E.R. 76; [1950] 1 K.B. 636; 2nd Digest Supp. For a discussion of these considerations, see also Telling and Layfield on *Planning Applications Appeals and Inquiries*.

24. Supplementary provisions as to review of planning decisions. —(1) Before giving a direction under the last preceding section, the Minister shall give notice in writing of his proposed direction to the local planning authority to whose decision that direction relates and to any person who made, and has not since withdrawn, a claim in respect of that decision, and, if so required by that authority or by any such person, shall afford to each of them an opportunity to appear before, and be heard by, a person appointed by the Minister for the purpose.

(2) Where the Minister gives a direction under the last preceding section, the Minister shall give notice of the direction to the authority to whose decision the direction relates and to every other person (if any) who made, and has not since withdrawn, a claim in respect of that decision; and where a notice under this subsection is given to a person who made such a claim, that person, if he does not withdraw the claim, may at any time within thirty days after the service on him of the Minister's notice under this subsection give notice to the Minister modifying the claim.

(3) Subject to any modification by virtue of a notice given by a claimant under the last preceding subsection, where the Minisfer gives a direction under the last preceding section in respect of a decision of a local planning authority, any claim made in respect of that decision shall have effect as if it had been made in respect of the decision which by virtue of the direction is substituted for the decision of the authority, or, as the case may be, as if it had been made in respect of the decision of the authority as modified by the direction.

NOTES

This section ensures that the local planning authority and any claimants whose claims have not been withdrawn will be told of any direction under s. 23, *ante*, or s. 45, *post*, before it is given, and will have an opportunity of making representations, before the Minister's representative, at a public local enquiry, or at a hearing.

The reference to the local planning authority is presumably to the delegate authority if such an authority acted on behalf of the planning authority; see s. 69 (4), *post*. No express provision is here made for notifying the planning authority in cases where there has been a decision under a delegation. No provision is made for notifying persons interested in the land, or affected by the decision, who have not claimed or whose claims have been withdrawn. Persons interested will often be well advised to make and maintain a claim, however forlorn their hope of compensation, in order to secure a right of audience. They will in all probability have received notice of the making of the claim or claims of others under s. 22 (5) (*b*), *ante*.

The local planning authority will have informed the Minister of its views as to any more favourable decision or permission for alternative development; see reg. 4 (2) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), made under s. 22 (4) (*b*), *ante*, which applies also to Part V cases, by virtue of s. 45 (1), *post*. The authorty will also draw attention to the provisions of the plan, and may be required to furnish further information.

A claimant may wish, in a simple case, to support the Minister's proposal, perhaps against the opposition of the local planning authority (or its delegate), or to urge the Minister to make an even more favourable decision. In other cases, a claimant may be faced with a proposed decision thought to be more favourable which would in fact be less favourable; so long as compensation would be adequate, he may not greatly mind. It is not clear, from s. 23 (2) and (4), *ante*, or in Part V cases from s. 45 (3), *post*, whether the Minister is the final judge of whether a decision is more favourable or not; *i.e.*, the words " if . . . it appears to the Minister " in those sections clearly make him the judge of whether or not a more favourable decision should be substituted, but it is arguable that, unless a decision is in fact more favourable, it cannot validly be substituted for that of the local planning authority (or its delegate).

Proposals to grant, or undertake to grant, permission for alternative development are those most likely to call for carefully prepared representations under this section. A direction of this nature, under s. 23 (3), *ante*, or s. 45 (4), *post*, may have the effect of wholly excluding compensation without in fact granting or offering anything of value; see, for example, s. 21, *ante*, or that section applied to past planning decisions by s. 43

(4), *post*, and ss. 26 and 43 (3) and (5), *post*. In other cases, some form of alternative development may be welcomed by the claimant who will wish to make representations as to the form of grant or as to the conditions to be imposed.

Sub-s. (1).

Notice in writing of his proposed direction. The directions referred to are those under ss. 23 (2) and (3), *ante*, under this Part (Part II); but the present section is applied also to Part V cases, where a direction is to be given under s. 45 (3) or (4), by s. 45 (5), *post*. Notice may be given, by virtue of s. 67 (3), *post*, in the manner provided by s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186); the normal manner is by delivery to the person to whom notice is to be given, or by sending it in a prepaid registered letter addressed to that person at an address furnished by him (or to his usual or last known place of abode). Where the Minister changes his mind, it seems he will be under a fresh duty to serve a notice; cf. s. 19 (5) of the Act of 1947 (Hill, p. 83; 48 Statutes Supp. 57), considered in *Ealing Borough Council* v. *Minister of Housing & Local Government*, [1952] 2 All E.R. 639; [1952] Ch. 856; 3rd Digest Supp. To obviate any need of the Minister to afford a further opportunity for making representations, it may be the practice, as under s. 19 of the principal Act, for the parties to agree to waive any further right to be heard, but this is difficult to arrange if some party is absent from the first hearing, and may not always be prudent.

Local planning authority. See s. 4 of, and the First Schedule to, the Act of 1947 (Hill, pp. 42, 268; 48 Statutes Supp. 28, 211) by virtue of s. 119 (1) of that Act and of s. 69 (2), *post*. *Semble*, the reference here, where a decision was made by a delegate authority, will be to that authority; see s. 69 (4), *post*; see also s. 34 of the Act of 1947 (Hill, p. 115; 48 Statutes Supp. 83), as to delegation. For delegation in the City of London, see s. 114 of that Act.

Decision. See s. 16 (4), *ante*, but see also s. 45 (5), *post*, applying this section to Part V cases (including orders revoking permission) with the necessary modifications.

Withdrawn. Cf. s. 22 (5) (*a*), *ante*.

An opportunity . . . to be heard. This may be a hearing or a public local inquiry; as to inquiries, see s. 67 (5), *post*, applying s. 104 of the Act of 1947 (Hill, p. 238; 48 Statutes Supp. 184). This in turn applies s. 290 (2) to (5) of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 503, 504).

Sub-s. (2).

If he does not withdraw. This subsection and sub-s. (3), *supra*, allow the claimant (1) to withdraw (which it is assumed he may always do, and which he may often have to do in view of the effect of s. 21, *ante*, and s. 26 or s. 43, *post*, unless he merely wishes to maintain his right of audience before the Lands Tribunal on a dispute as to a competing claim); (2) expressly to amend the claim; or (3) to allow the claim to have effect as if it related to the decision as reviewed.

25. General provisions as to amount of compensation.—(1) Subject to the next following subsection, where a person is entitled to compensation under this Part of this Act in respect of the depreciation by a planning decision of the value of an interest in land to which the planning decision relates which at the time of that decision has an unexpended balance of established development value (in this section referred to as " qualified land "), the amount of the compensation shall be whichever is the less of the following amounts, that is to say—

(*a*) the amount by which the value of the interest, or, in the case of an interest extending to other land, the amount by which the value of the interest in so far as it subsists in qualified land, is depreciated by the decision; or

(*b*) the amount of the unexpended balance of established development value immediately before the decision of the qualified land in which the interest subsists:

Provided that if compensation is payable under this Part of this Act in respect of two or more interests in the same qualified land by reason of the same planning decision and the aggregate amount of compensation payable apart from this proviso in respect of those interests exceeds the amount mentioned in paragraph (*b*) of this subsection, the amount so mentioned shall be allocated between those interests in proportion to the depreciation of the value of each of them respectively, and the amount of the compensation payable in respect of any of those interests shall be the sum so allocated to that interest.

(2) Where the land to which the planning decision relates, taken as a whole, does not satisfy the following conditions, that is to say—

(*a*) that the land is qualified land; and

(*b*) that every interest subsisting therein the value of which is depreciated by the decision subsists in the whole thereof,

then, for the purposes of assessing the compensation payable under this Part of this Act in respect of any interest subsisting in that land or any part thereof—

(i) the depreciation of the value of the interest by the planning decision shall first be ascertained with reference to the whole of the land to which the planning decision relates in which that interest subsists;

(ii) the land to which the planning decision relates in which that interest subsists shall then be treated as divided into as many parts as may be requisite to ensure that each such part consists of land which either satisfies the conditions aforesaid or is not qualified land; and

(iii) the depreciation of the value of the interest ascertained as aforesaid shall then be apportioned between the said parts according to the nature of those parts and the effect of the planning decision in relation to each of them,

and the amount of the compensation shall be the aggregate of the amounts which would be payable by virtue of the preceding subsection if the planning decision had been made separately with respect to each such part.

NOTES

The effect of this section is to set an upper limit, the amount of the unexpended balance, on compensation payable under this Part (Part II) of the Act. Subject to this limit, compensation will be the amount by which the claimant's interest in land is said to be depreciated, within the rather special meaning of s. 26, *post*. The claim will be determined under s. 27, *post*, by the Minister, or on appeal by the Lands Tribunal. This section derives from clause 21 of the Bill as first introduced [Bill 72] with the incorporation of provisions from clauses 22, 25, 26 and 27; if properly construed with ss. 17 and 18, *ante*, the wording of this section is the key to a number of difficult apportionments.

First, it is necessary to divide the land into units with a hitherto uniform claim history. Unless the land, taken as a whole, has an unexpended balance of established development value, within the meaning of ss. 17 and 18, *ante*, the upper limit on compensation cannot be properly applied; the land must therefore be divided (at least) into parts which, taken separately, form the largest units which can be said to have a balance or have no balance. Sub-s. (1), *supra*, imports the term " qualified land ", to refer to any part of the area affected by the decision which has a balance.

Secondly, provision must be made for competing claims so that, where two or more interests subsist in the land affected, the total amount of compensation payable does not transgress the upper limit. Sub-s. (1) proviso, *supra*, accordingly provides that the available compensation, in such a case, is to be allocated between the competing interests; and, so that this may be done, sub-s. (2) (*b*), *supra*, provides for possible subdivision of those units which can be called qualified land (where the interests subsisting in any unit which would otherwise be chosen do not all extend to the whole of it).

Thirdly, it is necessary to be able to apportion the effect of the decision on any interest in land. The starting point, for this calculation is not the depreciation of a theoretical freehold of all the land affected by the decision, which might then be apportioned between persons having interests; instead, the claimant must begin with his own interest, in so far as it subsists in the land affected. The depreciation of this must be ascertained. Then the land must be so divided that each part satisfies both conditions (*a*) and (*b*) of sub-s. (2), *supra*, or is a part having no balance. This will mean that all the qualified land is so divided that each part is one where the same competition of interests, if any, is to be found. The depreciation of the claimant's interest must then be apportioned between these parts, according to their nature and the effect of the decision, and the apportioned fractions of the whole depreciation must be reduced where necessary to accord with the balance available on each part of the land and, if need be, abated also because of the existence of a competing interest. When the limit has been applied to each fractional amount of the total depreciation, the amounts are aggregated to form the compensation payable in respect of the interest in question.

It will be noted that in some cases the existence of a competing interest may have an unexpected effect. Where the land affected by the decision is a single unit of qualified land (*i.e.*, taken as a whole it has an unexpended balance) and only one interest subsists therein (a fee simple, in hand), or all the interests subsist in the whole of the land, it does not matter how the value of the established claim (or claims) might have been distributed to different parts of the land, or how any part is now affected by the decision, and there is one simple limit on compensation. But where a competing interest subsists in part of the land, the land has to be divided, the unexpended balance and the effect of the decision must be apportioned, and the unexpended balance may now be found to be in the wrong place or mostly in the wrong place.

The present section is not applied to Part V cases, but somewhat similar provision is made by s. 44, *post*. Under Part IV, *post*, the amount of any unexpended balance or balances is not relevant to the amount of " compensation for depreciation ", which is calculated as part of the compensation assessed under s. 22 of the Act of 1947 as amended by s. 38, *post*. It is, however, relevant to the calculation of the Minister's contribution under s. 40, *post*, and it is there necessary also to calculate what compensation might have been payable, by reference to this section or s. 44, *post*, if permission had been refused, or granted in modified form, in the first place. Questions of apportionment arise under Parts IV and V, *post*; the provisions of ss. 27 to 29, *post*, dealing with appeals to the Lands Tribunal, registration of compensation and recovery on subsequent development, and adjustments of the unexpended balance, are applied, with modifications, by Parts IV and V. Certain similar provisions appear also in ss. 48 and 57, *post*. As to the binding effect of previous apportionments, see s. 27 (3) and notes thereto, *post*.

Sub-s. (1).

Entitled to compensation. See s. 19 (1) and notes thereto, *ante*, and cf. notes to s. 16, *ante*.

Under this Part. Part II; for cross-references, see General Note, *supra*.

Planning decision. See s. 16 (4), *ante*.

Interest in land. See s. 69 (1), *post*; and cf. the note, " An interest in any land ", to s. 19 (1), *ante*.

The time of that decision. See s. 69 (3), *post*, and cf. the note to similar words in s. 16 (2), *ante*.

Unexpended balance. See ss. 17 and 18, *ante*.

Depreciated. See s. 26, *post*.

Compensation is payable. These words are important, particularly where an interest in land has been acquired, compulsorily or otherwise, by an authority which has been or might have been authorised to acquire compulsorily for the purpose in question. See s. 19, *ante*, for the exclusion of such an authority, or any successor in title, from payment of compensation under this Part (Part II). Where s. 37, *post*, applies there is no express allocation of the reduced balance, following an acquisition or sale, to any interest or interests left outstanding in private hands. But under this section, as under Part III, *post*, the remaining balance may be said to enure thereafter for the benefit of such outstanding interests. It will not necessarily, however, be the same figure as would be available on a future purchase to which Part III applies, *i.e.*, under this Part the balance will be reduced in such a case, by deducting the amount not attributable to outstanding interests at the time of the previous acquisition or sale; but under s. 37, *post*, if an outstanding interest is acquired the previous acquisition or sale is disregarded, and the distribution of the balance is related to the later date.

Sub-s. (2).

The following conditions. If both are satisfied, sub-s. (1), *supra*, applies alone, and the proviso thereto deals sufficiently with competing interests. If not, the land affected by the decision is divided into units which can be found as follows:

(1) Outline on a map the land to which the decision relates;

(2) Outline also the boundaries of any interest in land which subsists in the area already defined or part of it;

(3) Proceed as required by ss. 17 and 18, *ante*, to find the qualified land, by outlining the claim areas of the original Part VI claims under the Act of 1947 and subdividing them as required by this Act as at 1st January 1955, and then mark the further subdivisions required by s. 18 (2), *i.e.*, the outlines of areas affected by previous acts or events affecting the unexpended balance of part of an area;

(4) Eliminate all the parts which have no balance.

Depreciation must first be assessed in respect of each interest as a whole, and then apportioned to these parts; see the General Note, *supra*.

Mineral land. See s. 54, and the Minerals Regulations, 1954 (S.I. 1954 No 1706), *post*.

Parliamentary Debates. See the note, " The Bill and Hansard ", at the beginning of this book and the original clauses of the Bill mentioned in the General Note, *supra*.

26. Measure of depreciation for assessing compensation.—(1) Any question whether, or to what extent, the value of an interest in land, or of an interest in so far as it subsists in particular land, is depreciated by a planning decision shall, for the purposes of this Part of this Act, be determined in accordance with the provisions of this section; and in those provisions references to the relevant decision are references to the planning decision in relation to which the question arises.

(2) Subject to the next following subsection, the value in question shall be taken to be depreciated if, and to the extent to which, that value, calculated—

(*a*) as at the time of the relevant decision; but

(*b*) as affected by that decision, by any grant of planning permission made after that decision and in force immediately before the Minister gives notice of his findings on the claim for compensation in respect of that decision, and by any undertaking to grant planning permission so in force; and

(*c*) on the assumption that, after the relevant decision and apart from any such permission or undertaking as aforesaid, planning permission would be granted for development of any class specified in the Third Schedule to the principal Act but not for any other development,

falls short of what that value, calculated as aforesaid, would have been if the relevant decision had been a decision to the contrary effect.

(3) If compensation under this Part or Part V of this Act, or compensation for depreciation within the meaning of subsection (3) of section thirty-eight of this Act, has become, or becomes, payable in respect of another planning decision or in respect of an order to which the said section thirty-eight applies, being a planning decision or order made before the relevant decision in respect of, or of land which includes, the whole or part of the land to which the relevant decision relates, the calculation called for by the last preceding subsection shall be made on the assumption that that other planning decision was a decision to the contrary effect or, as the case may be, that that order was not made.

(4) In this section the expression " a decision to the contrary effect "—

(*a*) in relation to a decision refusing permission, means a decision granting the permission subject to such conditions (if any) of a description falling within subsection (2) of section twenty of this Act as the authority making the decision might reasonably have been expected to impose if the permission had not been refused;

(*b*) in relation to a decision granting permission subject to conditions, means a decision granting the permission applied for subject only to such of those conditions (if any) as fell within subsection (2) of the said section twenty.

NOTES

Depreciation of the value of an interest in land is to be measured, under this section, by comparing its value as affected by the planning decision but on the assumption that certain development would be permitted with the value on the same assumption if the decision had been " to the contrary effect ". In effect this involves an assumption that, but for the decision, the claimant would be entitled to develop the land, subject only to conditions such as are specified in s. 20 (2), *ante*. S. 24, *ante*, which makes general provision as to the amount of compensation under this Part (Part II) of the Act, requires depreciation first to be assessed in relation to the whole of an interest so far as it subsists in the land to which the decision relates, and then to be apportioned, in some cases, to parts of the land, for the purpose of limiting compensation by reference to the unexpended balance of any such part, and for allocating the balance available between competing interests.

The present section is applied, by s. 43 (3), *post*, with the modifications there mentioned, to Part V cases arising out of a planning decision. Where an interest was depreciated by an order, made before 1st January 1955, revoking or modifying permission, the present section is not applied, but similar provision is made by s. 43 (5). In both these types of Part V cases, there are various special factors to be remembered,

e.g., the Minister's power of review is different in scope (compare s. 23, *ante*, and s. 45, *post*); there are modifications in Part V in cases where land has been sold (see s. 43 (1) (*b*), (3) proviso, (4) proviso, and (5) proviso) and where a tenancy has been granted (see s. 43 (6)); and there are different provisions as to the general limit on compensation (compare s. 25, *ante*, and s. 44, *post*).

Calculations of value, under the present section, are governed by s. 65, *post* (applying rr. (2)–(4) of s. 2 of the Act of 1919 (Hill, p. 703), as modified in effect by the Lands Tribunal Act, 1949). In Part V cases liability to development charge is disregarded; see s. 43 (3) proviso, *post*.

Sub-s. (4), *supra*, defines what is meant by "a decision to the contrary effect" which is relevant for calculating depreciation under sub-s. (2) and also for the purpose of taking into account the effect of previous decisions or orders under sub-s. (3), *supra*. Sub-s. (4) in effect avoids the sort of argument that arose on s. 10 (3) of the Act of 1932 (repealed) about the words "decided to the contrary" (Hill, pp. 380, 381); but gives a new and artificial meaning to the words. In order to limit compensation, reference is made to s. 20 (2), *ante*; if permission has been refused, it is necessary to consider what conditions of the kinds mentioned in s. 20 (2) would have been imposed if permission had been granted. If permission has in fact been granted, less speculation about planning intentions is involved, as the conditions actually imposed can be considered; in such a case the problem will be to distinguish those falling within s. 20 (2) from the others.

Sub-s. (2), *supra*, limits compensation by the assumption that Third Schedule development is available. Where the application for permission related to development some of which was "new development" (as defined in s. 16 (5), *ante*) and some of which fell within the Third Schedule, and all is refused, or granted conditionally, it seems that compensation should be claimed under this Act (in respect of the new development) and under s. 20 of the Act of 1947 (in respect of development falling within Part II of the Third Schedule to that Act). The problem may be how to tell which is which; *e.g.*, if the application covered two minor extensions to a building, either of which alone would be within the Third Schedule tolerance, and both are refused, who is to say which extension would be new development, and what assumption must be made under sub-s. (2) (*c*), *supra*?

Sub-s. (2), *supra*, also affects compensation by taking into account undertakings to grant permission in force immediately before the Minister gives notice of his findings; cf. ss. 21 and 23, *ante*, and s. 27 (1) *post*. It also takes account of permission granted after, and perhaps permission granted before, the time of the decision in question. Unless previous permissions can be taken into account, there will be no point in assuming, as required by sub-s. (3), *supra*, that previous decisions were to the contrary effect, *i.e.*, granted subject only to conditions such as are mentioned in s. 20 (2).

Sub-s. (3), *supra*, attempts to confine the depreciation to such as has not been suffered, and compensated, already.

Mineral land. See s. 54, *post*, and the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, particularly regs. 10, 13 and 20. These refer to certain subdivisions of the unexpended balance, and prevent overlap between compensation payable under the regulations in respect of decisions affecting mineral working and compensation under this Act, in cases where certain buildings, plant or machinery are depreciated in value.

Sub-s. (1).

Interest in land. See s. 69 (1), *post*; and cf. note to similar words in s. 19 (1), *ante*.

So far as it subsists in particular land. See s. 25 (2), *ante*, and notes to ss. 17 and 18, *ante*.

Planning decision. See s. 16 (4), *ante*. As to planning decisions under Part V, *post*, see General Note, *supra*. See also s. 16 (3), *ante*, as to buildings or works included because the applicant had reason to believe they would be required; and that provision as applied by s. 42 (3) to planning decisions under Part V, *post*.

Sub-s. (2).

Calculated. See s. 65, *post*.

At the time of the relevant decision. The relevant decision is the decision now in question: see sub-s. (1), *supra*. As to the time of the decision, see s. 69 (3), *post*, and the note, p. 53, *ante*, to similar words in s. 16 (2).

Any grant . . . made after that decision. Permission may be granted, after the time of the relevant decision, on some other application (and as to who may apply, see *Hanily* v. *Minister of Local Government and Planning*, [1952] 1 All E.R. 1293; [1952] 2 Q.B. 444; 3rd Digest Supp.). It may also be granted in the exercise of the review power; see s. 23 (2) and (3), *ante* (or somewhat similar provisions in Part V, *post*). Permission may be granted under various special provisions of the Act of 1947 (*e.g.*, by a special development order, under s. 13; Hill, p. 68; 48 Statutes Supp. 46). Permissions may have been granted before the time of the relevant decision, and it is not clear whether they can be considered and if so what their effect should be. Comparison of para. (*b*) of this subsection with s. 21 (2), *ante*, suggests that prior permissions should

be disregarded; but perhaps para. (*a*) may be intended to allow them to be considered. Para. (*c*), which excludes new development, again refers expressly only to the position after the relevant decision.

Notice of his findings. See s. 27, or that section as applied by s. 45 (1), *post*. In Part V cases, see also s. 43 (3) proviso, *post*, modifying the present subsection in certain cases, and corresponding with s. 43 (5) proviso. Cf. s. 21 (2), *ante*.

Any undertaking to grant. See s. 23 (3) (*b*), *ante*, and s. 45 (4), *post*. S. 45 (4) can give rise to an undertaking only in respect of a planning decision before 1st January 1955, which was a refusal of permission (or in respect of an order revoking permission, which is not immediately relevant here, as depreciation in such a case is measured under s. 43 (5), *post*). *Semble*, however, any undertaking previously given (including an undertaking given on the review of a past order revoking permission) can now be considered if still " in force ". As to the effect of a direction under s. 19 of the Act of 1947, cf. the notes to s. 21 (2), *ante*.

Third Schedule to the principal Act. See s. 71 (1) and (4) and paras. 3 and 4 of the Seventh Schedule to this Act, *post*. The Third Schedule to the Act of 1947 (Hill, pp. 271–273; 48 Statutes Supp. 214) is set out, showing amendments, in the notes to the Seventh Schedule, *post*. As to what is Third Schedule development and what is new development, see General Note, *supra*.

Sub-s. (3).

Compensation under this Part or Part V. This Part (Part II) applies to planning decisions after 31st December 1954; Part V applies to planning decisions or orders revoking or modifying permission made before 1st January 1955. Compensation under Part V is payable to a claim holder in respect of the depreciation of his interest; the assumption required by the present paragraph may be unexpectedly drastic in such cases; but see notes " Another planning decision " and " Order to which . . . s. 38 applies ", *infra*. *Semble*, it is only " planning decisions ", and not " orders " which gave rise to Part V compensation, which must now be taken into account.

Compensation for depreciation. See s. 38 (3), *post*, referring to so much of the compensation payable (under s. 22 of the Act of 1947 where Part IV of this Act applies), on the revocation or modification of permission, as relates to loss or damage consisting in depreciation in value of an interest in land. Such compensation is also payable in respect of a planning decision made on or after 1st January 1955, following the withdrawal of " permitted development "; see s. 38 (4), *post*.

Becomes payable. See ss. 27 (4) and 46 (1), *post*, and, in Part IV cases, s. 22 (1) of the Act of 1947 (Hill, p. 88; 48 Statutes Supp. 61).

Another planning decision. A " planning decision ", as defined by s. 16 (4), *ante*, would include:

(1) A refusal or conditional grant, following the withdrawal of permitted development, by a decision made on or after 1st January 1955; this might lead to payment of compensation for depreciation (Part IV) but not to payment of compensation under Part II, save in very exceptional cases (see s. 19 (5), *ante*).

(2) Any other planning decision on or after 1st January 1955; this might (or might not) lead to the payment of compensation under Part II (cf. notes to s. 16, *ante*).

(3) Decisions similar to (1) and (2) above, made after 30th June 1948 but before 1st January 1955; these might lead to payment of compensation under Part V.

It will not include an order expressly revoking or modifying permission before 1st January 1955 (though such an order might lead to compensation under Part V).

Order to which . . . s. 38 applies. This expression refers to an order under s. 21 of the Act of 1947 (Hill, p. 87; 48 Statutes Supp. 60) made on or after 1st January 1955 (see s. 38 (2), *post*) expressly revoking or modifying permission. It does not refer to similar orders before 1st January 1955, nor to any of the planning decisions mentioned in the previous note, *supra*.

Sub-s. (4).

A decision to the contrary effect. See General Note, *supra*; and for s. 20 (2), see *ante*.

27. Determination of claims for compensation.—(1) Provision shall be made by regulations under this section—

(*a*) for requiring claims for compensation under this Part of this Act to be determined by the Minister in such manner as may be prescribed by the regulations;

(*b*) for regulating the practice and procedure to be followed in connection with the determination of such claims;

(*c*) for requiring the Minister, on determining any such claim, to give notice of his findings to the claimant and to every other person

(if any) who has made a claim for compensation under this Part of this Act in respect of the same planning decision, and, if his findings include an apportionment, to give particulars of the apportionment to any other person entitled to an interest in land which it appears to the Minister is substantially affected by the apportionment.

(2) Subject to the next following subsection, provision shall be made by regulations under this section—

(*a*) for enabling the claimant or any other person to whom notice of the Minister's findings has been given in accordance with the preceding subsection, if he wishes to dispute the findings, and any other person to whom particulars of an apportionment included in those findings have been so given, or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require the findings or, as the case may be, the apportionment to be referred to the Lands Tribunal;

(*b*) for enabling the claimant and every other person to whom notice of any findings or, as the case may be, apportionment has been given as aforesaid to be heard by the Tribunal on any reference under this subsection of those findings or, as the case may be, that apportionment; and

(*c*) for requiring the Tribunal, on any such reference, either to confirm or to vary the Minister's findings or, as the case may be, the apportionment and to notify the parties of the decision of the Tribunal.

(3) Where on a reference to the Lands Tribunal under this section it is shown that an apportionment relates wholly or partly to the same matters as a previous apportionment and is consistent with that previous apportionment in so far as it relates to those matters, the Tribunal shall not vary the apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

(4) Where compensation is determined under this section to be payable, the Minister shall pay the compensation to the person entitled thereto in accordance with the preceding provisions of this Part of this Act.

NOTES

This section provides for the making of Regulations governing the determination of claims under this Part (Part II) by the Minister subject to an appeal to the Lands Tribunal. Sub-s. (4), *supra*, requires the Minister to pay the compensation so determined.

Cross-references.

Sub-ss. (1)–(3), *supra*, will be seen to correspond, with minor differences, with s. 13 (2)–(4), *ante*, which provide for the making of regulations under Part I (see the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *post*). Sub-s. (4), *supra*, corresponds with s. 14 (1), *ante* (Part I payments), and s. 46 (1), *post* (Part V compensation).

The present section is expressed to apply to Part II cases, but is applied also to Part V cases by s. 45 (1), *post* (except that sub-s. (4), *supra*, is presumably unnecessary in Part V cases in view of s. 46 (1), *post*). Sub-s. (2), *supra*, is applied by s. 39 (3), *post*, to provide machinery for the settlement of disputes as to certain apportionments of "compensation for depreciation", payable under the Act of 1947 as amended by Part IV, *post*, and registrable in the same manner as compensation under this Part. No such provision is made by s. 57, *post* (registration of payments made under the War Damage Scheme).

Under the present section, and under s. 22, *ante*, and ss. 40 and 45, *post*, the Minister has made the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*. See, particularly, regs. 6–8.

Those Regulations should be read with s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, which make provision for the circumstances in which claims may be made by mortgagees of land, rentcharge owners and trustees, for the extent to which such persons are entitled to be heard on the determination of claims, and for their rights to receive payment. They also provide

(reg. 5 (*b*)) for certain Part V cases, where a mortgagee of a claim holding is entitled to claim in his own right under s. 43 (2), *post*.

In connection with appeals to the Lands Tribunal, see the notes, *infra*, to sub-s. (3), and regs. 7 and 8 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600). Special rules governing such appeals have been made by the Lord Chancellor; see the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

Sub-s. (1).

Regulations. See the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, made under this section (and under s. 22, *ante*, and ss. 40 and 45, *post*). Generally, as to Regulations under this Act, see s. 68, *post*.

Claims for compensation. See s. 22, *ante*, as to claims under this Part; and that section as applied by s. 45 (1), *post*, as to claims under Part V. Regs. 3–5 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, apply to the making of claims under this Part (Part II), or Part V.

Under this Part. Part II; for the application of the present provision to Part V cases, see s. 45 (1), *post*.

To be determined. Before determining a claim under this Part, the Minister may have reviewed the decision in question under s. 23, *ante*. A somewhat different review power is given in Part V cases (decisions or orders before 1st January 1955) by s. 45 (2)–(5), *post*. S. 24, *ante*, provides for rights of objection, and makes consequential provisions, in both Part II and Part V cases.

A claim may be withdrawn before the stage of determination is reached. Under s. 22 (5), *ante*, the applicant may be invited to withdraw his claim. Under s. 24, *ante*, he may, if he does not withdraw, amend the claim in the light of directions given under s. 23, *ante*, or s. 45, *post*, as the case may be; or the claim may be allowed to stand, without amendment, as if it referred to the decision (or order) as affected by the Minister's direction.

If the claim is maintained it will be determined under reg. 6 of the above-mentioned Regulations (S.I. 1954 No. 1600), *post*.

The Minister. The Minister of Housing and Local Government, see s. 69 (1) and (8), *post*.

Practice and procedure. See reg. 6 of the above-mentioned Regulations (S.I. 1954 No. 1600), *post*. Reg. 6 (1) requires the Minister to cause such investigations to be made and such steps to be taken as he may deem requisite for a proper determination. Presumably, in appropriate cases, the Minister might receive written representations, or afford persons interested a hearing before a person appointed by the Minister, or hold a public local inquiry under s. 104 of the Act of 1947 (Hill, p. 238; 48 Statutes Supp. 184); see s. 67 (5), *post*. As to powers of entry on land, see s. 67 (2), *post*, and s. 103 of the principal Act (Hill, p. 236; 48 Statutes Supp. 182).

Give notice. See s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186), applied by s. 67 (3), *post*; and reg. 6 (4) of the above-mentioned Regulations (S.I. 1954 No. 1600), *post*.

Findings. The Minister will be bound to consider a very large number of matters; as to what must be expressly stated in his findings, see reg. 6 of the above-mentioned Regulations (S.I. 1954 No. 1600), *post*, and, where compensation is registrable in a compensation notice, see s. 28 (1) and (2), *post*.

Under this Part (Part II) the Minister must consider:—

(1) Whether there is a planning decision (s. 16 (4), *ante*) which was made or is treated as having been made (s. 69 (3), *post*) on or after 1st January 1955 (s. 16 (1), *ante*) and by which planning permission was refused or granted subject to conditions (s. 16 (2), *ante*).

(2) Whether the meaning of the decision is affected by his certificate under s. 16 (3), *ante*, which relates to certain applications wherein the requirements of the planning authorities were anticipated. See also s. 20 (6), *ante* (certain conditions equivalent to partial refusals of permission).

(3) Whether the decision follows the withdrawal of permitted development, see s. 19 (5), *ante*. If so, compensation is payable under the principal Act, as amended, and not under this Part of this Act.

(4) Whether the claimant is debarred under s. 19 (2)–(5), *ante*, as a public authority or the like, or a person deriving title from such an authority, in the circumstances there mentioned.

(5) Whether the claimant is entitled to claim as a person entitled to an interest in land (see s. 69 (1), *post*, and s. 19 (1), *ante*); or whether he is entitled to claim as a mortgagee of an interest, rentcharge owner, or as trustees, under s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*; and whether any necessary extension of time has been granted (s. 22 (1) and (2), *ante*).

(6) Whether the claim has been withdrawn (see ss. 22 (5) and 24 (2), *ante*; or has been expressly or automatically modified in effect (s. 24 (2) and (3), *ante*).

(7) Whether the application was for permission to carry out new development (s. 16 (1) and (5), *ante*) and (*semble*) to what extent permission for new development

has been refused or granted conditionally. If the decision affected both new development and Third Schedule development, see the General Note to s. 26, *ante*.

(8) Whether the decision is affected by any appeal (s. 69 (3), *post*) or direction under s. 23 (2) and (3) (*a*), *ante*, or by an undertaking to grant permission (s. 23 (3) (*b*), *ante*); and see sub-s. (6), *supra*.

(9) Whether compensation is excluded by s. 20, *ante* (change of use, advertisement applications, premature applications, certain conditions imposed, etc.) or by s. 21, *ante* (permission available for certain kinds of development which are thought to be normally remunerative). If so, the claimant should have been invited to withdraw (s. 22 (5), *ante*).

(10) Whether there is an unexpended balance of established development value (ss. 16 (2) and 19 (1), *ante*) on the land or part or parts of it. As to what is involved in considering this, see ss. 17 and 18, *ante*, and notes thereto. If there is no balance, the claimant should have been invited to withdraw (s. 22 (5), *ante*).

(11) Whether, and to what extent, the interest has been " depreciated " (s. 26, *ante*) in value generally, or in respect of any one of the parts into which it must be split (s. 25, *ante*). S. 26, *ante*, employs a test of depreciation which takes into account (*a*) previous compensation payable under this Part and in certain other circumstances, (*b*) certain permissions granted, and certain undertakings to grant permission, (*c*) Third Schedule rights, and (*d*) the fact that certain kinds of conditions, which were imposed, or which might have been imposed if the decision had not been a refusal, carry no right of compensation (s. 20 (2), *ante*). The measure of depreciation may thereby be reduced.

(12) What compensation is payable (s. 25, *ante*), having regard to the depreciation, the unexpended balance or balances, and the existence of any competing interests.

(13) What action should be taken under s. 28, *post* (apportionment and registration of compensation, where practicable).

Reg. 1 (2) of S.I. 1954 No. 1600, *post*, requires the Minister in Part II cases to state (*a*) the amount of compensation payable, with the amount of depreciation found, and the amounts of the unexpended balances involved, or (*b*) his determination that no compensation is payable and the reason for this.

As to findings in rentcharge cases, see reg. 9 of S.I. 1955 No. 38, *post*, which requires further information to be given in another notice.

As to mortgaged land, see reg. 4 of S.I. 1955 No. 38, *post*, whereunder the Minister may have to deal with priorities as between mortgagees; and may, if part only of the land is mortgaged, be required to deal separately with that part.

In general, the matters to be considered in Part V cases are somewhat similar; they do not call for detailed comment here.

To the claimant. See s. 19 (1), *ante*, and s. 69 (1), *post*, as to claims by persons having an interest in land affected by the decision under this Part (Part II). In Part V cases, see s. 43 (1) and (2); s. 43 (2) provides for claims by certain mortgagees of a claim holding.

As to claims by mortgagees of land, rentcharge owners, etc., see s. 66, *post*, and the regulation thereunder (S.I. 1955 No. 38), *post*. In certain circumstances, under those regulations, a mortgagee is to be treated as if he were the " original applicant ", see reg. 4. As to rentcharge owners, see regs. 7 and 8 of, and the Schedule to, those Regulations. As to trustees, see reg. 10.

Every other person who has made a claim. As to informing persons interested in land of claims made by others, see s. 22 (5) (*b*), *ante*. The claim form (S.I. 1954 No. 1600, Schedule), *post*, will give the Minister certain information for this purpose. Only those who make a claim are entitled to be heard as to the exercise of the Minister's review power, see s. 24, *ante*. *Semble*, the present subsection refers to any person who has made a claim (whether or not it is withdrawn), but reg. 6 (4) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, does not require, at this stage, the giving of notice to persons whose claims have been withdrawn. As to competing interests, see s. 25, *ante*. Subject to s. 66, *post*, there should be only one claimant in Part V cases. Where s. 66 applies, see the Regulations thereunder, the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

An apportionment. Cf. the note on those words in s. 13 (2), *ante*, and see ss. 2 and 15, *ante*. The Minister, under this Part (Part II) or Part V, will presumably follow previous apportionments, including those made under Part I, *ante*, or s. 48, *post*; cf. sub-s. (3), *supra*, which requires the Lands Tribunal, on appeal, so to do. In Part V cases, he will have regard to earlier determinations under that Part; see the words, " for the application of this Part of this Act [Part V] to any subsequent planning decision or order " in s. 46 (2), *post*. In Part II cases, he will have regard to the effect of s. 46, *post*, and to any previous claim under this Part, and to the effect on the unexpended balance of Parts III and IV; see ss. 37 and 40, *post*.

As to " previous apportionments ", see the definitions in s. 69 (1), *post*. Certain apportionments under the Act of 1953, made or approved by the Central Land Board, are included in the definition.

As to apportionments required by Part II, note particularly ss. 17 (2), 18 (4) (*b*) and (5), 20 (6), 21 (1) proviso, 25 and 26, *ante*.

S. 28, *post*, and that section as applied to Part V cases by s. 46 (4), *post*, will require an apportionment of the compensation under this Part (Part II) or Part V for the purpose of registration in a compensation notice, unless the amount is small or the apportionment impracticable.

Any other person entitled. Such persons will be given particulars, so that they may dispute the apportionment or apportionments. The present paragraph requires the Minister to make regulations under which he will give notice of his findings to every claimant; but see reg. 6 (4) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, which is expressed to exclude from that provision claimants who have withdrawn their claims. Such claimants and other persons having interests in land may be affected by an apportionment; this paragraph and reg. 6 (4) provide for them receiving particulars of apportionments. A claimant who has withdrawn his claim would seem thereby to be precluded from disputing other findings; if this is so, claimants will be well advised not to withdraw unless every other claimant also withdraws.

Sub-s. (2), *supra*, allows persons who do not receive particulars to establish their right to be heard if they can show that their interest will in fact be substantially affected. It provides no such right, apparently, where the findings should have included an apportionment but did not do so.

Interest in land. See s. 69 (1), *post*. As to mortgages, etc., see s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

It appears to the Minister. The Minister, it seems, is made the judge (at this stage) of whether or not a person is entitled to an interest in land, and whether or not that interest is substantially affected by an apportionment. Cf. the notes, " He is satisfied " to s. 16 (3), *ante*, and " Appearing to him " to s. 22 (5), *ante*.

If a person receives particulars, he may be heard to dispute them, under sub-s. (3), *supra*, whether or not he should have received them. If there is an apportionment, a person who claims he should have received them may established his right to be heard. If no apportionment is included (although one may have been required), no particulars will be received by persons other than claimants; nor will there be an opportunity of establishing a right to be heard.

Substantially affected. Cf. the note " Substantially " to s. 13 (2), *ante*. Persons may be affected because they have an interest in the same land as the claimant (in which case the persons affected may or may not be competing claimants); or because they have an interest in other land, and are concerned about how much of the unexpended balance or of the effect of a previous decision or other sum or value is being attributed to their land. Mortgagees of land may be affected, but they have no interest in land as defined by s. 69 (1), *post*.

Sub-s. (2).

To dispute the findings. This may be done by the claimant and by competing claimants who have received notice of the findings.

To dispute the apportionment. This may be done by persons who have received particulars of the apportionment; and by persons who establish their right to be heard. See the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), regs. 7 and 8. As to establishing the right to be heard, see the next note, *infra*.

Referred to the Lands Tribunal. As to the constitution of the Tribunal, see the Lands Tribunal Act, 1949 (Hill, 2nd Supp., pp. B1–B24; 61 Statutes Supp. 32). For the general framework of the Tribunal's rules, see the Lands Tribunal Rules, 1949 (S.I. 1949 No. 2263) as amended by the 1951 Amendment rules (S.I. 1951 No. 2004; Hill, 2nd Supp., pp. B116–B139 and B249). For special provisions relating to references under this subsection (or this subsection as applied by other provisions of this Act), see the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

Rule 3 (2A) of the Tribunal's rules, inserted by r. 3 of the 1955 Amendment rules (S.I. 1955 No. 54), *post*, indicates that, although the dispute is in this Act said to be " referred " to the Tribunal, the proceedings will be governed by Part I of the rules (rr. 3 to 7, as amended), which governs Appeals against Determinations, and not Part III of the rules, which governs References. Notice of appeal is to be given in Form 1A, inserted by r. 15 of and the Schedule to the 1955 Amendment rules, *post*.

As to persons who received neither the findings nor particulars of apportionment, but who wish to be heard, see reg. 7 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, whereunder such persons are entitled, like persons who did receive the findings or particulars, to give notice of the dispute to the Tribunal. Notice should be given in Form 1A, mentioned *supra*. On any dispute which has been referred, such persons can give notice of intention to appear under r. 5A of the Tribunal's rules, inserted by r. 5 of the 1955 Amendment rules (S.I. 1955 No. 54), *post*.

Vary. See sub-s. (3), *supra*, as to the binding effect of previous apportionments.

Sub-s. (3).

It is shown. These words appear to place the onus of proving that there was a previous apportionment, relating wholly or in part to the same matter or matters, upon the person who so contends.

Previous apportionment. See s. 69 (1), *post*.

The Tribunal shall not vary. The Tribunal are sitting on appeal against a determination by the Minister (or other determining authority, where sub-s. (2), *supra*, is applied; *i.e.*, under s. 39, *post*, the local planning authority). There is no express provision that the Minister must follow a previous apportionment, but this seems to be implied (as the appellate Tribunal is bound to do so).

Sub-s. (4).

This Part. Part II; it seems unnecessary to apply this subsection to Part V cases (as mentioned in s. 45 (1), *post*) in view of s. 46 (1), *post*. As to when compensation is "determined" to be payable, see reg. 8 (2) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, which prescribes at what stage findings become conclusive for the purposes of this section or s. 46, *post*.

28. Apportionment and registration of compensation.—(1) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, the Minister determines that compensation is payable and that the amount of the compensation exceeds twenty pounds, the Minister shall (if it appears to him to be practicable to do so) apportion the amount of the compensation between different parts of the land to which the claim for compensation relates, and shall include particulars of the apportionment in the notice of his findings under the last preceding section.

(2) In carrying out an apportionment under the preceding subsection the Minister shall divide the land into parts, and shall distribute the compensation between those parts, according to the way in which different parts of the land appear to him to be differently affected by the planning decision.

(3) On a reference to the Lands Tribunal under the last preceding section, unless the decision of the Tribunal will not affect the amount of the compensation or any apportionment thereof by the Minister, the preceding provisions of this section shall apply with the substitution for references to the Minister of references to the Lands Tribunal.

(4) Where, on a claim for compensation under this Part of this Act in respect of a planning decision, compensation has become payable of an amount exceeding twenty pounds, the Minister shall cause notice of that fact, specifying the planning decision and the land to which the claim for compensation relates, and the amount of the compensation and any apportionment thereof under this section, to be deposited with the council of the county borough or county district in which the land is situated and, if that council is not the local planning authority, with the local planning authority.

(5) Notices deposited under this section shall be registered in the register of local land charges, in such manner as may be prescribed by rules made for the purposes of this section under subsection (6) of section fifteen of the Land Charges Act, 1925, by the proper officer of the council of the county borough or county district.

(6) In relation to compensation specified in a notice registered under this section, references in this Part of this Act to so much of the compensation as is attributable to a part of the land to which the notice relates shall be construed in accordance with the following provisions, that is to say—

(*a*) if the notice does not include an apportionment under the preceding provisions of this section, the amount of the compensation shall be treated as distributed rateably according to area over the land to which the notice relates;

(*b*) if the notice includes such an apportionment, the compensation shall be treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land shall be treated as distributed rateably according to area over that part of the land.

NOTES

Compensation payable on a claim under this Part (Part II) of the Act is to be registered against the land, except where the amount does not exceed £20. The

Minister will send a compensation notice to the local authority which is appropriate for the purposes of its registration as a local land charge; see sub-ss. (4) and (5), *supra*.

Where registrable compensation is payable (*i.e.*, an amount exceeding £20), it will be apportioned, if it appears practicable to do so, between different parts of the land; see sub-ss. (1) and (2), *supra*. In so far as parts of the land are not taken to be " different ", the compensation is considered to be distributed rateably according to area; see sub-s. (6), *supra*.

Where an apportionment is made, particulars will form part of the Minister's findings for the purposes of s. 27, *ante*. An appeal may be made thereunder; on such an appeal, the Lands Tribunal are directed to make the apportionment (if it appears to the Tribunal to be practicable). The Minister or, on appeal, the Tribunal will divide the land into parts and the apportionment, as between those parts, will depend on how they were differently affected by the decision giving rise to compensation; see sub-ss. (1), (2) and (3), *supra*.

Cross-references.

The present section is expressed to apply to decisions under this Part (Part II); by s. 46 (4), *post*, it is applied to past decisions, and to orders, made before 1st January 1955, whereby planning permission was revoked or modified.

Somewhat similar provision is made, under Part IV, *post*, for the apportionment and registration of " compensation for depreciation ", *i.e.*, so much of the compensation for revocation or modification of permission to which that Part applies as is payable for loss or damage consisting of depreciation in the value of an interest in land. There is a similar appeal to the Lands Tribunal; see s. 39 (3), *post*, applying s. 27 (2), *ante*, and the Regulations made under s. 27 (2); and s. 39 (4), *post*.

S. 57, *post*, makes provision for registering payments under the War Damage Scheme, or parts of such payments, in certain circumstances. It does not confer a right of appeal.

Rules have been made, under s. 15 (6) of the Land Charges Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 1089), prescribing the manner of registering compensation under sub-s. (5), *supra* (or that provision as applied by ss. 39 (4), 46, *post*), and the manner of registering war damage scheme payments (s. 57, *post*) by the proper officer of the local authority concerned; see the Local Land Charges (Amendment) Rules, 1954 (S.I. 1954 No. 1677), *post*.

S. 29 (1)–(8), *post*, provides for the recovery by the Minister of registered compensation in certain circumstances; and is applied for the purposes of the analogous provisions mentioned, *supra*. S. 29 (9), *post*, however, relates only to adding back to the unexpended balance where the sums recovered represent compensation registered under this Part (Part II). For analogous provisions under Parts IV and V, see notes to s. 29, *post*.

Sub-s. (1).

On a claim. If more than one claim is made in respect of the same division, each claim should, it seems, be separately considered under this section, even when claims relate to the same land.

Under this Part. Part II; for the application of this section to Part V cases, see s. 46 (4), *post*. For other analogous provisions, see note, " Cross-references ", *supra*.

The Minister determines. See s. 27 (1), *ante*.

Notice of his findings. See s. 27 (1) (*c*), *ante*.

Sub-s. (2).

Divide the land. This subsection requires, it seems, that both the division of the land into parts and the distribution of compensation between the parts shall be carried out according to the way in which " the different parts " appear to the Minister or, on appeal, to the Lands Tribunal to be differently affected by the decision. If parts do not appear to be differently affected, presumably the Minister or Tribunal will decide, under sub-s. (1), *supra*, that it is not practicable to apportion. In some cases, the division and apportionment may follow closely the calculations required by s. 25, *ante*.

Sub-s. (3).

Reference to the Lands Tribunal. See s. 27 (2), *ante*; see also s. 27 (3).

Sub-s. (4).

Notice. This is conveniently referred to as a " compensation notice " in s. 29, *post*.

County borough or county district. County districts are non-county boroughs, urban districts and rural districts. As to London and the Isles of Scilly, see s. 62, *post*.

Local planning authority. See s. 4 of the Act of 1947 (Hill, p. 42; 48 Statutes Supp. 28). Cf. the note " On an application ", p. 55, *ante*; and s. 69 (4), *post*.

Sub-s. (5).

Registered. For the general framework of the Local Land Charges Rules, see S.R. & O. 1934 No. 285, as amended (18 Halsbury's Statutory Instruments, title Real Property, Part 2). For the rules made under this section (and s. 57, *post*), see the Local Land Charges (Amendment) Rules, 1954 (S.I. 1954 No. 1677), *post*. These

amendment rules add a definition (" the Act of 1954 ") to r. 2 (1) of the 1934 rules; amend the definition of " planning charges " in r. 2 (1) of the 1934 rules; add to r. 5 (*c*) of the 1934 rules a reference to notices under the present Act; add a new rule, r. 9c, prescribing what entry is to be made in the case of notices registered under this section (or this section applied by s. 39 or 46) or under s. 57, *post*; add a new para. (6) to r. 13 of the 1934 rules, as to the entry of subsequent notices affecting the same land; and amend paras. 1 and 2 of the Second Schedule to the 1934 rules; see r. 2 of the 1954 amendment rules, *post*.

For earlier amendment rules made for the purposes of the Act of 1947, see S.I. 1948 Nos. 1213, 1283 and 2471 (Hill, pp. 786–793, 811–813 and 901–902). As to the definition of " planning charges ", see the 1954 amendment rules, which incorporate the definition from S.I. 1948 No. 2471 with an additional para. (*b*) referring to charges secured by notices under the present Act.

Sub-s. (6).

Attributable to part of the land. See s. 29 (3) (*b*), (4), (5) and (9), *post*. The purpose of treating compensation as distributed over the land is to ensure that, if development of part of the land is thereafter contemplated, it will be possible to calculate the sum recoverable (under s. 29, *post*) by reference to that part, and also to add back an appropriate amount to the unexpended balance. Reference should also be made to s. 18, *ante*. S. 18 (3) requires the making of a deduction, on any subsequent occasion where the unexpended balance of any land falls to be considered, for the purpose of reducing or extinguishing that balance to take account of compensation already paid. S. 18 (5) provides the mechanism for deducting an appropriate amount of the compensation from the balance or balances of the part or parts of the land which are considered on the subsequent occasion (which may not coincide with those considered on the earlier occasion or occasions). That subsection requires an apportionment on the same principles as applied to determining the compensation, *i.e.*, those set out in ss. 25 and 26, *ante*, where the general principle is that compensation is the lesser of (1) the amount of depreciation or (2) the amount of the balance. In some, but not all, cases the distribution of compensation under the present section (in accordance with the effect of the decision, see sub-s. (2), *supra*) will follow the same pattern. Where this is so, apportionments under this section may be taken as binding for the purposes of s. 18, *ante*, *i.e.*, on the next occasion when the unexpended balance becomes relevant it may be shown that there has been a binding " previous apportionment ".

Does not include an apportionment. This will be so where the compensation exceeds £20 but it appears to the Minister or, on appeal, to the Tribunal to be impracticable to apportion it to different parts of the land in accordance with the effect of the decision on those parts. Presumably it will not be worth while apportioning compensation where it is only slightly in excess of £20, or where the effect is uniformly distributed according to area. When there is an apportionment to parts, each part will have allotted to it an amount which, within that part, is to be regarded as distributed according to area; see para. (*b*) of this subsection, *supra*.

29. Recovery of compensation on subsequent development.—(1) No person shall carry out any new development to which this section applies, on land in respect of which a notice (in this section referred to as a " compensation notice ") is registered under the last preceding section, until such amount (if any) as is recoverable under this section in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Minister.

(2) This section applies to any new development—

(*a*) to which section twenty-one of this Act applies; or

(*b*) which consists in the winning and working of minerals; or

(*c*) to which, having regard to the probable value of the development, it is in the opinion of the Minister reasonable that this section should apply:

Provided that—

(i) this section shall not apply to any development by virtue of paragraph (*c*) of this subsection if, on an application made to him for the purpose, the Minister has certified that, having regard to the probable value of the development, it is not in his opinion reasonable that this section should apply thereto; and

(ii) in a case where the compensation specified in the notice became payable in respect of the imposition of conditions on the granting

of permission to develop land, this section shall not apply to the development for which that permission was granted.

(3) Subject to the three next following subsections, the amount recoverable under this section in respect of the compensation specified in a compensation notice—

(*a*) if the land on which the development is to be carried out (in this subsection referred to as " the development area ") is identical with, or includes (with other land) the whole of, the land comprised in the compensation notice, shall be the amount of compensation specified in that notice;

(*b*) if the development area forms part of the land comprised in the compensation notice, or includes part of that land together with other land not comprised in that notice, shall be so much of the amount of compensation specified in that notice as is attributable to land comprised in that notice and falling within the development area.

(4) Where, in the case of any land in respect of which a compensation notice has been registered, the Minister is satisfied that, having regard to the probable value of any proper development of that land, no such development is likely to be carried out unless he exercises his powers under this subsection, he may, in the case of any particular development, remit the whole or part of any amount otherwise recoverable under this section; and where part only of any such amount has been remitted, he shall cause the compensation notice to be amended by substituting therein for the statement of the amount of the compensation, in so far as it is attributable to that land, a statement of the amount which has been remitted under this subsection.

(5) Where, in connection with the development of any land, an amount becomes recoverable under this section in respect of the compensation specified in a compensation notice, then, except where, and to the extent that, payment of that amount has been remitted under the last preceding subsection, no amount shall be recoverable under this section in respect of that compensation, in so far as it is attributable to that land, in connection with any subsequent development thereof.

(6) No amount shall be recoverable under this section in respect of any compensation by reference to which a sum has become recoverable by the Minister under subsection (6) of section fifty-two of this Act or under that subsection as applied by regulations made under subsection (8) of that section.

(7) An amount recoverable under this section in respect of any compensation shall be payable to the Minister, and—

(*a*) shall be so payable either as a single capital payment or as a series of instalments of capital and interest combined, or as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Minister may direct, after taking into account any representations made by the person by whom the development is to be carried out; and

(*b*) except where the amount is payable as a single capital payment, shall be secured by that person in such manner (whether by mortgage, covenant or otherwise) as the Minister may direct.

(8) If any person initiates any new development to which this section applies in contravention of subsection (1) of this section, the Minister may serve a notice upon him, specifying the amount appearing to the Minister to be the amount recoverable under this section in respect of the compensation in question, and requiring him to pay that amount to the Minister within such period, not being less than three months after the service of the notice, as may be specified in the notice.

(9) Where an amount becomes recoverable under this section in respect of the compensation specified in a compensation notice, then, for the purpose of determining any question as to the unexpended balance of established development value of any land at any subsequent time, except where, and to the extent that, payment of that amount has been remitted under subsection (4) of this section, so much (if any) of that compensation as is attributable to that land shall be treated as not having become payable and accordingly (notwithstanding anything contained in subsection (3) of section eighteen of this Act) shall not be deducted from that balance.

NOTES

This section is partly derived from Part VII of the principal Act, relating to the recovery of development charge. It provides for the recovery of registered compensation if development of the land is carried out. Sub-ss. (1)–(8), *supra*, apply primarily to the recovery of compensation paid under this Part (Part II) of the Act and registered in a compensation notice under s. 28, *ante*.

These provisions are also applied, by s. 41 (1), *post*, to Part IV cases, where compensation for depreciation has been registered under s. 28 as applied by s. 39 (4), *post*, after the revocation or modification of planning permission by an order (or planning decision treated as such) made on or after 1st January 1955. They are applied also by s. 46 (4), to compensation, for past planning decisions or orders, registered under s. 28, *ante*, as applied by s. 46 (4), *post*. S. 57 (3), *post*, also applied sub-ss. (1)–(8), *supra*, to the registered amounts of War Damage Scheme payments; there are, however, exceptions to the requirement of registering such payments, and to the cases in which they are recoverable. That section refers to every description of new development, and is not limited to the new development mentioned in sub-s. (2), *supra*.

Reference should also be made to s. 66 (2) and (3), *post*, which empower trustees and others to raise moneys necessary to comply with this section.

Sub-s. (1), *supra*, provides that no person shall carry out new development to which this section applies (as defined by sub-s. (2), *supra*) until the amount recoverable by the Minister is paid or secured. This is derived from s. 69 (1) of the Act of 1947 (Hill, p. 175; 48 Statutes Supp. 134), which related to the levy of development charge.

Sub-s. (7), *supra*, is based on s. 71 of the Act of 1947 (Hill, p. 180; 48 Statutes Supp. 137), and states how the recoverable amount is to be paid or secured.

Sub-s. (8), *supra*, is a default power, enabling the Minister to serve notice requiring payment, if new development is initiated before the recoverable amount has been paid or secured as required by sub-s. (1). It is in terms milder than those of s. 74 of the Act of 1947 (Hill, p. 186; 48 Statutes Supp. 142), and there is no provision for the addition of a penalty (s. 74 (3) of the principal Act).

Sub-s. (2), *supra*, specifies the descriptions of new development to which the section applies, and provides, in para. (*c*) and proviso (i), a discretion for the Minister to decide, in effect, that certain development is sufficiently valuable to warrant inclusion, or to certify to the contrary.

Sub-s. (3), *supra*, states the amount which is recoverable. Where the development is to be carried out on the land covered by the notice (with or without other land), the whole amount registered is recoverable. If the development area is or includes part only of the land covered by the notice, s. 28, *ante*, provides a means of finding the amount attributable to the part in question, and this amount will be recoverable.

Sub-ss. (4) *and* (5), *supra*, provide, in effect, that the full amount is recoverable only once. Sub-s. (4), however, allows the Minister to remit the payment wholly or in part, amending the compensation notice if necessary, where desirable development would otherwise be discouraged. Where this power is exercised, the amount remitted will remain available for recovery on a subsequent occasion if further development is carried out.

Sub-s. (6), *supra*, is concerned with certain cases where the land has been acquired by a public authority; it prevents any overlap of powers of recovery; see the note about s. 52 (6), *infra*.

Cross-reference. For further financial provisions, see s. 41, *post* (in Part IV cases), and, generally, ss. 52 and 64, *post*.

Sub-s. (1).

Carry out. This expression usually refers to operations rather than to a change of use, and the development mentioned in sub-s. (2), *supra*, appears to be largely of this character. In sub-s. (8), *supra*, the word "initiates" is employed; as to this word, see s. 16 (5), *ante*.

New development. See s. 16 (5), *ante*.

Registered. As a local land charge, see s. 28 (5), *ante* (or that provision applied by s. 39 (4) or s. 46 (4), *post*) or, in the case of War Damage Scheme payments, s. 57 (2), *post*.

Last preceding section. See s. 28, *ante*, providing for the registration of com-

pensation payable under this Part (Part II) of the Act. For the application of the present section to other cases, see the General Note, *supra*, referring to ss. 39, 46 and 57, *post*.

Paid or secured. See sub-s. (7), *supra*.

Sub-s. (2).

Any new development. See s. 16 (5), *ante*. In the case of War Damage Scheme payments, registered under s. 57, *post*, see s. 57 (3) proviso (*a*) (" every description of new development "). Apart from this provision of s. 57, *post*, the present section applies only to the descriptions of new development set out in this subsection.

Development of a residential, commercial or industrial character, consisting wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings (including warehouses), or any combination of these, is generally to be taken as being reasonably remunerative, in the theory of this Act. See the General Note to s. 21, *ante*; and where this is not so in fact, see sub-s. (4), *supra*.

As to mining operations, cf. s. 20 (2), *ante* (which excludes compensation for conditions imposed on mineral workings), and the special provisions as to mining, etc., in ss. 54 to 56, *post*.

S. 21. See s. 21 (3), *ante*.

Minerals. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204), and cf. notes to s. 54, *post*. The term includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, but does not include peat cut for purposes other than sale.

Probable value of the development. This presumably refers to the appreciation in land value by reason of the prospect of development, rather than to the higher value of the land with the development carried out, *i.e.*, regard will be had to the cost to the developer, as was the case in assessing development charge. The Fourth Schedule, *post*, which is used for determining the deduction from the unexpended balance required by s. 18 (4), *ante*, where development is carried out, also proceeds on this basis.

If this view is right, the Minister may approach the matter as follows:—

Example 1.

Present agricultural value (10 acres):	£1,000
Value for intended development:	£6,000
Registered compensation (earlier refusal):	£3,000
Value for, say, houses would be:	£10,000

On such figures it might seem that, as the value for the intended development is of the same order as (though less than) the value for one of the purposes to which the section automatically applies (para. (*a*) of this subsection), and as the appreciation (£5,000) exceeds the amount of registered compensation, it is reasonable that the section should apply.

In arriving at the figure of £6,000, *supra*, the Minister may have considered an estimate of the value of the land after development, and deducted the developer's costs, *e.g.*, value as developed £40,000, less cost of building, etc., £34,000, gives a value of the site for development of £6,000. Deducting the present agricultural value (£1,000), gives a figure of £5,000, which, it is suggested, can properly be called the " probable value of the development ".

Example 2.

As in Example 1, except that the value for development is not £6,000 but £1,200.

Here, it is suggested, the Minister might *either* exercise his power under sub-s. (4), *supra*, to waive most of the recoverable amount of £3,000, *or*, more probably, certify that it is not in his opinion reasonable that this section should apply.

In the opinion of the Minister. It is for the Minister to make the decision; cf. notes " Satisfied " to s. 16 (3), *ante*, and " Appearing to him ", to s. 22 (5) (*b*), *ante*.

Proviso (i) to this subsection will, however, enable this question to be settled in the developer's favour in advance, if the Minister, on an application, certifies accordingly.

Imposition of conditions. See, generally, s. 16, *ante*, and see also s. 20 (6), *ante*. S. 20 (6) may require a conditional permission to be regarded, for the purposes of s. 20, as a partial refusal. For present purposes, however, the decision can be regarded as a single decision granting permission subject to conditions, *i.e.*, the only effect of s. 20 (6), *ante*, at this stage, is that more compensation may have been paid and registered than would otherwise have been the case.

Where compensation was registered under s. 39, *post* (Part IV of this Act), in respect of an order modifying permission, s. 41 (1), *post*, similarly provides that development in accordance with the modified permission will not come within the present section. In Part V cases, the present section is applied both to planning decisions and orders; again specific provision is made, by s. 46 (4) proviso, *post*, to adapt the wording of the present proviso to the case of orders modifying permission.

The reason for the present provision, and the analogous provisions mentioned in this note, *supra*, is that compensation will have been assessed on the assumption that development, subject to the conditions or in accordance with the modified permission, can be carried out. In other words, the Act does not require a large sum to be paid

first in compensation and then partially or wholly recovered under this section. It also avoids certain difficulties which would otherwise arise from the upper limit set on compensation by various provisions, *e.g.*, in this Part of the Act, by s. 25, *ante*.

Attention is drawn to the fact that the present proviso does not refer to cases where the amount of compensation was reduced by an undertaking to grant permission; see ss. 23 and 26, *ante*. Where the Minister has a discretion as to the application of the present section, he may be expected to bear in mind that development permitted as a result of such an undertaking logically ought not to involve the repayment of compensation.

Sub-s. (3).

Land on which. " On ", presumably, includes " in, over or under "; cf. the definition of development in s. 12 of the Act of 1947 (Hill, p. 65; 48 Statutes Supp. 44).

Compensation notice. See sub-s. (1), *supra*, s. 28, *ante*, and ss. 39, 46 and 57, *post*; and cf. the General Note, *supra*.

So much . . . as is attributable. See s. 28 (6), *ante*.

Sub-s. (4).

The Minister is satisfied. Cf. the note " Satisfied ", to s. 16 (3), *ante*. The Minister is to decide the matters mentioned in this subsection, and his decision will be difficult or impossible to challenge.

Probable value of any proper development. Cf. the note to similar words in sub-s. (2), *supra*. The present provision was inserted in the Act to meet a criticism of the original Bill; see H. of C. Official Report S.C.C., 27th May 1954, cols. 486 *et seq.* (cl. 33 of [Bill 72]). If some minor development is or becomes unobjectionable or desirable, it might for ever be prevented if its carrying out involved the recovery of some large sum registered against the land. The Minister is therefore empowered to recover a lesser sum (and to amend the compensation notice to refer to the amount remitted), or to remit the whole amount. The amount remitted will thus remain registered, and may subsequently be recovered if further development is carried out.

It is doubtful whether the retention of buildings or works, or the continuance of a use, on the expiry of a permission for a limited period, is or is not " development ". See ss. 12 and 18 of the Act of 1947 (Hill, pp. 65, 80; 48 Statutes Supp. 44, 55), and cf. notes to s. 20 of this Act, *ante*. If not, sub-s. (5), *supra*, will not allow the recovery of a remitted amount if permission is subsequently extended, *i.e.*, on this view, the retention or continuance is not subsequent " development ". In view of this doubt, the Minister may be somewhat unwilling to remit an amount on the ground that permission for any proposed new development to which this section applies, has been granted for a limited period only.

As to what development will be considered " proper ", cf. the notes by s. 23, *ante*. The word may be used here with some such meaning as " for which permission has been or should be granted under Part III of the principal Act ".

Sub-s. (6).

Attributable. See s. 28 (6), *ante*.

S. 52 (6). Where compensation has been paid under this Part (Part II), or Part V, *post*, or as mentioned in Part IV, *post*, the land may subsequently be acquired, compulsorily or otherwise, by a public authority. If the compensation or price paid by that authority is less than it would have been, but for the prior planning decision or order, by an amount exceeding £20, the acquiring authority must account for this advantage to the Minister under s. 52 (6), *post*, or that subsection as applied, to sales by agreement, by regulations under s. 52 (8), *post*. Where this is the case, the acquiring authority, or some successor in title, may wish to carry out development to which the present section applies. No further sum will, in those circumstances, be recoverable under this section.

If the prior compensation was of an amount less than £20, it will not be registered and there is no question of this section applying. S. 52, *post*, may nevertheless apply, if the acquiring authority secured an advantage of more than £20.

Conversely, if the acquiring authority did not secure an advantage exceeding £20, but the prior compensation was of such an amount and was registered, it will be recoverable under the present section.

As to War Damage Scheme payments, see ss. 52 (7) and 57 (3), *post*.

Subs. (7).

Capital payment; mortgage, etc. See s. 66 (2) and (3), *post*. Mortgage is defined in s. 119 (1) of the principal Act, applied, save where the context otherwise requires, by s. 69 (2), *post*; but here the words are very wide (" mortgage, covenant or otherwise "). As to the powers of life tenants, trustees for sale, and universities and colleges, to raise money by mortgage, see the property Acts of 1925, mentioned in s. 66 (2), *post*. Periodic payments may be particularly appropriate in the case of mineral working. Cf. also the definition of " rentcharge " in s. 69 (1), *post*.

Sub-s. (8).

Initiates any new development. See s. 16 (5), *ante*.

Serve a notice. See s. 67 (3), *post*, and s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186).

Requiring him to pay. The person who may be required to pay is the person who has initiated the development, who is not necessarily the person to whom compensation was paid. A freeholder may have to re-pay compensation received by his lessee, or a purchaser to re-pay compensation received by his vendor. *Semble*, if the amount is not paid in the time allowed, it will be recoverable by action without further demand in any court having jurisdiction.

This section does not follow the precedent set by s. 74 (2) of the principal Act (Hill, p. 186; 48 Statutes Supp. 142), whereunder the sums recoverable might be charged on a person's interest in the land as a Class A land charge; nor does it authorise the addition of a penalty (s. 74 (3) of the Act of 1947).

Sub-s. (9).

Unexpended balance. See ss. 17 and 18, *ante*. The present subsection applies only to compensation payable under this Part (Part II) of the Act; other provisions are mentioned, *infra*. Where compensation is payable, in respect of a planning decision, under this Part, then at any subsequent time when it becomes relevant to enquire what is the unexpended balance of the land affected by the decision, or of any part of it, the balance (of the land or part) must be reduced or extinguished by deducting the compensation previously paid in respect of the same area; see s. 18 (3) and (5), *ante*. When compensation is recoverable under the present section, it will be " added back " to the unexpended balance; more strictly, the amount recoverable (excluding any amount remitted under sub-s. (4), *supra*) is treated as not falling to be deducted.

If the proposed development is then duly carried out, an amount representing the appreciation in value will again fall to be deducted, on any subsequent occasion, under s. 18 (4), *ante*, with the exception there mentioned in the proviso (effect of War Damage Scheme payments). The amount falling to be deducted, in respect of development so realised, may of course be greater, or less, than the amount " added back " to the unexpended balance, as (1) it depends on how much development is carried out (and it is not certain that any of the recoverable amount will have been remitted by the Minister under sub-s. (4), *supra*); and (2) the amount to be deducted under s. 18 (4), *ante*, does not fall to be assessed until some subsequent occasion.

It might seem unnecessary, in a straightforward case, to provide that an amount is to be " added back " to the balance, when a similar or larger amount is likely, very soon thereafter, to fall to be deducted. However, one reason for this mechanism is that it affords some protection against a compulsory purchase which might intervene before the development is realised. It ensures also that, where a large amount has been repaid to the Minister and only minor development takes place, there will still be an appropriate unexpended balance. It will also be understood that, in the straightforward case, these calculations will never in fact be carried out; *i.e.*, the previous compensation will be refunded in full; development, probably of higher value, will be carried out; the unexpended balance will thereby be extinguished; and no one will suggest, on any subsequent occasion which might arise, that there is left any unexpended balance to discuss or adjust.

Where a notice has been registered under s. 39, *post* (Part IV), s. 40 (2) (*d*), *post*, and reg. 11 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, provide a similar mechanism by applying s. 18 (3), *ante*, and the present subsection. The amount falling to be deducted (s. 18 (3) as applied) is limited to so much of the compensation as was contributed by the Minister under s. 40, *post* (not the whole compensation, nor the whole " compensation for depreciation ", paid for the revocation or modification or withdrawal of permission in question). The amount added back is similarly limited.

In Part V cases, s. 46 (2) proviso has a somewhat similar operation. S. 46 (2), *post*, states the effect on claim holdings, for the purposes of Part V, and for Parts II and III, of the payment of compensation (with interest) under Part V. Normally the principal amount of such compensation is deducted from the claim holding in question, or from the appropriate separate holdings resulting from a sub-division under s. 46 (3), *post*. When, however, such compensation is registered and recoverable as provided by s. 46 (4), *post* (applying s. 28, *ante*, and sub-ss. (1)–(8) of the present section, *supra*), both the principal amount and interest thereon may be recovered. Interest will have been calculated as provided by s. 46 (1), *post*, at 3½ per cent. from 1st July 1948 to the date of payment or 30th June 1955, whichever is the earlier. S. 46 (2) proviso, *post*, in effect assumes this interest to have been a lump sum of one-seventh of the principal amount. Accordingly it " adds back " seven-eighths of the amount recovered to the claim holding or holdings in question. At any time subsequent to that at which registered compensation became recoverable, this adding back of seven-eighths of the recoverable amount will be treated as having happened immediately before 1st January 1955. Accordingly, under s. 17, *ante*, the claim holding or holdings in question will be increased by one-seventh, as provided in that section, and converted into an unexpended balance or balances of established development value. In this way, in effect, the amount recoverable is added to the unexpended balance. If £x is the amount recoverable, this equation may be expressed as follows: $£x \times \frac{7}{8} + £x \times \frac{7}{8} \times \frac{1}{7} = £x$.

In the case of War Damage Scheme payments, registered under s. 57, *post*, there is no provision for adding back to the unexpended balance. If the proposed development is carried out, however, no deduction of its value will fall to be made; see s. 18 (4) proviso, *ante*. Between paying back an amount to the Minister and carrying out the development, however, the intending developer will not be protected by having an unexpended balance to supplement compensation if a compulsory purchase intervenes. A purchaser of land may be able to gain protection under s. 33, *post*; and, in any case, as works are carried out they will be protected by s. 32, *post*, in this interim period.

Part III

Compensation for Compulsory Acquisition of Land

30. Application of Part III.—(1) This Part of this Act applies to every compulsory acquisition of an interest in land, in pursuance of a notice to treat served after the commencement of this Act, by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919, or by a person or body of persons to whom the said Act of 1919 applies as it applies to such a department or authority.

(2) In this Part of this Act, in relation to a compulsory acquisition, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" the relevant interest " means the interest acquired;

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

" the notice to treat " means the notice to treat in pursuance of which the relevant interest is acquired;

" excepted interest " means the interest of any such person as is mentioned in section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845 (which relates to persons having no greater interest than as tenant for a year or from year to year).

NOTES

This section introduces Part III (ss. 30 to 37) of this Act, which amends the law of compensation on a compulsory acquisition of land, or an interest in land, in cases to which this Part of this Act applies; see sub-s. (1), *supra*.

The main provision made is for the payment of supplemental compensation where the interest compulsorily acquired subsists in land which has an unexpended balance of established development value. This will probably set an example for sales, in appropriate comparable circumstances, to public authorities by agreement.

As it is no longer possible to bring contemplated or partially completed development within the existing use value of land by payment of development charge, s. 32 affords protection to developers who have carried out works, on the faith of planning permission, which do not yet fall within the amended Third Schedule tolerance, and s. 33 affords a measure of protection, in certain circumstances, to purchasers of land. S. 34, *post*, amends s. 51 of the Act of 1947 to allow regard to be had, in special cases, to planning permissions actually granted; and s. 35, the " Pilgrim " provision, in effect allows the creation of a notional development value supplement, where a Part VI claim might have been, but was not, established under the principal Act. S. 35 is of very limited scope and is in the nature of a discretionary power to avoid cerain forms of hardship.

S. 36, *post*, creates a new system of law governing compensation for severance and other injurious affection, and sets a limit on compensation for disturbance. S. 36 applies only where there is a compulsory acquisition to which this Part of this Act applies, as defined in sub-s. (1), *supra*.

S. 31, *post*, allows certain disputes as to unexpended balances to be determined under this Part. S. 37, *post*, specifies the effect, on unexpended balances, of compulsory acquisitions to which this Part applies and of certain analogous sales by agreement. Information as to such balances can also be obtained, and certain disputes settled, under s. 48, *post*, which relates to Central Land Board certificates.

The present section applies the provisions of this Part of the Act to the compulsory acquisition of an interest in land, in pursuance of a notice to treat served after the commencement of the Act. It would appear that a notice to treat is necessary to make the provisions of this Part apply. The use of the expression " compulsory acquisition . . . in pursuance of a notice to treat . . ." seems to suggest that in addition there may have to be some further exercise of compulsory powers. The service of a

notice to treat does not of itself constitute an exercise of compulsory purchase powers. See *Guest* v. *Poole & Bournemouth Ry. Co.* (1870), L.R. 5 C.P. 553; 11 Digest (Repl.) 183, *501*; *Re Uxbridge & Rickmansworth Ry. Co.* (1890), 43 Ch.D. 536, at pp. 546 and 562 and 563, C.A.; 11 Digest (Repl.) 190, *572*; *Goodwin Foster Brown, Ltd.* v. *Derby Corpn.*, [1934] 2 K.B. 23; 11 Digest (Repl.) 190, *573*. This distinction may be of importance.

There would seem to be some five kinds of acquisition to consider in relation to an acquisition by a public authority. First, where the authority have power to acquire only by agreement. Second, where the authority are empowered to acquire by agreement and can be authorised to acquire compulsorily. Third, where the authority has obtained authorisation (by a confirmed compulsory purchase order or other " special act ") but no notice to treat has been served. Fourth, where a compulsory purchase order has been confirmed and a notice to treat served but there has been no further exercise of compulsory powers. Fifth, where there has been an exercise of compulsory powers in pursuance of a notice to treat.

The first case, *supra*, is not different from an ordinary private purchase and sale. The second case differs from the first in that the threat of compulsory purchase ensures that the purchase price will follow that provided for the case of compulsory acquisition. On the other hand, since there has been no authorisation, the relationship of the authority and persons who are owners of other affected interests in land, and who are not parties to the contract, will be that of the ordinary law. See *Metropolitan Asylum District* v. *Hill* (1881), 6 App. Cas. 193, at p. 208.

In the third and fourth cases the authorisation provided by the compulsory purchase order or other " special act " will put the purpose of the acquisition into the category of being authorised by the " special act ". The remedy in the case of any invasion of private right will be in compensation under the Lands Clauses Act, 1845. See *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437 (per North, J., and C.A.); 11 Digest (Repl.) 157, *320*.

It is in the fifth case only that this Part of the Act will apply with full force.

These matters are further considered in the notes to the succeeding sections of this Part. In all except the first of the five cases mentioned, *supra*, the purchasing authority will be, one " possessing " compulsory powers, within the meaning of the definition, in s. 69 (1), *post*, of " public authority possessing compulsory purchase " powers. Where the sale is by agreement, and is not strictly compulsory, see s. 37, *post*, as to adjustments of unexpended balances of established development value. Where there is a strictly compulsory acquisition, see ss. 31 and 37, *post*. See also s. 48 (2), *post*, as to certificates showing the balance or balances, where notice to treat has been served " with a view to " compulsory acquisition.

Sub-s. (1).

Compulsory acquisition. The expression does not include a vesting by Act of Parliament. See s. 69 (1), *post*. See also General Note, *supra*. Notice to treat " with a view to the compulsory acquisition " of an interest is enough to enable s. 48 (2), *post*, to be operated (whether or not the acquisition then proceeds by agreement or compulsorily).

Interest in land. Means only an interest in fee simple or a " tenancy ". See s. 69 (1), *post*.

Public authority. By s. 12 (2) of the Act of 1919 (Hill, p. 711; 3 Halsbury's Statutes (2nd Edn.) 984), this means a body not trading for profit authorised by any Act to carry on a railway canal, dock, water or other public undertaking. See *Metropolitan Water Board* v. *Berton*, [1921] 1 Ch. 299; 11 Digest (Repl.) 314, *2229*.

Or body . . . to whom . . . Act of 1919 applies. The initial application of the Act of 1919 to government departments and local and public authorities has been continuously widened since the enactment of the 1919 Act. There are now few, if any, bodies possessing compulsory purchase powers to whom the Act does not apply. See s. 45 (5) of the Land Drainage Act, 1930 (13 Halsbury's Statutes (2nd Edn.) 593); s. 4 (7) of the New Towns Act, 1946 (Hill, p. 601; 25 Halsbury's Statutes (2nd Edn.) 431); and s. 57 (1) of the Act of 1947 (Hill, p. 154; 48 Statutes Supp. 114).

Sub-s. (2).

Notice to treat. This usually means such a notice as is mentioned in s. 18 of the Lands Clauses Consolidation Act, 1845 (Hill, p. 692; 3 Halsbury's Statutes (2nd Edn.) 902). See para. 1 (1) of the Sixth Schedule to the Act of 1944 as set out in the Eleventh Schedule to the Act of 1947 (Hill, p. 342; 48 Statutes Supp. 277) and ss. 19 and 119 (3) of the Act of 1947 (Hill, pp. 81, 261; 48 Statutes Supp. 56, 205). In some special Acts notices of intention to take lands are required in place of notice to treat, in the absence of other provision these have been treated as having the effect of notice to treat. *Tyson* v. *London Corpn.* (1871), L.R. 7 C.P. 18; 11 Digest (Repl.) 294, *2000*; *Morgan* v. *Metropolitan Ry. Co.* (1868), L.R. 4 C.P. 97; 11 Digest (Repl.) 188, *550*; *Wilkins* v. *Birmingham Corpn.* (1883), 25 Ch.D. 78; 11 Digest (Repl.) 293, *1989*.

Excepted interest. Excepted interests are not normally acquired in pursuance of a notice to treat. The purpose of s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949), is to allow the acquiring authority to

treat for the lessor's interest and to determine the lease under the tenancy. The residue of a long term of which less than a year remains is within the provision. *R.* v. *Great Northern Rail. Co.* (1876), 2 Q.B.D. 151; 11 Digest (Repl.) 187, *535*. As to compensation on the determination of such an interest, see s. 39 of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 134). Compensation under the Lands Clauses Consolidation Act will be assessed without regard to the tenant's right to renewal under the Landlord and Tenant Act; but if the compensation which would have been payable under s. 37 of that Act (87 Statutes Supp. 130) exceeds the Lands Clauses Consolidation Act compensation that compensation will be increased by the excess. If there is no compensation under the Lands Clauses Consolidation Act, by reason of the termination of the tenancy under s. 57 of the Landlord and Tenant Act, 1954 (87 Statutes Supp. 153), compensation under that Act will be payable under ss. 59 and 37 thereof (87 Statutes Supp. 158, 130).

31. Compensation to include unexpended balance of established development value.—(1) Where, in the case of a compulsory acquisition to which this Part of this Act applies, compensation on the basis of existing use is payable in respect of the acquisition of the relevant interest, and any of the relevant land has an unexpended balance of established development value at the time immediately before the service of the notice to treat, then, subject to section thirty-three of this Act, there shall be added to the compensation payable in respect of the acquisition of the relevant interest apart from the provisions of this section—

(*a*) where the relevant interest is the only interest (other than excepted interests) subsisting at that time in any of the relevant land which has such a balance, an amount equal to that balance at that time less, in a case when the relevant interest is subject to a rentcharge, any rental liability of that interest within the meaning of the Fifth Schedule to this Act; or

(*b*) where the relevant interest is one of two or more interests (other than excepted interests) so subsisting, an amount equal to so much of that balance at that time as is ascertained in accordance with the provisions of the said Fifth Schedule to be attributable to the relevant interest:

Provided that no payment shall be made by virtue of this section if the relevant interest is a tenancy granted on such terms that, immediately before the service of the notice to treat, the person entitled to that interest is prohibited from carrying out any new development of the relevant land.

(2) Regulations made under this section shall provide for requiring persons entitled to interests in the relevant land, other than the relevant interest and any excepted interest, to be notified in cases where it is proposed, by virtue of this section, to pay compensation in excess of compensation on the basis of existing use, and for enabling such persons, in case of dispute as to the application of this section, to require the dispute to be referred to the Lands Tribunal for determination by that Tribunal.

NOTES

Where compensation is paid on a compulsory purchase in pursuance of a notice to treat served on or after 1st January 1955, on the basis of existing use, and the land in which the interest acquired subsists has an unexpended balance of established development value, immediately before the notice to treat, there will be added to the compensation a payment amounting to so much of that balance as is attributable to the interest.

The interest may be comprised in land which is part of an area having an unexpended balance, or only some part or parts of the land in which the area subsists may have such a balance or there may be other complications.

It is first necessary to discover any balance which there is on the land in which the interest subsists. It will also be necessary to know what deductions have to be made from the original balance by reason of payments in respect of compensation for planning decisions or by reason of new development. Case payments and other payments under Part I, *ante*, and compensation for past decisions or orders (made before 1st January 1955) payable under Part V, *post*, must also be taken into account; see ss. 15 and 17, *ante*, and s. 46, *post*. It will take some time for applications and claims, in respect of these matters, to be dealt with. The unexpended balance or balances will also depend

on what adjustments are required by s. 2 (2) and (3), *ante*; cf. the notes to s. 17, *ante*.

Once the acquiring authority have served notice to treat they are entitled to apply to the Central Land Board for a certificate showing any unexpended balance immediately before the service of the notice to treat; see s. 48 (2), *post*. If the certificate involves a new apportionment (one which relates wholly or partly to matters as to which there has not been a previous apportionment), or involves the calculation of deductions, other persons having interests in land affected are entitled to have notice and may dispute the calculations or apportionment. The Board's proposals may be appealed to the Lands Tribunal. Once the certificate is granted to the acquiring authority, it is conclusive evidence of any unexpended balance of the land; see s. 48 (6), *post*.

There may, however, thereafter remain a number of interests subsisting in the land and those interests may not subsist in the whole of the land. They may overlap. In fact once again there may be an unravelling to be done. Some interests may be subject to rentcharges.

Once the balances of any land are finally ascertained and the authority are sufficiently informed of all the interests in land they are required to serve notice of any proposal to pay compensation in excess of existing use value on every person entitled to an interest in the land; see the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), *post*. Such persons have a right of appeal, in case of dispute, to the Lands Tribunal. Where there is already a dispute, with the owner of the interest being acquired, before the Tribunal, and the authority propose to make an excess payment, they are required to serve notices, within fourteen days from the reference of that dispute, or within such longer time as the Tribunal allow. If in such case no notice is served, but the Tribunal are of the view that such a payment will be payable, they will direct the service of notice before giving a decision. In such cases, the persons affected will be entitled to be heard on the reference already before the Tribunal.

The manner in which payments will be made among interests is as follows; see sub-s. (1), *supra*, and the Fifth Schedule and notes thereto, *post*:—

Where there is only one interest subsisting in any land, it will be the amount of any unexpended balance at the time of the notice to treat. If that interest is subject to a rentcharge, there will be deducted the capital value of any annual excess of the rent payment over the rent which would be obtained if the land were let subject to a covenant excluding new development (" existing use rent "). This is the rental liability of the interest.

Where the land comprises a number of interests, some of which overlap one another, the area must be subdivided into so many parts as to secure that all the interests in each of the parts subsist in whole of that part, and any rentcharge charged on the part is charged on the whole of the part. Each area to be considered must also be one which can be said to have a balance (see ss. 17 and 18, *ante*, and s. 48 (2), *post*).

In the case of a fee simple in possession, the payment will be the unexpended balance less any rental liability.

Where the part is subject to lease the rent under the lease will be compared with the rent which would be obtained under a tenancy restricting new development (existing use rent). Any excess over the existing use rent will be capitalized by reference to the remainder of the term. This is known as " the rental increment ".

In such case there will be paid to the freehold reversioner the present value of the right to receive the unexpended balance at the end of the lease (the reversionary development value) less any amount by which any rental liability exceeds any rental increment.

In the case of tenancies there will be calculated the rental increment derivable from any subletting and any rental liability by reference to any excess of the rent, payable under the superior lease, over the existing use rent.

In the case of a tenancy in reversion there will be payable an amount equal to the reversionary development value less the aggregate of the reversionary development value payable in respect of the interest in reversion immediately expectant on the termination of the tenancy in question (*i.e.*, normally, the fee simple) and the amount of any excess of rental liability over rental increment.

For example, taking a simple case, and ignoring rental increment and liability, the following would set out the division in a case where there was an unexpended balance of £100, and a lease having six years and an underlease three years to run:—

Landlord (fee simple):	
Present value of £100 in 6 years at 5 per cent.	£74.26
Tenant in reversion:	
Present value of £100 in 3 years at 5 per cent. less £74.26 = (86.38–74.26)	£12.12
Tenant:	
£100 less £86.38	£13.62
	£100.00

From the tenant's interest there would be deducted any rental liability. The deduction of rental liability or excess of rental liability reflects the fact that the interest does not enjoy the development value represented by that liability or excess. Excess

of rental increment is ignored in payment, from the unexpended balance, in respect of a superior interest, because it will there appear in the existing use.

No payment under this section will be made in respect of interests no greater than that of a tenant for a year, or from year to year, or where the tenancy prohibits the carrying out of new development.

Sub-s. (1).

Compulsory acquisition. See General Note to s. 30, *ante*. The present section can be operated only on a strictly compulsory acquisition.

Compensation on basis of existing use. See s. 69 (1), *post*. The definition excludes compensation on the basis of equivalent reinstatement (see s. 2 (5) of the Act of 1919; Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977) or on the basis of prevailing use (see s. 34 and the Sixth Schedule, *post*) and compensation for disturbance, severance and injurious affection (see s. 36, *post*). The text of s. 2 of the Act of 1919 is printed in the notes to s. 65, *post*.

Relevant interest. Means the interest acquired; see s. 30 (2), *ante*. There may be more than one.

Unexpended balance. See ss. 17 and 18, *ante*.

Notice to treat. See note to s. 30 (2), *ante*, and general note to that section.

S. 33. That section, *post*, enables purchasers of land who have bought on the faith of planning permission to secure that the value of the permission will be taken into account in certain circumstances. See sub-s. (5) of that section, *post*, excluding this provision.

Excepted interests. See note to sub-s. (2) of s. 30, *ante*.

Rental liability. See General Note, *supra*, and para. 3 of the Fifth Schedule, *post*.

Fifth Schedule. See *post*. See also explanatory general description in the General Note, *supra*.

New development. See s. 16 (5), *ante*. When there is such a tenancy as is mentioned in this proviso, *quaere* whether the existing use value of the superior interest is correspondingly increased, *i.e.*, by the value of the consideration which would be received for a release of the covenant or other waiver of the prohibition. *Semble*, also, that development is not "prohibited" by the common form covenant which merely requires the landlord's consent.

Sub-s. (2).

Regulations under this section. See the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), *post*.

Lands Tribunal. As to reference of disputes, see S.I. 1955 No. 80 (*ubi supra*) and the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. As for the Tribunal in general, cf. notes to s. 27, *ante*.

32. Additional compensation for works.—(1) The provisions of this section shall have effect as respects a compulsory acquisition to which this Part of this Act applies where compensation on the basis of existing use is payable in respect of the acquisition of the relevant interest and, on or after the first day of July, nineteen hundred and forty-eight, but before the date of service of the notice to treat, buildings have been erected or works constructed in accordance with planning permission, either on the relevant land, or on other land, or partly in the one way and partly in the other, at the expense of a person who, at a time when the buildings or works were erected or constructed, was entitled to an interest in the relevant land or some part thereof:

Provided that this section shall not apply—

(*a*) if the operation of subsection (4) of section fifty-one of the principal Act (which provides, with certain exceptions, for disregarding planning permission granted before the date of the notice to treat) is excluded in respect of that permission by virtue of the exception contained in paragraph (*a*) of that subsection or by virtue of any provision of this Act; or

(*b*) if the compensation on the basis of existing use payable in respect of the acquisition would be the same whether or not the said subsection (4) operated;

and where, if the notice to treat had extended to a part only of the relevant land, the amount of the compensation on the basis of existing use payable in respect of the relevant interest in so far as it subsisted in that part would have been the same whether or not the said subsection (4) operated, this

section shall have effect as respects the acquisition of the relevant interest as if the notice to treat had extended only to the remainder of the relevant land.

(2) If the value of the relevant interest immediately before the service of the notice to treat, with the benefit of any planning permission having effect at that time, is greater than it would have been at that time with the benefit of such permission if the buildings or works had not been erected or constructed, there shall be added to the compensation payable in respect of the acquisition of the relevant interest apart from the provisions of this section a sum equal to the amount of the difference.

(3) Where the last preceding subsection applies, then, in calculating the compensation on the basis of existing use which is payable in respect of the acquisition, it shall be ascertained whether that compensation is less than it would have been, or greater than it would have been, if the buildings or works had not been erected or constructed, and if so—

(*a*) the amount of the deficiency, or of the excess, as the case may be, shall be computed; and

(*b*) the sum referred to in the last preceding subsection shall be increased by the amount of the deficiency, or reduced by the amount of the excess, as the case may be.

NOTES

The purpose of this section is to make provision for the case where work has been done, on the faith of planning permission, and notice to treat is served after the commencement of this Act and before the development is completed. It meets three difficulties:—

(1) it is no longer possible to " buy back " development value by paying development charge. Where charge was paid, it will not be necessary, of course, to invoke this section; see sub-s. (1) proviso (*a*), *supra*, and s. 51 (4) (*a*) of the Act of 1947 (Hill, p. 145; 48 Statutes Supp. 107) which will give the value of the works and of the permission;

(2) even when charge was payable, there were cases of nil assessment which created difficulty; cf. the note on p. B702 of Hill, 2nd Supp.; and *Higham* v. *Havant & Waterloo Urban District Council*, [1951] 1 All E.R. 173; [1951] 1 K.B. 509; affirmed, [1951] 2 All E.R. 178, n; [1951] 2 K.B. 527, C.A; 2nd Digest Supp. At the time of the debates on the Bill for the Act of 1953, the Government were advised that this particular difficulty could be avoided, apparently by relying on that case, see H. of C. Official Report S.C.A., 17th December 1952, col. 77; this view has been abandoned;

(3) the present Act brings completed development into the existing use by amending the Third Schedule to the principal Act (see notes to paras. 3 and 4 of the Seventh Schedule to this Act, *post*), and contains other special provisions (ss. 33 and 34, *post*) but these do not cover all cases.

The present section enables an owner to obtain the value of the works as it would be assessed if regard were had to the permission, but does not go so far as to enable compensation to be paid for the value of the permission itself.

If the value of the land with the permission and the works, in the open market (and subject to the Act of 1919, see s. 65, *post*), would be greater than with the permission only, the amount added by the works will fall to be added to the compensation. This addition is a measure of the value of the works, having regard to the permission, but disregarding the value added by the permission itself.

Where the works have not affected the existing use value, the compensation will be the existing use value plus the addition to be made, as mentioned above. Where the works have added some value to the existing use, or where, on the other hand, they have injured it, the amount falling to be added will first be adjusted. This adjustment is computed by comparing the actual existing use value with that value as it would have been if the work had not been done. The amount of any benefit reflected in existing use is deducted; the amount of any injury to existing use is added. If there is an unexpended balance on any of the land, see s. 31, *ante*. This possibility is ignored in the following examples.

Example 1:

Permission has been granted to erect a small factory on an acre of farm land valued, for agricultural purposes, at £100. At the date of notice to treat, part of the factory consisting of a small garage building has been erected. Assume that this cannot be valued, for Third Schedule purposes, as having already an industrial use.

In the market the land, without the garage, but with permission to build the factory, would fetch £1,200. With the garage it is worth £1,500. The amount

prima facie to be added is therefore £300 (*i.e.*, the value of the garage, on the basis of permission having been granted, but disregarding the value, £1,100, of the permission itself). As agricultural land, however, the value with the garage is £150, showing an increase of £50 over what would have been the value (£100, as before).

The compensation payable would be: £150 + 300 − 50 = £400.

Example 2:

As in example 1, *supra*, but the works done consisted of footings and road works. These also would add £300 on the basis explained above, but have merely damaged the agricultural value, reducing it to £60.

The compensation will be: £60 + 300 + 40 = £400.

Where there is some part of the land where s. 51 (4) of the principal Act would make no difference, the present section will apply only to the remainder. This may be the case where partially completed development has been brought within the amended Third Schedule to the principal Act, and therefore taken out of the operation of s. 51 (4) of that Act.

Example 3:

As in example 1, *supra*, but one workshop representing half the intended factory has been erected and is in use. On the other half of the site, foundations have been laid for another workshop to complete the development.

In the market the land, without the completed workshop and without the foundations of the other, but with permission for the development, would fetch £1,200. With the permission and the work done, it is worth £4,250. If notice to treat had extended only to the part with the completed workshop, compensation would have been £3,600, whether or not s. 51 (4) of the principal Act operated. This figure in effect represents: £50 (agricultural value without works) + £550 (value of part of the permission) + £3,000 (value of the works on this land), though it need not be " broken down " in this way for the purpose of its assessment.

The present section therefore can be applied to the remainder of the land. This part, with the permission but without the works (the foundations), would fetch £600. With the works and permission, it would fetch £650. The agricultural value, without the works, would be £50, but with the works is £10. Compensation for this part would be: £10 + 40 + 50 = £100.

The total compensation will be £3,600 + 100 = £3,700.

This will be seen to represent:

Existing use value without works:	£100
Value added to half the land by permission:	£550
Value added to that half by works:	£3,000
Value of works on other half:	£50
	£3,700

If this section had applied to all the land the figure would have been: £100 + 3,000 + 50 = £3,150. If regard had been paid to all the added value arising from permission it would have been £4,250.

Sub-s. (1).

Compulsory acquisition. See s. 69 (1), *post*, and the General Note to s. 30, *ante*.

To which this Part . . . applies. See s. 30 (1), *ante*.

Compensation on basis of existing use. See s. 69 (1), *post*, and note to s. 31 (1), *ante*.

1st July 1948. The appointed day for the general commencement of the Act of 1947; see s. 120 of that Act and S.I. 1948 No. 213 (Hill, pp. 266, 733; 48 Statutes Supp. 209, 294).

The notice to treat. See note to s. 30 (2), *ante*, and the General Note to that section. As to enactments whereunder notice is deemed to be served, see also s. 119 (3) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205).

Buildings; works. See s. 69 (2), *post*, applying to words in this Act the meanings they bear in the Act of 1947, save where the context otherwise requires. See further s. 119 (1) of that Act (Hill, p. 258; 48 Statutes Supp. 203) defining " building " and " buildings or works ". Cf. the notes to s. 20 of this Act, *ante*.

Planning permission. See, by virtue of s. 69 (2), *post*, ss. 12 and 119 (1) of the Act of 1947 (Hill, pp. 65, 260; 48 Statutes Supp. 44, 204). Cf. generally the notes to s. 16 of this Act, *ante*.

Relevant land. This means the land in which the interest acquired subsists: see s. 30 (2), *ante*. The buildings or works here mentioned may be on some land other than that acquired. Land means any corporeal hereditament including a building as defined in s. 119 (1) of the principal Act; see s. 69 (2), *post*.

S. 51 (4) of the principal Act. See s. 51 (4) of the Act of 1947 (Hill, p. 145; 48

Statutes Supp. 106). That subsection provides for disregarding permission for development, other than Third Schedule development, except:

(*a*) where development charge has been paid; or

(*b*) (formerly) where no charge was payable because of any provision of Part VIII of the principal Act. This latter provision, relating to certain development charge exemptions, will not apply for the purposes of an acquisition to which this Part (Part III) of the present Act applies; see s. 34 (2), *post*. S. 34 (1), *post*, re-enacts some of the provisions formerly made by reference to such exemptions.

The effect of s. 51 (4) of the principal Act was preserved by s. 3 (1), (2) of the Act of 1953 (Hill, 2nd Supp., p. B700; 78 Statutes Supp. 136). For exceptions to its present operation, see s. 33 (2) and s. 34, *post*. Where works, or a use of land, have been brought within the amended Third Schedule to the principal Act (see notes to paras. 3 and 4 of the Seventh Schedule to this Act, *post*), their value is normally reflected in compensation on the basis of existing use, see s. 51 (2) of the principal Act; and s. 51 (4) of that Act will not apply.

Would have been the same. See Example 3 in the General Note, *supra*.

Sub-s. (2).

Value of the relevant interest. This is thought to mean the value in the open market calculated by reference to rr. (2)–(4) of s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977); see s. 65, *post*. An alternative interpretation is possible, and may not be very different in effect: on this view, the value referred to is the value as calculated for the purpose of compensation for the acquisition, but having regard to the permission. Special provisions might affect the value as calculated for the purposes of the acquisition.

Sub-s. (3).

Less than it would have been. See Example 2 in the General Note, *supra*.

Greater than it would have been. See Example 1 in the General Note, *supra*.

33. Protection for purchaser of interest subsequently acquired compulsorily.—(1) It shall be the duty of the council of a county borough or county district, on application made to them in writing by any person with respect to particular land in the borough or district, to serve on the applicant, within a period of twenty-eight days from the date of the receipt of the application, a notice stating whether or not the council propose to acquire within the next five years (whether compulsorily or otherwise) any interest in that land or in any part thereof, or have been notified by any public authority possessing compulsory purchase powers of a proposal of that authority so to acquire any such interest, specifying in the notice—

(*a*) any such public authority by whom the council have been so notified; and

(*b*) any part of that land to which any such proposal of the council or other authority does not extend.

(2) If—

(*a*) the council of a county borough or county district have, in accordance with the preceding subsection, given notice to a person that the council do not propose, and have not been notified of any proposal of another authority, to acquire within the next five years any interest in any land specified in the notice (in this subsection referred to as " the specified land "), being the whole or part of the land to which the application related; and

(*b*) the person to whom the notice was given has within three months of the service of the notice completed, or entered into a bona fide contract for, the purchase of an interest in the specified land or any part thereof and given notice of the completion or, as the case may be, of the making of the contract to the said council; and

(*c*) that interest, or that interest in so far as it subsists in any part of that land, is subsequently acquired compulsorily, and the first notice required to be published or served in connection with that acquisition, either by an Act or by any Standing Order of either House of Parliament relating to petitions for private bills, is

published or served in accordance with that Act or Order before the end of the period of five years beginning with the date of service of the notice referred to in paragraph (*a*) of this subsection,

then, for the purpose of assessing the compensation payable in respect of the acquisition of that interest, subsection (4) of section fifty-one of the principal Act shall not apply to any planning permission in force at the date of service of the notice referred to in paragraph (*a*) of this subsection:

Provided that—

(i) if at the date of the publication or service of the first notice in connection with the acquisition such as is referred to in paragraph (*c*) of this subsection, the purchase mentioned in paragraph (*b*) thereof has not been completed, this subsection shall not have effect unless the contract mentioned in the said paragraph (*b*) remains in force at that date;

(ii) this subsection shall not have effect in relation to a purchase by a company from an associated company within the meaning of section forty-seven of this Act.

(3) If, in the case of an application under subsection (1) of this section, at the expiration of the period mentioned in that subsection the council have not served the notice required thereby, then, for the purposes of subsection (2) of this section, the council shall be deemed to have duly served on the applicant at the expiration of the said period such a notice as is mentioned in paragraph (*a*) of the said subsection (2) with respect to the whole of the land to which the application related.

(4) Without prejudice to the duty imposed by subsection (1) of this section on a council to whom an application under that subsection has been made, the council may require the applicant to pay to them a fee of five shillings.

(5) Section thirty-one of this Act shall not apply for the purpose of assessing any compensation to the assessment of which subsection (2) of this section applies:

Provided that if the compensation payable in respect of the acquisition of the relevant interest would, apart from this proviso, be less than it would have been if this section had not been enacted, the said subsection (2) shall not apply in the case of that acquisition.

NOTES

It is the duty of councils of county boroughs and county districts, when application is made to them in writing, to inform applicants by a notice whether they propose to acquire any land to which the application relates, or any part of it within the next five years. They must also give notice of any notification given to them, by any other public authority possessing powers of compulsory purchase, of any proposal of that authority to purchase within the same time.

In giving notice the council must state the authority by whom they have been notified and any part of the land to which proposal does not apply. Notice must be given within 28 days of the application.

If the council give notice that there is no proposal the person to whom notice is given may safely complete or enter into contract in the next three months after that notice. To ensure this protection, however, he must give notice of the contract or completion to the Council.

If the land is acquired compulsorily thereafter, within a certain period, compensation will be paid on the basis of the value of the land with the benefit of any planning permission in force at the date of the council's notice.

The period of protection covers any acquisition the first notification of which is published within five years of the council's notice of no proposal.

The benefit of this permission will be lost if the contract has not been completed before the date of the first notification of acquisition (unless the contract is in force at that date). The protection will not be available in the case of a sale by a company to an associated company (see s. 47, *post*). If the council fail to give notice of any proposal within twenty-eight days they will be deemed to have served a notice saying that there is no proposal. On any application the council may require a fee of five shillings. There will be no payment by reference to the unexpended balance in cases to which this section applies; but if the compensation under this section would be

less than in the ordinary way, then this section will not apply. These circumstances could arise when the land has a substantial unexpended balance and the planning permission relates to development the value of which may be small, or be problematic until the development itself is actually carried out.

Sub-s. (1).

Council of county district. The council of a borough, urban, or rural district; see the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 515). In London, except in the City, the London County Council are the council concerned in this section. In the City it is the Common Council; see s. 62, *post*.

To serve . . . a notice. See s. 67 (3), *post*, applying s. 105 of the Act of 1947.

From the date. The period of 28 days presumably starts on the day after the application is received.

Interest in land. Means only an interest in fee simple or a tenancy; see s. 69 (1), *post*.

Public authority possessing compulsory purchase powers. This means an authority which is or could be authorised; see s. 69 (1), *post*.

Sub-s. (2).

Contract. See s. 69 (6), *post*.

Purchase of an interest. This includes the taking of a mining lease; see T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), reg. 22, *post*.

Given notice . . . to the said council. As to giving notice, see s. 67 (3), *post*, and s. 105 of the Act of 1947.

Acquired compulsorily. See the definition " compulsory acquisition " in s. 69 (1), *post*.

Notice required to be served . . . by an Act, etc. See, for example, the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946 (Hill, p. 660; 39 Statutes Supp. 4).

S. 51 (4) of the Act of 1947. See Hill, p. 145; 48 Statutes Supp. 106. That provision directs the Tribunal assessing compensation to disregard any planning permission granted before the date of the notice to treat unless either a development charge has been paid or none is payable by reason of some provision contained in Part VIII of that Act. Cf. note to s. 34, *post*.

Associated company. See s. 47, *post*.

Sub-s. (4).

Without prejudice to the duty. This implies that the authority should give their notice without waiting for the five shillings, and may require the payment of the fee thereafter.

Sub-s. (5).

S. 31 of this Act. That section, *ante*, provides that, where compensation is paid on the basis of the existing use, there will be added to the compensation a payment by reference to the amount of so much of any unexpended balance as may be attributable to the interest acquired.

34. Compensation to take account of planning permission in certain other cases.—(1) For the purposes of a compulsory acquisition to which this Part of this Act applies, subsection (4) of section fifty-one of the principal Act shall not apply to any planning permission granted—

(*a*) for any development of land of a class specified in the Sixth Schedule to this Act; or

(*b*) for any development specified in a certificate issued under section eighty of the principal Act (which relates to land ripe for development before the first day of July, nineteen hundred and forty-eight),

or to any planning permission deemed to be granted by virtue of section seventy-eight of the principal Act (which relates to unfinished buildings).

(2) Paragraph (*b*) of subsection (4) of the said section fifty-one (which provides certain exceptions from that subsection by reference to exemptions from development charges), and so much of subsection (1) of section three of the Act of 1953 as relates to the exceptions comprised in that paragraph, shall not apply for the purposes of any compulsory acquisition to which this Part of this Act applies.

NOTES

This section is required as a modification of the general effect of s. 51 of the Act of 1947 (Hill, pp. 144–146; 48 Statutes Supp. 106). That section limits compensation

generally so as to reflect only the value of Third Schedule development (s. 51 (2)); and s. 51 (4) requires actual permission for development beyond the Third Schedule (now amended, see paras. 3 and 4 of the Seventh Schedule to this Act, *post*), to be disregarded except where:

(*a*) a development charge has been paid, whereby the development value has been "bought back"; or

(*b*) no charge was payable by virtue of any exemption in Part VIII of the principal Act.

In connection with land of local authorities, statutory undertakers' operational land, and the functional land of charities, however, it might in certain cases be assumed that permission would be granted to make the value accord with "prevailing use". Exemption from charge was also conferred, for actual permissions granted in certain circumstances, by Part VIII exemptions. If reliance is placed on the first type of concession for such land, compensation will be calculated on the basis of prevailing use, as defined in s. 69 (1), *post*. It may be also that compensation will be calculated on the basis of equivalent re-instatement; see s. 69 (1), *post*, and r. (5) of s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977). In either of these cases compensation will not be calculated on the basis of existing use, as defined in s. 69 (1), *post*.

The present section now repeals, for the purposes of assessing compensation on a compulsory purchase to which this Part of this Act applies (see s. 30, *ante*), para. (*b*) of s. 51 (4) of the Act of 1947 (Hill, p. 145; 48 Statutes Supp. 107). That paragraph relates to cases where permission has been granted for development exempt from charge by some provision in Part VIII of that Act. Its effect was preserved under the Act of 1953 by s. 3 (1) and (2) thereof (Hill, 2nd Supp., pp. B700, B701; 78 Statutes Supp. 136, 137). The exclusion of this benefit is now enacted by sub-s. (2), *supra*; sub-s. (1), *supra*, is concerned to re-introduce a similar benefit in most of the former cases where Part VIII exemptions from charge arose. Regard may accordingly be had to permission granted for development covered by a dead-ripe certificate (s. 80 of the principal Act; Hill, p. 199; 48 Statutes Supp. 152); for the permission for the completion of certain unfinished building development under s. 78 of the Act of 1947 (Hill, p. 196; 48 Statutes Supp. 150) and for the special cases specified in the Sixth Schedule, *post*.

The Sixth Schedule, *post*, lists eight special classes of land to which this provision applies:

1. Land to which s. 82 of the Act of 1947 (Hill, p. 205; 48 Statutes Supp. 157) applies. This is land held by local authorities for general statutory purposes, which was so held on 1st July 1948, other than land held for comprehensive development, or land held for any statutory undertaking carried on by them or of any class of land excepted from the section under the T. & C.P. (Local Authorities Lands: Exceptions to s. 82) Regulations, 1948 (S.I. 1948 No. 1461) (Hill, p. 827).

2. Land acquired or appropriated by a local authority for development or comprehensive redevelopment where the relevant interest is the interest of that authority. See s. 83 of the Act of 1947 (Hill, p. 206; 48 Statutes Supp. 158).

3. Land acquired by a development corporation under the New Towns Act, 1946 (Hill, pp. 593-637; 25 Halsbury's Statutes (2nd Edn.) 427), where the relevant interest is that of the corporation. See s. 83 of the Act of 1947 (*ubi supra*).

4. Land which on the date of the notice to treat was operational land of statutory undertakers and the relevant interest is that of the undertakers. See s. 84 of the Act of 1947 (Hill, p. 208; 48 Statutes Supp. 159).

5. Specified land of the National Coal Board (see T. & C.P. (National Coal Board) Regulations, 1951 (S.I. 1951 No. 716; Hill, 2nd Supp., p. B238), where the relevant interest is that of the Board.

6. Functional lands of charities which were such lands on 1st July 1948. See s. 85 of the Act of 1947 (Hill, p. 209; 48 Statutes Supp. 160).

7. Lands which would have been lands within classes 1 to 6 if the notice to treat had been served on the date of the grant of planning permission.

8. Any land which the Minister has directed to be treated as functional land of a charity even though it was not used for functional purposes on 1st July 1948.

The classes of land referred to in classes 1, 4, 5, 6 and 8 are also mainly lands in respect of which compensation could be calculated on the basis of the prevailing use (see s. 69 (1), *post*). This section, by excluding the operation of sub-s. (4) of s. 51 of the Act of 1947 (*ubi supra*), over-rides the assumed limitation, to Third Schedule development only, contained in sub-s. (2) of that section, to the extent of allowing regard to be had to the permissions referred to here, in the circumstances referred to in the Schedule.

Class 7 brings into the same position lands of classes 1 to 6 where the protected interest has ceased, provided the planning permission is obtained before such cesser. Purchasers of such lands should ensure that planning permission is obtained before the interest ceases to be an interest to which classes 1 to 6 apply.

Class 8 is concerned with cases where the Minister granted a limited prevailing use protection, under s. 85 (5) of the Act of 1947 (Hill, p. 210; 48 Statutes Supp. 161). The same protection is now granted to such land. The original power of the Minister to grant the protection of s. 85 (*supra*) was limited; protection operated " so long as the interest [was] so held ".

In the case of the special classes in the Schedule, it is unlikely that there will be an unexpended balance (see s. 1 (3) (*a*) and (*b*), *ante*). In cases where compensation is paid on the basis of prevailing use, s. 31, *ante*, will not apply and there will be no payment by reference to the unexpended balance. In the case of class 8 land, para. 12 of the First Schedule, *post*, provides for the possibility of opting out of the class by an application made before 1st July 1955. There is a possibility of there being an unexpended balance in the case of land acquired by a statutory undertaker after 1st July 1948.

In the case of " dead ripe " land or unfinished buildings, such development may not have exhausted the whole of the development value in the land and there may be an unexpended balance.

Where any question arises for determination as to the special classes, ss. 92 and 119 (2) of the Act of 1947 (Hill, pp. 219, 261; 48 Statutes Supp. 169, 205) will apply; see s. 67 (4), *post*.

Sub-s. (1).

Compulsory acquisition. See s. 69 (1), *post*, and General Note to s. 30, *ante*.

To which this Part of this Act applies. See s. 30 (1), *ante*.

S. 51 (4) of the principal Act. See Hill, p. 145; 48 Statutes Supp. 106. Sub-s. (2) of that section requires valuation for compensation to assume that permission would be granted for Third Schedule development but not for other development. Sub-s. (4) of that section deals with the situation where a planning permission has actually been granted. It provides that the value is to be calculated as if it had not been granted, unless development charge has been paid or the development is free of charge under a provision in Part VIII of the Act of 1947 (ss. 75 to 92). See the General Note, *supra*.

Planning permission. See ss. 12 and 119 (1) of the principal Act, and s. 69 (2) of this Act, *post*, and cf. notes to ss. 16 and 20, *ante*. Permission may have been granted on an application for express permission; or, as permitted development, by a general development order or a special development order (such as that applying to New Towns): or, *semble*, under s. 35 (1) of the Act of 1947 (Hill, p. 116; 48 Statutes Supp. 84); or in other ways.

Attention is drawn also to the assumption that (in addition to any actual permission granted) permission would be granted in many of the cases to which the Sixth Schedule relates, for development corresponding with the prevailing use of contiguous or adjacent land. This is still of importance. A notice to treat might be served in respect of such lands at a time when there has been no actual grant of permission. If there is any dispute, in such cases, as to the prevailing use, see s. 110 (2) of the Act of 1947 (Hill, p. 245; 48 Statutes Supp. 190) and T. & C.P. (General) Regulations, 1948 (S.I. 1948 No. 1380), reg. 10 (Hill, p. 820), which provide for determination of disputes by the Central Land Board, subject to a right to appeal to the Minister.

Sixth Schedule. See *post*. The specified classes are described in the General Note, *supra*. In the Schedule they are described as " special " classes. See also, as to dispute, s. 67 (4), *post*, applying ss. 92 and 119 (2) of the principal Act.

S. 80 of the principal Act. See Hill, p. 199; 48 Statutes Supp. 152. That section relates to " dead-ripe " land.

S. 78 of the principal Act. See Hill, p. 196; 48 Statutes Supp. 150. As to permissions deemed to be granted for the completion of unfinished buildings, by that section, cf. also the notes to s. 16 (4), *ante*.

Sub-s. (2).

S. 3 (1) of the Act of 1953. See Hill, 2nd Supp., B700; 78 Statutes Supp. 136. S. 1 of that Act abolished development charges (with minor exceptions). The Act did not purport, however, to restore open market value on compulsory purchase transactions. It was still necessary, therefore, to give benefit to those who were entitled to have planning permission taken into account because they were exempt from charge under Part VIII. This type of exemption from charge was ordinarily given where a Part VI development value claim was excluded under the principal Act. S. 3 (1) provided, therefore, that s. 51 (4) (*b*) of the principal Act should continue to operate, as if development charge had been payable and as if the exemption still arose under Part VIII of the principal Act notwithstanding that charges had been abolished generally.

Had the interim period between that Act and the present Act been protracted, the effect of the Act of 1953 on acquisitions of land developed in accordance with permission and formerly liable to charge might have given rise to anomalous situations. S. 51 (4) of the principal Act would have excluded the permission from regard. The owner would not have been exempt for the purposes of s. 51 (4) (*b*), neither could

he " buy back " regard for his permission, for the purposes of s. 51 (4) (*a*). Cf. the General Note to s. 32, *ante*.

35. Additional payments in cases where no claim for development value has been established.—(1) If, in the case of a compulsory acquisition to which this Part of this Act applies, the appropriate authority is satisfied that the relevant land or some part thereof does not constitute or form part of the claim area of any established claim, but that a claim or claims in respect of one or more interests in that land, or, as the case may be, in that part thereof, would have been established if made, there shall be issued by or on behalf of the Treasury a certificate specifying—

(*a*) whether or not, in the opinion of the person signing the certificate, section thirty-one of this Act would have applied to the compulsory acquisition if the claim or claims aforesaid had been established; and

(*b*) if so, what in that person's opinion, after giving the person entitled to the relevant interest an opportunity to present his case, would have been the amount of the additional compensation calculated by reference to the unexpended balance of established development value of that land or that part thereof which would have been payable under that section in respect of the acquisition of the relevant interest.

(2) Where an amount has been specified as aforesaid that amount shall be added to the compensation payable in respect of the acquisition of the relevant interest apart from the provisions of this section:

Provided that if, after taking into account all the circumstances, the appropriate authority is of opinion that it is not just and reasonable that the whole of that amount should be so added or, as the case may be, that any amount should be so added, the said authority may direct that such lesser amount as he may specify shall be so added or, as the case may be, that no addition to the compensation aforesaid shall be made.

(3) In this section, the expression " the appropriate authority " means—

(*a*) where the compulsory acquisition of the relevant interest by the acquiring authority requires authorisation by a single other authority, that other authority; or

(*b*) where the acquiring authority is a government department and the compulsory acquisition does not require the authorisation of any other authority, the acquiring authority; or

(*c*) in any other case, the Treasury or such other authority as the Treasury may in any case or class of cases direct.

NOTES

The purpose of this section is to relieve hardship in cases where land which is acquired has no unexpended balance, because there was no Part VI claim in respect of development value under the principal Act. It is necessary to satisfy an appropriate authority (generally the confirming authority on the compulsory purchase order, see sub-s. (3), *supra*) that such a claim would have been established if it had been made.

If that authority is satisfied, the Treasury will issue a certificate saying whether there would have been a payment by reference to the unexpended balance; and, after giving the person entitled to the relevant interest an opportunity to present his case, a statement of opinion as to what the additional amount of compensation by reference the unexpended balance would have been, had there been an established claim.

The amount certified will be added to the compensation unless the appropriate authority direct (after taking account of the circumstances in determining whether a payment is just and reasonable) the exclusion of payment or that the payment should be of a reduced amount.

This section is commonly spoken of as the " Pilgrim clause ". It is limited in intention. It may rectify certain omissions to claims under Part VI of the principal Act. It does not operate generally to bring compulsory purchase prices up to market values.

Sub-s. (1).

Compulsory acquisition. See s. 69 (1), *post*. See also the General Note to s. 30, *ante*. It would appear that there should be a compulsory purchase before the machinery

of this section functions. On the other hand, it would appear from the section that the machinery may be capable of functioning before it can be known whether the purchase will be compulsory or not. This may be useful, and may lead to a sale by agreement at an appropriate price.

To which this Part of this Act applies. See s. 30 (1), *ante*.

Appropriate authority. See sub-s. (3), *supra*. That subsection is so drawn that where, as is usually the case, a single Government department is concerned, that department will be the appropriate authority; and in other cases the Treasury will be, or will decide what authority shall be, the appropriate authority.

Relevant land. By s. 30 (1), *ante*, this means the land in which the interest being acquired subsists.

Claim area of any established claim. See s. 1 (4), *ante*. It seems that the present section cannot be operated in so far as the land in question is in the area of any Part VI claim which was established, even though some other claim might also have been established on the same land.

On some part thereof. There may be relief under this section where part of the land has, and part of the land has not, an unexpended balance. It would appear however (see previous note) that no addition to the balance of part of the land can be obtained where there was no claim in respect of one interest in that part but there was an established claim on the same part in respect of another interest in the land.

One or more interests. See s. 60 (3) of the Act of 1947 (Hill, p. 161; 48 Statutes Supp. 120).

Would have been established. See generally ss. 58–64 in Part VI of the Act of 1947 (Hill, pp. 155–168; 48 Statutes Supp. 115–129), subject to s. 1 of this Act, *ante*, and the First Schedule, *post*.

In the opinion. Cf. the notes, " Satisfied ", to s. 16 (3), *ante*, and " Appearing to him " to s. 22 (5), *ante*.

S. 31 of this Act. See *ante*. It is that section which provides for an addition to compensation on the basis of existing use by reference to the unexpended balance. As to where that section would apply, see s. 31 (1).

That person's opinion. Presumably in practice the District Valuer of the Inland Revenue Department.

Unexpended balance of established development value. See ss. 17 and 18, *ante*.

Sub-s. (2).

Not just and reasonable. The question of what is just and reasonable is left to the opinion of the appropriate authority mentioned in sub-s. (3), *supra*. Matters such as the development of the land without the payment of development charge will, presumably, have already been taken into account under sub-s. (1) (*b*), *supra*, in deciding what compensation would be payable by reference to an unexpended balance; see s. 18 (4), *ante*, which might reduce or exclude the balance in the case of such development. The present proviso assumes there may be other circumstances which would call for a reduction or exclusion of additional compensation under the present section.

Sub-s. (3).

Requires authorisation. This is a loose phrase. Sub-s. (1), *supra*, appears to refer to cases where power to purchase compulsorily has already been conferred and perhaps, indeed, when it has been exercised. The present subsection appears to refer to an earlier stage, when there may be a power to purchase specific land by agreement but there is not yet a power to acquire specific land compulsorily, *e.g.*, where a compulsory power must be conferred by a compulsory purchase order and such an order has still to be confirmed (para. (*a*)) or formally made (para. (*b*)). It is only when this has been done that such a purchase can proceed as a compulsory acquisition. Even then it may proceed as a purchase by agreement, under the power conferred, and not compulsorily.

A single other authority. The common case where authorisation may be conferred by a single other authority is that of an acquisition to be made in pursuance of power to be granted by a compulsory purchase order prepared and submitted by a local authority for confirmation by a Minister, or other government department, concerned with the particular local authority function for which the land is required. Some such orders may require confirmation by more than one other authority; see, for example, s. 45 (4) of the principal Act (Hill, p. 134; 48 Statutes Supp. 98), but in those cases it is unlikely that there will be any interest to be acquired from a private owner who might be concerned to secure the benefit of the present section.

A government department. Cf. the definition of " government department " and " Minister " in s. 119 (1) of the Act of 1947 (Hill, pp. 259–263; 48 Statutes Supp. 203, 204) (as affected by the Electricity Commissioners (Dissolution) Order, 1948 (S.I. 1948 No. 1769), so far as those definitions referred to the former Electricity Commissioners). The usual form of compulsory purchase order procedure, where it is

available to a government department, provides for the initial preparation of the order in draft, and subsequent formal making of the order, by the department concerned.

In any other case. This will provide for statutes such as the Metropolitan Paving Act, 1817 (15 Halsbury's Statutes (2nd Edn.) 486), under which the acquiring authority has powers which it may exercise from time to time without further authorisation (whether by itself or any other authority). It will provide also for cases where more than one department is concerned and where the Treasury is the obvious co-ordinating department.

36. Compensation for severance, injurious affection and disturbance.—(1) In connection with a compulsory acquisition to which this Part of this Act applies—

(*a*) any compensation in respect of an interest in land for damage sustained by reason that the relevant land is severed from other land held therewith, or that any other land (whether held with the relevant land or not) is injuriously affected, shall be assessed in accordance with subsections (2) to (7) of this section;

(*b*) any compensation for disturbance shall not be assessed at a greater amount than that at which it would have fallen to be assessed if Part V of the principal Act and the preceding provisions of this Part of this Act had not been enacted.

(2) In the subsequent provisions of this section, the following expressions have the following meanings respectively—

" the compensation " means compensation such as is mentioned in paragraph (*a*) of the preceding subsection;

" the interest affected " means the interest in respect of which the compensation falls to be assessed, in so far as that interest subsists in land, other than the relevant land, which is affected by the injurious act or event;

" the land affected " means the land in which the interest affected subsists;

" the injurious act or event " means the act or event in consequence of which the compensation falls to be assessed;

" other interest affected " means an interest other than the interest affected which subsists in the whole or part of the land affected and in respect of which compensation such as is mentioned in paragraph (*a*) of the preceding subsection is payable by virtue of the injurious act or event;

" qualified land " means land which immediately before the injurious act or event has an unexpended balance of established development value;

" the loss of development value " means the amount, if any, by which the value of the interest affected immediately before the injurious act or event, if calculated on the assumption that, until such time as the land affected might reasonably be expected to become ripe for new development, no use whatever could be made of that land, would exceed the value of that interest immediately after that act or event if calculated on the like assumption;

" the loss of immediate value " means the amount, if any, by which the difference in the value of the interest affected immediately before and immediately after the injurious act or event exceeds the loss of development value.

(3) If neither the land affected taken as a whole nor any part thereof is qualified land, the amount of the compensation shall be the loss of immediate value.

(4) If the land affected taken as a whole satisfies the following conditions, that is to say—

(*a*) that it is qualified land; and

(*b*) that no other interest affected subsists in a part only thereof,

the amount of the compensation shall be the aggregate of the loss of immediate value and whichever is the less of the following amounts, that is to say—

(i) the loss of development value; or
(ii) the amount of the unexpended balance of established development value of the land affected immediately before the injurious act or event:

Provided that if one or more other interests affected subsist in the whole of the land affected, and the aggregate of the loss of development value of the interest affected and of any such other interest or interests exceeds the amount mentioned in paragraph (ii) of this subsection, that amount shall be allocated between the interest affected and any such other interest or interests in proportion to the loss of development value of each of them respectively, and the amount of compensation payable in respect of the interest affected in addition to the loss of immediate value shall be the sum so allocated to that interest.

(5) If the land affected, taken as a whole, does not satisfy the conditions mentioned in the last preceding subsection, then, for the purpose of assessing the compensation in respect of the interest affected—

(*a*) the loss of development value of the interest affected and of any other interest affected shall first be ascertained with reference to the whole of the land affected in which the interest in question subsists;
(*b*) the land affected shall then be treated as divided into as many parts as may be requisite to ensure that each such part consists of land which either satisfies the conditions aforesaid or is not qualified land; and
(*c*) the loss of development value of each of the interests aforesaid, ascertained as aforesaid, shall then be apportioned between the said parts according to the nature of those parts and the effect of the injurious act or event in relation to each of them,

and the compensation payable in respect of the interest affected in addition to the loss of immediate value shall be the aggregate of the amounts which would be so payable by virtue of the last preceding subsection if each such part had been the whole of the land affected.

(6) If in any case the amount of the compensation attributable to the loss of immediate value is less than the depreciation in restricted value of the interest affected, subsection (3) of the next following section shall have effect with respect to the amount of the difference.

In this subsection, the expression " the depreciation in restricted value " means the amount, if any, by which the value of the interest affected, immediately after the injurious act or event, would be less than the value of that interest immediately before that act or event if both values were calculated on the assumption that planning permission would be granted for development of any class specified in the Third Schedule to the principal Act but would not be granted for any other development.

(7) In calculating value for any of the purposes of this section in its application to compensation for damage to land not held with the relevant land, being damage sustained by reason of the construction or erection of works on the relevant land, no account shall be taken of the use, or the prospective use, of those works.

NOTES

This section provides for the consideration of development value in the assessment of compensation for severance and injurious affection and for the relation of such assessment to the unexpended balance. It also limits compensation for disturbance to no greater sum than would have been paid if Part V of the Act of 1947 and ss. 30–35 of this Act had not been passed. The effect of the first part of this limitation will exclude a claim in respect of any excess in the price of comparable alternative accommodation in the open market over compensation on the basis of existing use. See

Powner and Powner v. *City of Leeds* (1953), 103 L. Jo. 816 (Lands Tribunal) interpreting a similar provision in s. 57 (3) (repealed) of the Act of 1944 (Hill, p. 480) requiring the limitation to 1939 prices in Part II of that Act to be disregarded.

The further limitation relating to disturbance and excluding regard being had to ss. 30–35, *ante*, may not mean more than that those provisions are to be treated as an extension of Part V of the Act of 1947.

It might be possible to interpret the disregard of these provisions, however, as implying that the value of the land for compensation should be supposed to have been its open market value to a willing seller. The doctrine of *Horn* v. *Sunderland Corpn.*, [1941] 1 All E.R. 480; [1941] 2 K.B. 26, C.A.; 11 Digest (Repl.) 127, *167*, would thus apply, to affect compensation for disturbance in any case where this supposed value in the open market depended on development which involved accepting the disturbance. This seems unlikely since the consideration of disturbance may have already reduced the unexpended balance, by reducing the unrestricted value under s. 61 (7) of the Act of 1947 (Hill, p. 164; 48 Statutes Supp. 122), on the assessment of any Part VI claim established under that Act. S. 119 (4) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205), which limited compensation for disturbance, as well as for severance and injurious affection, to an existing use basis, is now repealed by s. 71 (2) and the Eighth Schedule, *post*. Sub-s. (1) (*b*), *supra*, seems to be designed to prevent any disparity between the compulsory purchase price and an open market price being made up under the head of disturbance. It seems that disturbance should be assessed at the figure at which it would appear as a component part of an open market price, but should not be disregarded merely because it would be " masked " in such a price by an alternative valuation based on the prospect of development.

The provisions as to severance and injurious affection provide for two components in the compensation: " loss of immediate value " and " loss of development value ". The loss of development value is arrived at by assuming that the interest in the land has no value at all in its present use, but that the prospect of development would give it a present value in the open market if offered by a willing seller (see s. 65, *post*) for development. The present value of this prospect is determined by the number of years by which the development is regarded as being deferred. This value in the interest in land affected is assessed before and after the severance or other injurious affection. The loss of development value is the amount by which that value is shown to be reduced.

The interest in the affected land is also valued, in the open market, at the price which the willing seller would get for it on the assumption that the purchaser could have the benefit of the annual value of the existing use until redevelopment and thereafter the reversionary development value. This valuation will also be made, of the interest in the affected land, before and after affection. From the difference between these two sums there will be deducted the loss of development value and the answer will be the loss of immediate value of the interest. In effect, the loss of immediate value is the depreciation of the restricted value for a limited period only, *i.e.*, existing in time only until new development might be expected to occur, and does not reflect the depreciation of the restricted value in perpetuity.

The foregoing might be illustrated by the following example:—

Let a = the future development value of the interest in the affected land, valued as before affection.

Let b = the future development value of the interest in the affected land valued as after affection.

Let c = appropriate reducing multiplier to reduce the future development value to present value. (For the purposes of this example, assume the same multiplier is appropriate.)

The loss of development value = $ac - bc$.

Let x = annual value of the present use before affection.

Let y = annual value of the present use after affection.

Let z = appropriate multiplier to convert the annual values, for the period until development, into a capital sum. (For the purposes of the example it is assumed that the same table would be appropriate in both cases.)

Loss of immediate value = $(xz + ac) - (yz + bc) - (ac - bc) = xz - yz$ or $z(x - y)$.

From the above it can be seen that the loss of immediate value could be very different from the depreciation in the existing use value of the affected interest, valued in perpetuity.

If neither the land affected taken as a whole nor any part has an unexpended balance (*i.e.*, is qualified land) the compensation is the loss of immediate value; see sub-s. (3), *supra*. What happens where the loss of immediate value is less than the depreciation in the existing use value in perpetuity is explained below. See also s. 37 (3), *post*.

Where the land affected, as a whole, is qualified land, and there is no other interest affected which subsists in part only, the compensation will be the loss of immediate value plus whichever is the lesser of (1) the loss of development value, or (2) the amount of the unexpended balance.

If one or more other interests affected subsist, and the aggregate of their losses of development value exceed the amount of the unexpended balance, that amount will be

allocated between the interests in proportion to their losses of development value; see sub-s. (4), *supra*.

If only part of the land has an unexpended balance, or if there is more than one affected interest and the second or other interest subsists in part only of the land, it is necessary to make a number of adjustments.

The loss of development value of each of the affected interests is ascertained, with reference to the whole of the land affected in which the interest subsists. The land affected is divided into so many parts as may be necessary to ensure that each such part has an unexpended balance, and contains no interest which subsists only in a part of such part, or is not qualified land. (Cf. s. 25 (2) in Part II, *ante*.) The loss of development value of each of the interests will be apportioned between the parts according to the nature of the parts and effect of the affection on each. The compensation payable in respect of the interests will be, in addition to the loss of immediate value, the aggregate of the amounts which would have been payable by reference to the loss of development value and the unexpended balance if each part had been the whole of the land affected; see sub-s. (5), *supra*.

Where the loss of immediate value is less than the damage to the existing use value, the missing payment is dealt with in the following fashion. The section assumes that the land is going to be developed and therefore that no damage will be suffered by the present existing use value in excess of the loss of immediate value.

If development does take place this is logical: the owner of the interest would in effect have to accept the abandonment of his existing use at the time of the development to obtain the development value. Provision has to be made, however, for the possibility that the affected land itself may be compulsorily acquired before development, or that planning permission for the development may be refused.

Sub-s. (6) coins the expression " the depreciation in the restricted value ". This means the amount by which the value of the interest after affection is less than the interest before affection if both values are calculated on the assumption that planning permission would only be granted for development of a class within the Third Schedule to the Act of 1947. If the loss of immediate value is less than the depreciation in the restricted value then (whether or not the affected land has an unexpended balance) it will be assumed that for the purpose of determining whether the land has a balance in the future (but not for any other purpose) that immediately after the commencement of the Act there existed a claim holding, having the affected land as its area and a value equal to seven-eights of the amount of the difference; see s. 37 (3), *post*.

If there are several affected interests there will be a number of such claim holdings, which will be aggregated under s. 17, *ante*, in so far as they relate to the same parts of the land. The amount of the aggregate claims will be increased to eight-sevenths of that amount, in becoming or being added to the appropriate unexpended balance or balances on the affected land or parts thereof; see s. 17 (2), *ante*.

The unexpended balances so created or increased will be available for distribution on a future compulsory purchase or refusal of planning permission. This is logical except that it may operate harshly if the development for which permission is refused is, for example, a change of use; see s. 20 (1), *ante*.

The use of the claim holding method of " adding back " to or creating an unexpended balance is ingenious. It allows the adding together of the depreciations of the interests as they exist at the date of the affection. If, for example, payment is made by reference to that balance on a future compulsory purchase of the affected land, it will, however, be divided according to s. 31, *ante*, and the Fifth Schedule, *post*, among the interests in the affected land as they exist at that future time.

Finally, sub-s. (7), *supra*, provides that in calculating any values for the determination of compensation for injurious affection in respect of damage to the affected land by the construction of works on the land taken, no account will be taken of the use or prospective use of those works if the affected land was not held with the land taken. This provision appears to be declaratory of a well settled rule: see *Hammersmith & City Ry. Co.* v. *Brand* (1869), L.R. 4 H.L. 171; 11 Digest (Repl.) 106, *29*. The position is otherwise if the land affected was held with the land taken: see *Buccleuch (Duke)* v. *Metropolitan Board of Works* (1872), L.R. 5 H.L. 418, H.L.; 11 Digest (Repl.) 143, *228*; *Cowper Essex* v. *Acton Local Board* (1889), 14 App. Cas. 153, H.L.; 11 Digest (Repl.) 143, *229*.

Sub-s. (1).

Compulsory acquisition. See s. 69 (1), *post*, and General Note to s. 30, *ante*.

Interest in land. See s. 69 (1), *post*; this means only an interest in fee simple or a tenancy.

Relevant land. See s. 30 (1), *ante*.

Severed. See generally ss. 49, 63 and 68 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 913, 917, 919). Ss. 49 and 68 are printed in Hill, pp. 695–697. S. 63 is to the same effect, as to the amount of compensation; see *Holt* v. *Gas Light & Coke Co.* (cited *infra*) at L.R. 7 Q.B., p. 736.

Other land held therewith. It is not necessary that the land taken and the affected land should be contiguous. If they are so situated that common ownership gives them an enhanced value, that will as a rule entitle the owner to compensation;

see *Cowper Essex* v. *Acton Local Board* (1889), 14 App. Cas. 153, H.L.; 11 Digest (Repl.) 143, *229*. The land taken and the land affected need not be held in the same title: *Holt* v. *Gas Light & Coke Co.* (1872), L.R. 7 Q.B. 728; 11 Digest (Repl.) 138, *204*. As to injurious affection of land held with other land, see ss. 49, 63 and 68 of the Lands Clauses Consolidation Act, 1845 (*ubi supra*). As to land not held with other land, see *ibid.*, s. 68, *ubi supra*. S. 68 is usually regarded as applying only to the assessment of compensation of land not held with the land acquired; strictly it applies in all cases where the assessment takes place after land has been taken. Where land was held with the land taken, s. 68 thus operates to apply s. 49 or s. 63, *ex post facto*.

Compensation for disturbance. For a general explanation of the character of this aspect of compensation, see *Horn* v. *Sunderland Corpn.*, [1941] 1 All E.R. 480; [1941] 2 K.B. 26, C.A.; 11 Digest (Repl.) 127, *167*. For the application of sub-s. (1) (*b*) to mineral lands, see T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), reg. 23 (*a*), *post*. There the provision is extended to provide that it shall not be less because of Part VI of the Act of 1947.

Part V of the principal Act. See ss. 50–57 of the Act of 1947 (Hill, pp. 143–155; 48 Statutes Supp. 105–115). Cf. also s. 119 (4) of that Act (Hill, p. 261; 48 Statutes Supp. 205) repealed by s. 71 (2) of this Act and the Eighth Schedule, *post*.

Sub-s. (2).

Interest affected. The interest affected and the land affected must always be kept clearly distinguished, in considering this section, from the " relevant interest " and " relevant land ". It is the taking or use of the relevant land which severs or injures the affected land and affected interest.

Injurious act or event. This may be the taking, the construction of the works, or the anticipated future use, subject to sub-s. (7), *supra*.

Qualified land. Land which has an unexpended balance.

Unexpended balance. See ss. 17 and 18, *ante*.

Loss of development value. See the General Note, *supra*.

New development. See s. 16 (5), *ante*, and the notes thereto. See also the Third Schedule to the principal Act re-printed as amended by this Act in the note to para. 4 of the Seventh Schedule, *post*.

Loss of immediate value. See General Note, *supra*. In relation to injurious affection to buildings, plant and machinery used in mining operations, whose value was attributable to minerals in the relevant land, see s. 54, and the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), reg. 23 (*b*), *post*. Such loss is to form part of the loss of immediate value.

Sub-ss. (4) and (5). See the General Note, *supra*, and cf. s. 25 in Part II, *ante*.

Sub-s. (6).

Depreciation in restricted value. See General Note, *supra*. See also s. 37 (3), *post*. Substantially this expression means the damage to the existing use value of the interest, valued without any limit referring to the time when the land would become ripe for new development.

Third Schedule to the principal Act. See that Schedule, reprinted, as amended by s. 71, *post*, and the notes to para. 4 of the Seventh Schedule to this Act, *post*.

Sub-s. (7). See the General Note, *supra*.

37. Effect of Part III on unexpended balance of established development value.—(1) Where, in the case of—

(*a*) a compulsory acquisition to which this Part of this Act applies; or

(*b*) a sale of an interest in land by agreement in pursuance of a contract made after the commencement of this Act to a public authority possessing compulsory purchase powers, being such a department, authority, person or body of persons as is mentioned in subsection (1) of section thirty of this Act,

any of the land in which the interest acquired or sold subsisted had an unexpended balance of established development value immediately before the relevant date (in this subsection referred to as " the relevant balance "), then, in determining whether that land or any part thereof has an unexpended balance of established development value at any subsequent time—

(i) for the purposes of section thirty-one of this Act and, unless immediately after the acquisition or sale there is outstanding some interest (other than an excepted interest) in that land to which some person other than the acquiring authority is entitled, for all

other purposes of this Act, the original unexpended balance of established development value of that land shall be treated as having been extinguished immediately before that subsequent time;

(ii) if, immediately after the acquisition or sale, there is outstanding any such interest as aforesaid, then for the purposes of any other Part of this Act there shall be deducted from the said original balance an amount equal to any part of the relevant balance which is not, or which in the appropriate circumstances would not have been, attributable for the purposes of the said section thirty-one to any such outstanding interest, and the original balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time:

Provided that in the event of a subsequent compulsory acquisition of any such outstanding interest, being a compulsory acquisition to which this Part of this Act applies, the said section thirty-one shall have effect for the purposes of assessing the compensation payable as if this subsection had not been enacted.

(2) Where—

(*a*) in connection with a compulsory acquisition to which this Part of this Act applies an amount by way of compensation such as is mentioned in paragraph (*a*) of subsection (1) of the last preceding section was paid in respect of an interest in any land other than the relevant land; or

(*b*) on such a sale as is mentioned in paragraph (*b*) of the preceding subsection, the price paid included an amount in respect of damage sustained by an interest in land other than, but held with, the land in which the interest sold subsisted, being damage sustained by reason of the severance of the land or by reason that the interest in that other land was injuriously affected,

and the said amount exceeds what was, or in the appropriate circumstances would have been, the loss of immediate value of that interest as defined in the last preceding section, then, for the purpose of determining whether that other land or any part thereof has an unexpended balance of established development value at any subsequent time, there shall be deducted from the original unexpended balance of established development value of that other land an amount equal to the excess, or so much thereof as was, or in the appropriate circumstances would have been, calculated by reference to that balance, and the original balance of that land or that part thereof shall be treated as having been reduced or extinguished accordingly immediately before that subsequent time.

(3) If in a case such as is mentioned in paragraph (*a*) or (*b*) of the last preceding subsection so much, if any, of the amount mentioned in that paragraph as was, or in the appropriate circumstances would have been, attributable to the loss of immediate value of the interest in question was or would have been less than the depreciation in restricted value of that interest within the meaning of subsection (6) of the last preceding section, then (whether or not the land in question or any part thereof would apart from the provisions of this subsection have had an original unexpended balance of established development value) for the purpose of determining whether at any time after the acquisition or sale the land in question or any part thereof has such a balance, but for no other purpose, it shall be deemed that immediately after the commencement of this Act a claim holding subsisted with an area consisting of the land in question and a value equal to seven-eighths of the amount of the difference.

(4) In this section the expression "in the appropriate circumstances" means if the compulsory acquisition or the sale had been a compulsory

acquisition in respect of which the said section thirty-one operated, and the expression " the relevant date " means the date of the service of the notice to treat or, as the case may be, the date of the making of the contract.

NOTES

In a case where there has been a compulsory purchase to which this Part of this Act applies, this section provides for the extinguishment or adjustment of the unexpended balance, or balances, of established development value of the land or parts of the land acquired, or of other land injuriously affected by severance or otherwise. Similar provision is made for sales by agreement in analogous circumstances; compare sub-s. (1) (*b*), *supra*, and s. 30 (1), *ante*. Adjustments will fall to be made at any subsequent time when it is necessary to enquire, under this Part (Part III) or other Parts of this Act, whether or not there is a balance on any land and what is then the amount of such a balance. The adjustments are not quite the same for all purposes.

Sub-s. (1), *supra*, deals with the balance or balances on the land acquired. If there is no interest outstanding after such a sale (whether a compulsory sale or an analogous sale by agreement) other than an " excepted interest ", the balance of any part is extinguished. An interest is left outstanding if, immediately after the sale, it still belongs to some person other than the acquiring authority. An excepted interest is one which could be dealt with under s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949); see s. 30 (2), *ante*.

If, immediately after the sale, there is left any outstanding interest (not belonging to the acquiring authority) there will fall to be made, immediately before any subsequent time, a deduction from the balance. This will be a deduction of the amount not attributable to any outstanding interest under s. 31, *ante*, and the Fifth Schedule, *post*. S. 31 may not in fact have operated; a similar deduction will nevertheless be made, of the amount which, had s. 31 operated, would not have been attributable thereunder to any outstanding interest. This adjustment may have to be made at a subsequent time to a separate unexpended balance on part of the land; an apportioned amount may have to be deducted, see s. 18 (5), *ante*. Equally, it is possible that the acquisition extended to part only of a unit of land which could formerly be regarded as having a balance; in such a case the history of the parts of that unit will thereafter be traced separately (see s. 18 (2) and (5), *ante*) and the appropriate deduction required by sub-s. (1), *supra*, will fall to be made from any balances relating to the part acquired. The deductions described above will fall to be made for the purposes of other Parts of this Act.

Where there is a subsequent purchase of an outstanding interest by a compulsory acquisition to which this Part of this Act applies (see s. 30 (1), *ante*), compensation will be assessed as if these provisions for deductions had not been enacted. This will enable s. 31, *ante*, to apply afresh, and will ensure that the compensation for the outstanding interest will include such part of the former unexpended balance or balances as would be appropriate to the interest at the time of the subsequent acquisition.

The interest most likely to be left outstanding is, it is thought, a leasehold with a few years to run. If the provisions of s. 31, *ante*, are then applied afresh, there will be deducted (under para. 5 of the Fifth Schedule, *post*) from the unexpended balance the reversionary development value of the interest in reversion expectant on the termination of the lease. The reversionary development value will have grown with the passage of time since the earlier sale, and less of the unexpended balance will be attributed to the outstanding interest.

Sub-ss. (2) and (3), *supra*, make somewhat similar provision for cases where, in connection with a compulsory or quasi-compulsory purchase, the compensation or price paid has included an amount in respect of damage by severance or injurious affection to an interest in other land (but, in the case of such a sale by agreement, only if the land was held with the land acquired) and that amount has exceeded the loss of immediate value. Such excess is regarded as having been paid from the unexpended balance or balances of the land affected. Such balances will accordingly fall to be reduced or extinguished immediately before any subsequent time when they become relevant.

In such a case, however, the amount paid in respect of loss of immediate value (see s. 36 (2), *ante*) may be less than the depreciation in restricted value (see s. 36 (6), *ante*). If so, an appropriate claim holding or holdings will be created under sub-s. (3), *supra*, for the purpose of inventing or increasing unexpended balances on the land affected. Such a claim holding, as converted by s. 17, *ante*, will form a new balance on, or new balances on parts of, the affected land, or will be added to an existing balance or balances thereon. This is explained in the general notes to ss. 17 and 36, *ante*.

Sub-s. (1).

Compulsory acquisition. See s. 69 (1), *ante*, and the notes to s. 30, *ante*.

To which this Part of this Act applies. See s. 30 (1), *ante*, resembling para. (*b*) of the present subsection.

Contract made. See s. 69 (6), *post*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*; cf. s. 30 (1), *ante*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*. The expression (in this Act) includes not only an authority which has been authorised to purchase compulsorily for the purpose in question, but also one that could be so authorised. The departments, authorities, persons and bodies mentioned in s. 30 (1), *ante*, are those within the Act of 1919 or to whom that Act has been applied. If an authority could be authorised to acquire compulsorily, it is probable also that the authority will have been given the benefit of the Act of 1919; see, for example, the notable extension to statutory undertakers, acquiring compulsorily under the principal Act or any other Act, contained in s. 57 of the principal Act (Hill, p. 154; 48 Statutes Supp. 114). If, in some case, the Act of 1919 does not apply, the most important provisions of Part V of the principal Act will not apply either (see s. 51 (1) of the Act of 1947 (Hill, p. 144; 48 Statutes Supp. 106).

Unexpended balance. See ss. 17 and 18, *ante*.

Relevant date. See sub-s. (4), *supra*.

At any subsequent time. This means (in this subsection) at a time, subsequent to the service of notice to treat, or making of the contract, when it becomes necessary to enquire whether the land, or any part, may be regarded as having any, and if so what, unexpended balance. This may arise under Part II, *ante*, or Part IV (see s. 40), *post*; or under this Part (Part III), see s. 31, *ante*.

Where there is an outstanding interest, belonging to a person other than the acquiring authority, other than an excepted interest, para. (ii) of this subsection requires deductions for the purposes of other Parts of this Act, and the proviso to this subsection makes different provision for the purposes of any future application of s. 31, *ante*.

S. 31. That section, *ante*, and the related Fifth Schedule, *post*, provide for the distribution of the unexpended balance of any land among the interests subsisting therein. If s. 31 applies on a subsequent compulsory acquisition, this division is done afresh, disregarding the deductions normally required by this subsection. The owner of any outstanding interest may thus receive less (or more) than appeared to be the balance as it fell to be adjusted to take account of the previous sale; see the General Note, *supra*. But if no interest is outstanding, the balance is extinguished for all purposes.

Excepted interest. See s. 30 (2), *ante*, referring to certain short or terminable or expiring interests that are dealt with in s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949).

Original balance; relevant balance. As to the original unexpended balance, see s. 17 (2), *ante*. The "relevant balance" is the original balance as it fell to be adjusted immediately before the notice to treat, or contract, in pursuance of which the sale was effected. The deduction mentioned is to be made from the original balance; this may be misleading, but see s. 18 (5) which shows that all deductions falling to be made at a subsequent time are cumulative in effect.

In the appropriate circumstances. *I.e.*, if the sale (whatever its nature in fact) had been a compulsory one where s. 31, *ante*, operated; see sub-s. (4), *supra*.

Sub-s. (2).

S. 36 (1) (a). That paragraph, *ante*, provides that s. 36 (2)–(7) shall apply to the assessment of compensation for damage sustained by land not acquired by way of severance or other injurious affection in connection with such a compulsory acquisition as is mentioned in s. 30 (1), *ante* (whether, in the case of injurious affection other than severance, the land was held with the relevant interest acquired or not).

In the appropriate circumstances. See sub-s. (4), *supra*.

Loss of immediate value. See s. 36 (2), *ante*.

That land or any part. As to what land may be regarded as having an unexpended balance, see ss. 17 and 18, *ante*. The affected land may include one or more parts which, separately, form the largest basic units which can be said to have such a balance. The excess of the compensation or price over the loss of immediate value may be considered to have been paid out of the unexpended balance or balances. The excess may fall to be apportioned among the units which have a balance, when balances have to be reduced.

At any subsequent time. This means (in this subsection) at a time, subsequent to the *payment* of the compensation or price, when the balance becomes relevant.

Sub-s. (3).

Depreciation in restricted value. See s. 36 (6), *ante*.

Claim holding. See s. 2, *ante*. For the purpose of creating this holding, see the general notes to ss. 17 and 36, *ante*, and to this section, *supra*.

Seven-eighths. See General Note to s. 36, *ante*, explaining this provision. Cf. the explanation, in the note to s. 29 (9), *ante*, of a similar device in s. 46 (2) proviso, *post*.

Sub-s. (4).

S. 31 operated. See ss. 30 (1) and 31 (1), *ante*. See also s. 33 (5), *ante*; and the definitions of various types of compensation in s. 69 (1), *post*.

Service of notice to treat. As to deemed notices, see s. 119 (3) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205). Generally see the notes to s. 30, *ante*, and cf. the notes to s. 6 (5) in Part I, *ante*.

Date of the making of the contract. See s. 69 (6), *post*.

Part IV

Compensation for Revocation or Modification of Planning Permission

38. Amendment of s. 22 of principal Act.—(1) In relation to orders to which this section applies subsection (1) of section twenty-two of the principal Act (which confers a right to compensation in respect of orders revoking or modifying planning permission) shall have effect as if the proviso to that subsection (which, with certain exceptions, precludes compensation in respect of the depreciation in value of an interest in land) were omitted.

(2) This section applies to any order made after the commencement of this Act under section twenty-one of the principal Act (which empowers local planning authorities to make orders revoking or modifying planning permission previously granted).

(3) In this Act references to compensation to which this Part of this Act applies are references to compensation payable under subsection (1) of section twenty-two of the principal Act in consequence of an order to which this section applies, and in this Part of this Act the expression "compensation for depreciation" means so much of any compensation to which this Part of this Act applies as is payable in respect of loss or damage consisting of the depreciation in value of an interest in land.

(4) The provisions of this Part of this Act shall have effect in relation to the provisions of subsection (1) of the said section twenty-two as applied by subsection (3) of that section (which relates to planning decisions following upon the withdrawal of permission granted by a development order) as they have effect in relation to the said subsection (1) apart from the said subsection (3):

Provided that, for the purposes of the application of the provisions of this Part of this Act in accordance with the preceding provisions of this subsection, references to an order under section twenty-one of the principal Act shall be construed as references to the planning decision whereby the permission in question is refused, or is granted subject to such conditions as are mentioned in the said subsection (3).

NOTES

This section introduces Part IV of the Act, and provides a new general basis for compensation payable on the revocation or modification of planning permission. This new basis obtains where permission is revoked or modified on or after 1st January 1955. Compensation may now in all such cases be claimed for loss or damage consisting of the depreciation in value of an interest in land.

The next three sections, ss. 39 to 41, *post*, contain consequential provisions. So much of the compensation payable under s. 22 of the principal Act (Hill, pp. 88–91; 48 Statutes Supp. 61–64) as relates to depreciation in the value of an interest in land is now called "compensation for depreciation", see sub-s. (3), *supra*. The total compensation payable is termed "compensation to which this Part [Part IV] of this Act applies". Compensation for depreciation is to be apportioned and registered against the land under s. 39, *post*. If new development (otherwise than in accordance with the original permission as modified, in cases where permission was not wholly revoked) is later carried out, this registered compensation is recoverable by the Minister, see s. 41, *post*. In a case where there is an unexpended balance of established development value, the Minister may make a contribution towards the compensation payable for depreciation; this is limited to the lesser of (1) the compensation which would have been payable if the permission revoked or modified had been refused or granted conditionally in the first place, or (2) the unexpended balance still available at the time of revocation or modification; and it cannot, of course, exceed the compensation payable for depreciation, see s. 40, *post*. This contribution can be regarded as coming from

the unexpended balance; appropriate deductions will fall to be made from the balance, and an amount will be " added back " if compensation which has been registered becomes recoverable.

This new basis of compensation for revocation or modification is introduced by repealing the proviso to s. 22 (1) of the Act of 1947; see sub-ss. (1) and (2), *supra*, and the formal repeal effected by s. 71 (2) and the Eighth Schedule, *post* (subject to the saving, in s. 71 (6), *post*, for orders made before 1st January 1955). That proviso excluded compensation for depreciation except where the claimant was, in effect, entitled to the higher value by virtue of development charge paid in respect of the development in question or by virtue of an exemption from charge arising from any provision of Part VIII of the principal Act.

Cross-references.

Power to revoke or modify. S. 22 of the Act of 1947 (as amended) provides for compensation in respect of two types of revocations or modifications of permission:—

(1) *Express revocation or modification of permission by an order* under s. 21 of the Act of 1947 (Hill, p. 87; 48 Statutes Supp. 60). If such an order is made on or after 1st January 1955, it is " an order to which this section applies ", see sub-s. (2), *supra*. Such an order may be made by a local planning authority (or an authority exercising delegated powers) and does not take effect unless confirmed by the Minister. The Minister is bound to afford persons concerned an opportunity to be heard, and may confirm with or without modifications or may decide not to confirm. Such an order can normally only be made to revoke or modify permission granted on an application, *i.e.*, an " express " planning permission (cf. the note " On an application " to s. 16 (4), *ante*). It cannot be made if development has been completed, *i.e.*, if operations have been wholly carried out or if a change of use has taken place. If operations have been partially carried out, a revocation or modification cannot affect the operations already carried out but may prevent their completion. Similar action against completed development can be taken only under ss. 26 and 27 of the Act of 1947 (Hill, pp. 98–103; 48 Statutes Supp. 69–73), which give power to deal with authorised works and uses.

(2) *Planning decisions after withdrawal of permitted development.* Permission granted by a general or special development order made under s. 13 of the Act of 1947 (Hill, p. 68; 48 Statutes Supp. 46) may be withdrawn. An application for express permission may be made to the local planning authority (or an authority exercising delegated powers) and permission may then be refused or granted subject to conditions other than those affecting the permission as granted by the order but now withdrawn. This planning decision is treated, in s. 22 (3) of the Act of 1947 (Hill, p. 92; 48 Statutes Supp. 62), as equivalent to the revocation or modification of the former permitted development.

It should be noted that such planning decisions after the withdrawal of permitted development are planning decisions as defined by s. 16 (4), *ante*, and s. 69 (1), *post* (which repeats the definition in s. 16 (4) by reference). They are treated as planning decisions in Part V, *post*. In Part II, *ante*, however, they are excluded from compensation under that Part, by s. 19 (5), *ante*, if compensation for depreciation is payable. Such compensation is payable under s. 22 of the principal Act as amended by the present section; see sub-s. (4), *supra*.

Liability for compensation. Compensation is payable by the local planning authority, but this liability may be delegated under s. 34 (3) (*b*) of the Act of 1947 (Hill, p. 115; 48 Statutes Supp. 83) in accordance with regulations; see the T. & C.P. (Authorisation of Delegation) Regulations, 1947 (S.R. & O. 1947 No. 2499; Hill, p. 729); or the T. & C.P. Delegation (London) Regulations, 1948 (S.I. 1948 No. 1459; Hill, p. 825). Claims must be made within six months of the order or decision in question, or an extended period allowed by the Minister, and are to be delivered or sent to the local planning authority; see reg. 4 of the T. & C.P. (General) Regulations, 1948 (S.I. 1948 No. 1380; Hill, p. 816).

The present Act provides for a Ministerial contribution towards compensation for depreciation, see s. 40, *post*, and for payment over by the Minister of sums received by him in respect of registered compensation which becomes recoverable, see s. 41, *post*. In these and other provisions of this Part, references to the local planning authority must be construed in the light of s. 69 (4), *post*. If liability for compensation payable under s. 22 of the principal Act has been delegated, the references in this Act are to the delegate authority. The claim should, however, be delivered or sent to the local planning authority (usually the county or county borough council).

For further financial provisions affecting acquiring authorities and the Minister, see ss. 52 (6) and (8) and 64 (4) and (8)–(10), *post*.

As to grants, under the principal Act, see s. 93 thereof as substituted by s. 50, *post*.

Measure of compensation. Compensation to which this Part of this Act applies is payable to any person, interested in the land to which the original permission was referable, who shows that he has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification or has otherwise sustained loss or damage directly attributable to the revocation or modification of permission. It is

assessed in accordance with the Fourth Schedule to the Act of 1947 (Hill, p. 273; 48 Statutes Supp. 215) on the assumption that Third Schedule development would be permitted. Work carried out before the original grant of permission is disregarded and loss or damage is disregarded in so far as it arises from anything done or omitted to be done before the original grant; this rule, however, does not apply to expenditure on the preparation of plans or other similar preparatory matters or to loss or damage consisting of depreciation in the value of the interest in land; see s. 22 (2) of the principal Act. Special provisions deal with:—

(1) cases where a purchase notice is served (s. 22 (4), (6)); and
(2) cases where development charge has been incurred but not fully discharged (s. 73 of the principal Act (Hill, pp. 183–186; 48 Statutes Supp. 140–142)).

S. 22 (5) and certain words in s. 22 (6), referring to claims for compensation under s. 20 of the principal Act (as applied by s. 22 (5)) are now repealed by s. 71 (2) of this Act and the Eighth Schedule, *post*.

Local authorities and statutory undertakers. The above-mentioned provisions of Part III of the principal Act should be read with s. 35 of that Act (Hill, p. 116; 48 Statutes Supp. 84). Particular attention should be paid, in cases concerned with operational land of statutory undertakers, to the Fifth Schedule to the Act of 1947 and the Fourth Schedule to the Act of 1944 (Hill, pp. 274–277 and 337–338; 48 Statutes Supp. 217–219 and 273–275), which should be read subject to the Lands Tribunal (Statutory Undertakers Compensation Jurisdiction) Order, 1952 (S.I. 1952 No. 161; Hill, 2nd Supp., p. B287). The regulations at present in force under s. 35 dealing with development by local planning authorities (S.I. 1951 No. 2069; Hill, 2nd Supp., p. B249), exclude such authorities from compensation for revocation or modification of permission under s. 22 of the principal Act; see reg. 8 (Hill, 2nd Supp., p. B253).

Mortgagees. See para. 3 of the Fourth Schedule to the Act of 1947 (Hill, p. 273; 48 Statutes Supp. 216).

Development charge paid. Normally where charge had been paid, compensation for depreciation was (before 1st January 1955) payable by virtue of s. 22 (1) proviso (*a*) of the principal Act (Hill, p. 88 ; 48 Statutes Supp. 62). Where the charge had not been paid in full, the Central Land Board might vary the charge under s. 73 (2) (*a*) or (3) (*a*) of that Act (Hill, p. 184; 48 Statutes Supp. 140, 141); and where the Board varied the charge this was taken into account in assessing compensation for depreciation or other compensation under s. 22; see s. 73 (4) of that Act. Attention is drawn to the fact that s. 73 is not repealed by the present Act or the Act of 1953; it is, however, in Part VII of the principal Act which does not (except in relation to certain minerals) have effect in relation to development begun after 17th November 1952. S. 3 (5) of the present Act, *ante*, requires the reduction or disallowance of certain Case A payments under Part I of this Act, where compensation under s. 22 of the principal Act has become payable by reason of the payment of development charge, or the amount of compensation has been increased by reason of such payment. This does not, it seems, refer to compensation to which this Part of this Act applies, as payment of development charge will not now increase the amount of s. 22 compensation or cause it to be payable in cases where it would not otherwise be payable. Compensation for depreciation is now payable by virtue of the amendments effected by the present section.

Development charge exemptions. The effect of exemption from charge under any provision of Part VIII (*e.g.*, s. 80) of the principal Act, was to allow compensation for depreciation to be claimed under s. 22, and this position was preserved by s. 3 (1) and (3) of the Act of 1953 (Hill, 2nd Supp., pp. B700, B701; 78 Statutes Supp. 136, 137). S. 3 (1) (*a*) of the Act of 1953 is now no longer necessary, and is repealed by s. 71 (2) and the Eighth Schedule, *post*. Compensation to which this Part of this Act applies, *i.e.*, compensation under s. 22 of the principal Act in respect of a revocation or modification on or after 1st January 1955, will include compensation for depreciation without any need for reference to development charge exemptions.

Minerals. See s. 81 of the Act of 1947 (Hill, p. 201; 48 Statutes Supp. 154), as amended by s. 31 (2) and (3) of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B64; 74 Statutes Supp. 69), in respect of non-specified land of the National Coal Board; and s. 54 of the present Act, *post*. For the present regulations under these Acts, see the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, particularly regs. 5 and 10. Under reg. 5, abortive expenditure or loss on buildings, plant or machinery are specially dealt with. Reg. 10 deals with certain refusals and conditional grants of permission to resume or continue previous mineral workings in adjacent land; compensation is payable partly by analogy with s. 79 of the principal Act (reg. 10 (1)); partly by analogy with s. 22 of that Act (reg. 10 (2)); and partly under Part II of the present Act (in appropriate cases) or Part V (see regs. 20 and 24).

Comparison with compulsory purchase. It is important to observe how far the provisions of this Part (Part IV) differ from those of Parts II and III, *ante*. In this Part, the unexpended balance of established development value does not form a limit to the compensation to which this Part of this Act applies, or to compensation for depreciation. It limits only the amount of the Minister's contribution and the adjustments required to be made to the balance under ss. 40 and 41, *post*. In Part III, *ante*,

the unexpended balance normally limits the liability of an acquiring authority to pay for unrealised development value (though, by reason of the amendments to the Third Schedule to the principal Act, realised development value is brought within current existing use). In Part II, *ante*, the unexpended balance always limits compensation; and there are numerous cases where compensation is reduced or altogether excluded.

The comparison of this Part with Part III, *ante*, shows the two-tier price system of the present Act in one of its most remarkable aspects. It will almost always be cheaper to buy land under compulsory powers than to pay compensation in respect of the revocation or modification of permission, unless the modification be a very minor one. It may perhaps be expected that little use will be made, on or after 1st January 1955, of the power to revoke or modify by an order under s. 21 of the principal Act, or by refusing or granting conditionally permission on an application after the withdrawal of permitted development. The withdrawal of permitted development by directions under the development order may, for the same reason, become less common. The Minister however has a default power to direct a revocation or modification; see s. 100 of the Act of 1947 (Hill, p. 229; 48 Statutes Supp. 177). Such powers have rarely been invoked (three times in seven years: see H. of C. Official Report, S.C.C., 16th June 1954, col. 617).

Past orders and decisions. Orders revoking or modifying permission, and planning decisions having a similar effect after the withdrawal of permitted development, if made before 1st January 1955, are dealt with in Part V (ss. 42–46), *post*. Compensation thereunder is limited by reference to claim holdings representing so much of the value of Part VI claims under the Act of 1947 as is left after the operation of Part I of the present Act, *ante*.

Hansard. See the note, "The Bill and Hansard" at the beginning of this book. Ss. 38–41 represent, in amended form, clauses 41–44 of the Bill as originally introduced [Bill 72].

Sub-s. (1).

Orders. See sub-ss. (2) and (4), *supra*.

S. 22 (1) proviso of the principal Act. See Hill, p. 88; 48 Statutes Supp. 62. See also s. 71 (2) and (6) of the present Act, and the Eighth Schedule, *post*. S. 22 (5), and part of s. 22 (6), of the Act of 1947 are also repealed. S. 3 (1) (*a*) of the Act of 1953 (Hill, 2nd Supp., p. B700; 78 Statutes Supp. 136) is likewise repealed. See, as to mineral land, regs. 5 and 10 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

Sub-s. (2).

Order. Note, however, sub-s. (4), *supra*, applying the provisions of this Part to certain planning decisions. For this purpose, references to an order will be read as referring to such a decision.

Made. It is not certain when an order must be taken to be made; see s. 21 of the Act of 1947 (Hill, p. 87; 48 Statutes Supp. 60) mentioned in the note "Power to revoke or modify", *supra*. An order is "made" by the local planning authority or its delegate, but is not then effective, may be modified, and may never take effect. S. 21 (2) of that Act refers to a person "who in their opinion *will be* affected by the order". S. 21 (3) refers to so much of the operations "as has not *previously* been carried out". It has never been clear from these expressions whether an order takes effect as from the date of confirmation or whether its effect dates back to the original making and submission, though the latter view involves more difficulties than the former. If, in the present subsection, "made" refers to the resolution of the local authority and not to confirmation by the Minister, it will still be possible for an authority to submit in the future an order so "made" before 1st January 1955, without incurring liability for compensation on the new basis. This will not fit in with the repeals effected by s. 71, *post*; and is an interpretation which would also give rise to great uncertainty.

As to when a planning decision is "made", see s. 69 3), *post*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

S. 21 of the principal Act. See Hill, p. 87; 48 Statutes Supp. 60. See also the note "Power to revoke or modify", *supra*.

Sub-s. (3).

In this Act. Note that the definition of compensation to which this Part of this Act applies is a general one. The definition of compensation for depreciation is for the limited purposes of this Part; thus it has to be imported, by express reference to the present subsection, in s. 26 (3), *ante*. As used in this Part (Part IV), compensation for depreciation refers only to compensation so payable in respect of orders or decisions made on or after 1st January 1955. (It has been used, in the notes containing cross-references, *supra*, to refer also to compensation similarly payable in special cases in respect of earlier orders or decisions.)

Compensation for depreciation. See s. 22 (7) of and the Fourth Schedule to the Act of 1947 (Hill, pp. 90, 273; 48 Statutes Supp. 63, 215). For its apportionment and registration, see s. 39 of this Act, *post*. For its recovery on subsequent develop-

ment, see s. 41, *post*. For the Minister's power to contribute to it, where there is an unexpended balance of established development value, see s. 40, *post*.

Sub-s. (4).

Sub-s. (3) of that section. See s. 22 (3) of the Act of 1947 (Hill, p. 89; 48 Statutes Supp. 62).

Planning decisions. See s. 16 (4), *ante*. See also s. 19 (5), *ante*, excluding planning decisions where compensation for depreciation is payable from compensation under Part II, *ante*. The planning decisions referred to in s. 22 (3) of the principal Act are decisions, given on an application made in that behalf under Part III of that Act, whereby permission for the development formerly permitted is refused or is granted subject to conditions other than those previously imposed by the development order.

Withdrawal of permission granted by a development order. Development orders are made under s. 13 of the Act of 1947 (Hill, p. 68; 48 Statutes Supp. 46). The General Development Order of 1950 (Part I of S.I. 1950 No. 728; Hill, 2nd Supp., pp. B166–B204), is made under this power. For examples of special development orders, see those relating to New Towns (S.I. 1950 No. 152), Landscape Areas (S.I. 1950 No. 729) and Ironstone Areas (S.I. 1950 No. 477; Hill, 2nd Supp., pp. B152, B207 and B221).

Art. 3 of and First Schedule to the G.D.O. of 1950 (Part I of S.I. 1950 No. 728), *ubi supra*, grant permission, subject to the provisions of the order and directions given thereunder, for the development set out in classes in that Schedule. This is " permitted development "; its scope may be limited or extended by a special development order. Permission granted by a development order may be acted upon without any application for express permission, though in a few cases an " approval " must be sought.

S. 22 (3) of the Act of 1947 (Hill, p. 89; 48 Statutes Supp. 62) refers to the withdrawing of permission granted by a development order " whether by the revocation or amendment of the order or by the issue of directions under powers in that behalf conferred by the order ". As to the making of development orders, see s. 13 (2) and (5) of the Act of 1947 (Hill, pp. 68, 69; 48 Statutes Supp. 46–47). As to directions excluding permitted development, see s. 13 (3) (*b*), and see also art. 4 of the G.D.O. of 1950 (Hill, 2nd Supp., pp. B170–B172).

It should be noted that permitted development may be, and for the most part is, granted subject to conditions or limitations; see s. 13 (2) of the Act of 1947. If such permission is withdrawn, and by a planning decision made on or after 1st January 1955, permission is granted subject to no conditions other than those to which the previous permitted development was subject, there will be no right to claim under s. 22 of the Act of 1947; see s. 22 (3) thereof. In effect such a decision is not a revocation or modification. S. 19 (5) of this Act, *ante*, will not exclude a claim, in such circumstances, under Part II of this Act.

39. Registration and apportionment of compensation for depreciation.—(1) Where compensation to which this Part of this Act applies becomes payable and includes compensation for depreciation of an amount exceeding twenty pounds, the local planning authority shall (if it appears to them to be practicable to do so) apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates and give particulars of any such apportionment to the claimant and to every other person (if any) entitled to an interest in land which appears to the authority to be substantially affected by the apportionment.

(2) In carrying out an apportionment under the preceding subsection, the local planning authority shall divide the land into parts, and shall distribute the compensation for depreciation between those parts, according to the way in which different parts of the land appear to the authority to be differently affected by the order in consequence of which the compensation is payable.

(3) Subsection (2) of section twenty-seven of this Act, and any regulations made by virtue thereof, shall have effect with respect to any such apportionment, subject to any necessary modifications, as they have effect with respect to an apportionment under subsection (1) of section twenty-eight of this Act; and on a reference to the Lands Tribunal by virtue of this subsection, subsections (1) and (2) of this section, so far as they relate to the making of an apportionment, shall apply with the substitution for references to the local planning authority of references to the Lands Tribunal.

(4) Where compensation to which this Part of this Act applies becomes payable and includes compensation for depreciation exceeding twenty

pounds, the local planning authority shall give notice thereof to the Minister, specifying the amount of the compensation for depreciation and any apportionment thereof under this section, and subsections (4) to (6) of section twenty-eight of this Act shall have effect with respect thereto as they have effect with respect to compensation under Part II of this Act, subject, however, to any necessary modifications, and, in particular, with the substitution—

(*a*) for references to the compensation mentioned in that section of references to the compensation for depreciation specified in the notice; and

(*b*) for references to the planning decision of references to the order under section twenty-one of the principal Act in consequence of which the compensation is payable.

NOTES

This section provides for the apportionment and registration of compensation for depreciation, *i.e.*, of so much of any compensation to which this Part of this Act applies as is payable in respect of loss or damage consisting of the depreciation in value of an interest in land; see s. 38 (3), *ante*.

If the amount of compensation for depreciation exceeds £20 the local planning authority (sub-s. (4), *supra*), or if liability for compensation was delegated, the delegate authority (s. 69 (4), *post*), will give notice thereof to the Minister, and the amount will then be registered, as in the case of compensation for a planning decision under Part II, *ante*, as a local land charge; see sub-s. (4), *supra*, and s. 28 (4) and (5), *ante*, as applied thereby.

An apportionment of the compensation will be carried out if the amount exceeds £20 and if it appears to be practicable to the local planning authority (or the delegate authority); see sub-s. (1), *supra*. Compensation is to be distributed to different parts of the land to which the claim for compensation relates, as those parts appear to be affected by the revocation or modification. Particulars of the apportionment must be given to the claimant and to every other person whose interest appears to be substantially affected by the apportionment; sub-ss. (1) and (2), *supra*.

As under Part II, *ante*, there is a right of appeal to the Lands Tribunal; see sub-s. (3), *supra*, and ss. 27 (2) and 28 (3), *ante*. This appeal will enable the apportionment to be disputed by the claimant, by persons who have received particulars, and by persons who, in effect, claim they should have received such particulars as persons whose interests in land are substantially affected. On appeal the Lands Tribunal will carry out the apportionment required by sub-ss. (1) and (2), *supra*.

Particulars of any apportionment will also be sent to the Minister and registered. In so far as no express apportionment is made, registered compensation for depreciation will be treated as distributed rateably according to area; see sub-s. (4), *supra*, and s. 28 (6), *ante*, as applied thereby.

The provisions of the present section will be seen to be modelled almost entirely on s. 28, *ante*. One difference is that the primary apportionment under this section is to be carried out by the authority liable to pay the compensation for depreciation, and not by the Minister, who will be informed of the result for the purposes of registration. Another difference is that any dispute, referred under s. 27 (2) as applied, would appear to be concerned solely with the apportionment of compensation for the purpose of registration. An apportionment of compensation under Part II, *ante*, forms part of the Minister's findings under s. 27, *ante*, see s. 28 (1), *ante*. Compensation for depreciation is however assessed, as part of the compensation to which this Part of this Act applies, under s. 22 of the principal Act. Separate provision is therefore made in sub-s. (1), *supra*, for giving particulars, of any apportionment required under the present section, to the claimant and others.

Cross-reference. As to the liability of an acquiring authority who purchase land after permission has been revoked or modified, see s. 52 (6) (*a*), *post*, and that provision applied to purchasers by agreement by regulations under s. 52 (8). This does not depend on registration under this section, but upon whether the acquiring authority secure an advantage of more than £20 in the compensation or price it pays.

Sub-s. (1).

Compensation to which this Part of this Act applies. See s. 38 (3), *ante*. Briefly, it means the whole compensation for a revocation or modification made on or after 1st January 1955.

Becomes payable. See s. 22 of the Act of 1947 (Hill, p. 88; 48 Statutes Supp. 61) and reg. 4 of the T. & C.P. (General) Regulations, 1948 (S.I. 1948 No. 1380; Hill, p. 816).

Includes compensation for depreciation. See s. 38 (3), *ante*.

Exceeding twenty pounds. Cf. s. 28 (1), *ante*.

Local planning authority. See ss. 4 and 35 of, and the First Schedule to, the Act of 1947 (Hill, pp. 42, 116, 268; 48 Statutes Supp. 28, 84, 211). Where liability for compensation to which this Part of this Act applies has been delegated, the reference is to the delegate authority; see s. 69 (4) of this Act, *post*. Cf. the note, " Liability for compensation ", to s. 38, *ante*.

Land. The land to which the claim for compensation relates would seem to be the land in which the claimant's interest in land subsists so far as the original permission extended thereto or, in the case of a withdrawal of permitted development, so far as the planning decision in question extended thereto. *I.e.*, the claim will relate to an " interest in land ", but compensation will be apportioned and registered by reference to " land " in the sense of a corporeal hereditament; see the definition of land in s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203), and s. 69 (2), *post*.

Give particulars. Cf. ss. 27 and 28, *ante*, relating to apportionments under Part II, *ante*. As to the method of giving particulars, see s. 67 (3), *post*, and s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186), which provides modes of serving or giving any notice or document.

Interest in land. See s. 69 (1), *post*.

Appears to the authority. Cf. s. 27 (1) (*c*), *ante*. It is for the authority to decide what persons should be given particulars (in addition to the claimant). Persons not so notified may claim to be heard, see s. 27 (2), *ante*, and reg. 7 (1) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, applied by sub-s. (3), *supra*.

Substantially. Cf. the note to s. 13 (2) (*c*), *ante*.

Sub-s. (2).

Divide the land. Cf. s. 28 (2), *ante*.

Sub-s. (3).

Regulations. See, generally, s. 27 (2), *ante*; the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, are made under ss. 22 and 27, *ante*, and ss. 40 and 45, *post*. Of these, regs. 7 and 8, as to disputes under Part II of this Act, *ante*, are made under s. 27 (2), *ante*, and provide for the reference of disputes and for the stage at which findings become conclusive. Reg. 7 (1) provides for such a reference or appeal, within 30 days of the issue of the Minister's findings, by a claimant, or a person who has received particulars of an apportionment, or who claims to be entitled to an interest in land substantially affected by an apportionment. As applied, with modifications by the present subsection, reg. 7 (1) will presumably be read as requiring notice to be given within 30 days of the giving of particulars under sub-s. (1), *supra*.

Lands Tribunal. As to the method of appeal to the Tribunal, see the note, " Referred to the Lands Tribunal ", to s. 27 (2), *ante*, and the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. On an appeal against the apportionment, the Tribunal will follow the directions given by sub-s. (1) and (2), *supra*, so far as they relate to making an apportionment. This seems to mean that the Tribunal can also decline to apportion, if it seems impracticable to do so; cf. s. 28 (3), *ante*.

Sub-s. (4).

S. 28 (4) to (6). See those provisions, *ante*. They require the Minister to give notice to the appropriate local authority for the purposes of registration of the notice as a local land charge; for registration in accordance with the Land Charges Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 1063), and the Local Land Charges (Amendment) Rules, 1954 (S.I. 1954 No. 1677), *post*; and for the attribution of parts of the amount of the compensation to parts of the land in accordance with any apportionment and, in so far as not apportioned, rateably according to area.

Order. References to such an order are to be substituted for references to a planning decision. But, in this Part, references to such an order may in turn include references to certain planning decisions after the withdrawal of permitted development; see s. 38 (4), proviso, *ante*. As to orders under s. 21 of the Act of 1947 (Hill, p. 87; 48 Statutes Supp. 60), see the note, " Power to revoke or modify " to s. 38, *ante*.

40. Exchequer contribution towards compensation in certain cases.—(1) Where a notice under the last preceding section is given to the Minister in consequence of the making of an order under section twenty-one of the principal Act, and the circumstances are such that, if the permission revoked or modified by the order had been refused, or, as the case may be, had been granted as so modified, at the time when it was granted, compensation under Part II or Part V of this Act could have been claimed and would have been payable by the Minister, the Minister may, subject to the provisions of this section, pay to the local planning authority a contribution of the amount appearing to him to be the amount of compensation which would have been payable by him as aforesaid under the said Part II or Part V:

Provided that the amount of any such contribution shall not exceed—

(*a*) the amount of the compensation for depreciation paid by the local planning authority; or

(*b*) the unexpended balance of established development value at the date of the making of the order of the land in respect of which that compensation was paid.

(2) Regulations made under this section shall provide, as respects cases where the Minister proposes to pay a contribution under this section—

(*a*) for requiring the Minister to give notice of his proposal to persons entitled to such interests as may be prescribed in the land to which the proposal relates, and to such other persons (if any) as may be determined in accordance with the regulations to be affected by the proposal;

(*b*) for enabling persons to whom notice of the proposal is given to object to the proposal, on the grounds that compensation would not have been payable as mentioned in the preceding subsection, or that the amount of the compensation so payable would have been less than the amount of the proposed contribution;

(*c*) for enabling any person making such an objection to require the matter in dispute to be referred to the Lands Tribunal for determination; and

(*d*) where a contribution under this section is paid, for applying with any necessary modifications the provisions of Part II of this Act as to the reduction or extinguishment of the unexpended balance of established development value of land as if the contribution had been a payment of compensation under Part II of this Act.

NOTES

The Minister is empowered by this section to contribute to the compensation for depreciation which is payable, as part of the compensation to which this Part of this Act applies, under s. 22 of the principal Act where permission has been revoked or modified on or after 1st January 1955.

There are four limits upon this contribution:—

(1) The compensation for depreciation must be an amount exceeding £20; if this is not the case notice under s. 39 (4), *ante*, will not be given to the Minister. A contribution under this section can only be made where the Minister receives such a notice, see sub-s. (1), *supra*.

(2) It must be the case that, if the revoked or modified permission had originally been refused, or granted in the modified form, compensation could have been claimed under Part II of this Act (ss. 16–29), *ante*, or Part V (ss. 42–46), *post*, and would have been payable by the Minister thereunder. *Prima facie*, the amount to be contributed is the amount appearing to the Minister to be the amount he would have had to pay in such circumstances.

(3) The contribution must not exceed the amount of the compensation for depreciation actually paid, see sub-s. (1) proviso (*a*), *supra*.

(4) The contribution can be regarded as coming from the unexpended balance of established development value on the land in question; it must not exceed the amount of that balance at the date of the revocation or modification.

It is further provided that the Minister shall give notice of his proposal to contribute, to certain persons affected; see sub-s. (2) (*a*), *supra*, and reg. 9 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*. The Minister will prepare a statement of the amount of the proposed contribution showing the manner in which it has been ascertained. He will send a copy to persons appearing to him to have an interest in the land in question, or appearing to him to have an interest which is substantially affected by an apportionment involved in the proposal, and also to every other person who appears to be substantially affected by the reduction or extinguishment of the unexpended balance.

Sub-s. (2) (*a*), *supra*, requires provision to be made in the Regulations for enabling persons notified of the Minister's proposals to appeal on the grounds:

(*a*) that compensation would not have been payable under Part II or V, as mentioned, *supra*; or

(*b*) that the amount which would have been so payable would have been less than the proposed contribution.

These grounds do not exhaust the matters which such persons might wish to raise. The Regulations therefore provide that persons notified of the Minister's proposal may

object by notice in writing within 30 days (reg. 9 (4) of S.I. 1954 No. 1600, *post*), specifying whether or not his objection is on the grounds (*a*) or (*b*), *supra*. The Minister is bound to consider the objection (whatever the grounds) and may then determine the amount, if any, of the contribution to be made.

Further notice will be served on the same persons as before. Any person who still objects, on the grounds (*a*) or (*b*), *supra*, may refer the dispute to the Lands Tribunal. This will be done in Form 1A of the Lands Tribunal Rules, inserted in the First Schedule to those rules by the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. The dispute will be dealt with under Part I of the 1949 rules (Hill, 2nd Supp., pp. B116–B139), as amended, and will take the form of an appeal against a determination (and not a " reference " within the meaning of the rules).

The regulations suggest that an appeal may also be made on grounds other than those mentioned in sub-s. (2) (*b*), *supra*. All persons served may be heard by the Tribunal on the appeal and the Tribunal are required to confirm or vary the findings or any apportionment; see reg. 10 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

Sub-s. (2) (*d*), *supra*, requires the application, with any necessary modifications, by Regulations thereunder, of the provisions of Part II of this Act, *ante*, as to the reduction or extinguishment of the unexpended balance; as to this, see the note " The provisions of Part II ", *infra*, to sub-s. (2).

Sub-s. (1).

Notice . . . to the Minister. See s. 39 (4), *ante*. This will be given if compensation for depreciation exceeds £20. It will show the amount involved and the distribution of that amount to different parts of the land. In so far as there is no express apportionment, the amount is distributable rateably.

Order. For s. 21 of the Act, 1947, see Hill, p. 87; 48 Statutes Supp. 60. See also s. 38 (4) of this Act, *ante*, applying the provisions of this Part to certain planning decisions after the withdrawal of permitted development. In such cases, it seems that the making of the development order is " the time when the permission was granted ", but cf. *Godstone Rural District Council* v. *Brazil*, [1953] 2 All E.R. 763; 3rd Digest Supp., as to the granting of permission in this way.

Refused; granted as modified. See the definition of " planning decision " in s. 16 (4), *ante*, and cf. s. 69 (3), *post*, as to the time of decisions made on an application for express permission. As to permitted development, see the note " Order ", *supra*.

Part II. See ss. 16–29, *ante*, which provide for the claiming and payment of compensation in respect of interests in land affected by planning decision made, or treated under s. 69 (3), *post*, as made, on or after 1st January 1955, whereby permission for new development, as defined in s. 16 (5), *ante*, is refused or granted subject to conditions. Payment of such compensation is subject to a variety of exclusions, and reductions in amount, under that Part of the Act, and compensation so payable can be regarded as coming from the unexpended balance.

Part V. See ss. 42–46, *post*, which provide, *inter alia*, for the claiming and payment of compensation to holders of claim holdings, including certain mortgagees, by reference to such holdings, in respect of planning decisions made on or after 1st July 1948 and before 1st January 1955.

The Minister may. On the use of the word " may ", see H. of C. Official Report, S.C.C., 16th June 1954, cols. 618–621. The then Minister (Mr. Macmillan) expressed the view that " may " and " shall " mean the same thing. The intention was that " the Minister will make the contribution ".

Compensation which would have been payable. See particularly, in Part II, *ante*, ss. 25 and 26; and in Part V, *post*, ss. 43 (3), (4) and (6), and 44. In cases where permitted development has been withdrawn, s. 38 (4) applies the provisions of this Part (Part IV) of the Act as if references to an order (expressly revoking or modifying permission) were references to a subsequent planning decision (refusing permission for the development formerly permitted, or granting permission with conditions different from those which formerly applied). Compensation under Part II, *ante*, or Part V, *post*, would not be payable in respect of the conditional grant of permission by a development order, or for the failure to prescribe some class of development as permitted; those Parts relate to express grants subject to conditions or express refusals, and to certain special cases mentioned in s. 16 (4), *ante*. In order to apply the present section to cases of planning decisions following upon the withdrawal of permitted development, it is perhaps necessary to imagine an application made and decided at the time of the granting of permission by the making of the development order.

Compensation for depreciation. See s. 38 (3), *ante*.

Unexpended balance. See ss. 17 and 18, *ante*. The balance referred to is that existing at the time of the revocation or modification.

Sub-s. (2).

Regulations. See Part III, regs. 9–11, of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*. As to regulations generally, see s. 68, *post*. Regs. 9 and 10, giving effect to paras. (*a*) to (*c*) of this subsection, are outlined in the General

Note, *supra*. The then Minister stated (H. of C. Official Report, S.C.C., 16th June 1954, col. 616) that it was intended to confer by regulations rights, similar to those in s. 27, *ante*, of making representations and of appeal to the Lands Tribunal, for the protection of persons affected by the reduction of the unexpended balance or by apportionments, who were " the second and third degree of people affected ". The actual regulations depart in detail from what might have been expected from the wording of this subsection, and should be studied carefully.

Such interests as may be prescribed. " Prescribed " means prescribed by regulations under this Act; see s. 69 (1), *post*. The interests prescribed by reg. 9 (2) of S.I. 1954 No. 1600, *post*, seem to be those (1) appearing to the Minister to be interests in land to which his proposal relates, and (2) appearing to the Minister to be substantially affected by an apportionment. For the definition of " interest in land ", see s. 69 (1), *post*.

Such other persons . . . as may be determined. Reg. 9 of the above-mentioned Regulations (S.I. 1954 No. 1600), *post*, contains no procedure for determining who is affected; it requires the Minister to send a copy of the statement of his proposal to every other person who appears to the Minister to be substantially affected by the reduction or extinguishment of the unexpended balance, and subsequently to give notice of his determination to the same persons as were previously served.

Referred to the Lands Tribunal. See reg. 10 of the above-mentioned Regulations (S.I. 1954 No. 1600), *post*; and the note to the same words in s. 27 (2), *ante*. See also the General Note, *supra*.

The provisions of Part II. The provisions which it is necessary to apply are s. 18 (3), *ante*, which (in Part II) requires the deduction, on any subsequent occasion, of the compensation paid from the unexpended balance; and s. 29 (9), *ante*, which provides for adding back, *i.e.*, waiving such a deduction, where and to the extent that registered compensation has become recoverable, under s. 29, on subsequent development.

Reg. 11 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, applies these provisions with appropriate modifications. The amount of the Minister's contribution, under the present section, will fall to be deducted under s. 18 (3) as applied; and it is the amount of the Minister's contribution, or the properly attributable part of it, which will fall to be added back under s. 29 (9) as applied, where an amount becomes recoverable under s. 28 as applied by s. 41 (1), *post*.

The Minister's contribution is, in effect, regarded as coming from the unexpended balance, and it is considered appropriate that this should be the amount to be deducted, or added back, on any subsequent occasion when the balance is relevant. Cf. the note, " Unexpended balance ", to s. 29 (9), *ante*.

41. Recovery, on subsequent development, of compensation under s. 22 of principal Act.—(1) Subsections (1) to (8) of section twenty-nine of this Act shall have effect in relation to notices registered under the provisions of section twenty-eight of this Act as applied by the preceding provisions of this Part of this Act as they have effect in relation to notices registered under the said section twenty-eight:

Provided that, in a case where the compensation to which this Part of this Act applies specified in such a notice became payable in respect of an order modifying planning permission, the said section twenty-nine shall not apply to development in accordance with that permission as modified by the order.

(2) Subject to the next following subsection, any sum recovered by the Minister under the said section twenty-nine as applied by the preceding subsection shall be paid to the local planning authority who paid the compensation for depreciation to which that sum relates.

(3) In paying any such sum to the local planning authority, the Minister shall deduct therefrom—

(*a*) the amount of any contribution paid by him under the last preceding section in respect of the compensation to which the sum relates;

(*b*) the amount of any grant paid by him under Part IX of the principal Act in respect of that compensation:

Provided that, if the sum recovered by the Minister is an instalment of the total sum recoverable, or is recovered by reference to development of part of the land in respect of which the compensation was payable, any deduction to be made under paragraph (*a*) or paragraph (*b*) of this sub-

section shall be a deduction of such amount as the Minister may determine to be the proper proportion of the amount referred to in that paragraph.

NOTES

Compensation for depreciation, registered as provided by s. 39 (4), *ante*, in the same manner as compensation paid under Part II, *ante*, is recoverable if the land in question is subsequently developed; see sub-s. (1), *supra*, and s. 29 (1)–(8), *ante*. An appropriate adjustment will be made to the unexpended balance of established development value; see s. 40 (2) (*d*), *ante*, and the Regulations thereunder (reg. 11 of S.I. 1954 No. 1600, *post*), applying s. 29 (9), *ante*.

Such compensation is not recoverable where the original permission was not revoked but merely modified and development is carried out in accordance with the permission as modified. *Quære*, as to the effect of undertakings to grant permission for other development under s. 19 (2) (*b*) of the Act of 1947 (Hill, p. 82; 48 Statutes Supp. 56), as applied by s. 22 (4) of that Act (Hill, p. 89; 48 Statutes Supp. 62); see the note " As modified by the order ", *infra*.

Where registered compensation for depreciation is recovered by the Minister, he will pay it to the local authority concerned (sub-s. (2), *supra*) after deducting any amount representing his contribution to the compensation made under s. 40, *ante*, or a grant paid by him under Part IX of the Act of 1947. Where compensation is recovered by instalments (see s. 29 (7), *ante*), or in respect of development of part of the land (see s. 29 (3) (*b*), *ante*), the Minister will deduct what he considers a proper proportion of the amount of his contribution or grant.

Sub-s. (1).

S. 29 (1) to (8). S. 29 (9) is also applied; see s. 40 (2) (*d*), *ante*, and reg. 11 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

S. 28 as applied. See s. 39, *ante*; sub-ss. (1)–(3) of s. 39 are similar in effect to s. 28 (1)–(3), *ante*. S. 39 (4) applies s. 28 (4)–(6), *ante*. Thus compensation for depreciation, as defined in s. 38 (3), *ante*, is apportioned and distributed over the land affected by a revocation or modification after 1st January 1955, and is registered as a local land charge.

Compensation to which this Part of this Act applies. See s. 38 (3), *ante*.

Order modifying planning permission. " Order " includes a planning decision with similar effect following the withdrawal of " permitted development "; see s. 38 (4), *ante*. The result of a modification, as opposed to a revocation, of permission is that the original permission is still in force in a modified form, *e.g.*, subject to more stringent conditions.

As modified by the order. Registered compensation is recoverable if new development of certain kinds (see s. 29 (2), *ante*), is carried out. This provision prevents a person having his development value twice over, first as compensation and again by actually realising it while retaining the compensation received. Compensation for the modification of planning permission will have been assessed on the assumption that development in accordance with the permission as modified is still available to the person interested, *i.e.*, in the case of an express modification by an order under s. 21 (1) of the Act of 1947 (Hill, p. 97; 48 Statutes Supp. 60), the order leaves the original permission in force subject to such modifications as the authority making the order thought expedient, or such further or other modifications as the Minister thought proper to effect in confirming the order. It is for the loss or damage caused by the order as confirmed, in the nature of depreciation in value of an interest in land, that the registered compensation for depreciation will have been paid.

One minor difficulty of interpretation should be mentioned. In certain circumstances, when permission is modified, a purchase notice may be served under s. 19 of the Act of 1947 (Hill, p. 81; 48 Statutes Supp. 56), as amended by s. 70 of this Act, *post*, and as applied by s. 22 (4) of the principal Act (Hill, p. 89; 48 Statutes Supp. 62). The purchase notice may fail to take effect by reason of a direction in the nature of an undertaking, under s. 19 (2) (*b*), that permission for alternative development shall be granted if an application is made in that behalf. It is not clear how far such a direction affects the assessment of compensation under s. 22 (7) of, and the Fourth Schedule to, the principal Act (Hill, pp. 90, 273; 48 Statutes Supp. 63, 215). S. 22 (7) of that Act requires the assumption to be made that Third Schedule development would be permitted. It neither requires the prospect of other development to be disregarded, nor does it make express provision for taking into account the direction.

The better view is that such a direction is to be ignored in assessing compensation for depreciation. If so, it seems consistent to construe the present proviso narrowly, *i.e.*, development subsequently permitted in pursuance of such a direction would not be in accordance with the original permission " as modified by the order ".

Generally, this view seems reconcilable with the analogous provisions of Part II of this Act, *ante*. There, when compensation is assessed under s. 26, *ante*, regard is to be had to certain undertakings to grant permission, but compensation is nevertheless recoverable on the carrying out of any new development to which s. 29, *ante*, applies; and no exception is made by s. 29 (2) proviso (ii) for cases where there was an undertaking (as opposed to a conditional grant) which affected the amount of compensation.

However, that section is unlikely to apply (or to be applied by the Minister where he has a discretion) to the carrying out of development covered by an undertaking which reduced the amount of compensation (but did not exclude compensation altogether). Similarly, under **s.** 29 as applied by this Part of the Act, it is unlikely that compensation for depreciation will be recoverable in respect of development covered by a direction, if such a direction was in fact taken into account in assessing compensation.

Sub-s. (2).

Any sum recovered. See, generally, s. 29, *ante*. Cf. s. 64 (9), *post*, which contains a saving for the present section by way of exception to the Minister's general duty to pay compensation recovered into the Exchequer.

Local planning authority. See s. 69 (4), *post*, and cf. the note, " Liability for compensation ", to s. 38, *ante*.

Sub-s. (3).

Contribution paid by him. See s. 40, *ante*. Such a contribution towards the compensation for depreciation comes, in effect, from the unexpended balance of established development value.

Part IX of the principal Act. See ss. 93–99 of the Act of 1947 (Hill, pp. 220–229; 48 Statutes Supp. 169–177). Ss. 50 and 51 of the present Act, *post*, substitute a new s. 93 in place of ss. 93 and 94 of the principal Act. The deduction referred to in the present paragraph can be made only in respect of a grant paid by the Minister and not, for example, in respect of an analogous contribution by some other Minister under Part IX of the principal Act.

Instalment. See s. 29 (7), *ante*.

Part of the land. See s. 29 (3) (*b*), *ante*.

PART V

COMPENSATION FOR PAST PLANNING DECISIONS AND PAST ORDERS REVOKING OR MODIFYING PLANNING PERMISSION

42. Scope of Part V.—(1) The provisions of this Part of this Act shall have effect for enabling compensation to be claimed in respect—

(*a*) of planning decisions made before the commencement of this Act whereby permission for the carrying out of new development of land to which this section applies was refused, or was granted subject to conditions;

(*b*) of orders made before the commencement of this Act under section twenty-one of the principal Act whereby permission for the carrying out of new development of land to which this section applies was revoked or modified.

(2) This section applies to any land to which the planning decision or order related which satisfies the following conditions, that is to say—

(*a*) that at the time of the planning decision or order in question the land constituted the area, or part of the area, of a claim holding; and

(*b*) that the claim holding referred to in the preceding paragraph, or, where by virtue of any provision of this Act two or more separate claim holdings have been constituted thereout, one or more of those separate holdings whose area consisted of or included that land, was still subsisting at the commencement of this Act;

and in this Part of this Act, in relation to a claim for compensation in respect of any such claim holding so subsisting as aforesaid, any such land is referred to as " qualified land " and the claim holding is referred to as " the relevant holding ".

(3) Subsection (3) of section sixteen of this Act shall have effect for the purposes of this Part of this Act as it has effect for the purposes of Part II of this Act, with the substitution for the reference to a planning decision made after the commencement of this Act of a reference to a planning decision made before the commencement of this Act.

NOTES

This section introduces Part V, ss. 42–46, of this Act, whereunder compensation may be payable in respect of past planning decisions and past orders revoking or

modifying planning permission. Such decisions and orders are those made, or treated as made, on or after 1st July 1948 and before 1st January 1955. Decisions and orders made, or treated as made, on or after 1st January 1955 are dealt with in Parts II and IV, *ante*. This Part (Part V) proceeds largely by applying the provisions of Part II or by making specific provisions similar to those of Part II.

Planning decisions following the withdrawal of permitted development are here treated as planning decisions. In Part IV, *ante*, they might be treated as equivalent to revocations or modifications of permission, if made on or after 1st January 1955 (see s. 38 (4), *ante*).

Payments under this Part (Part V) may be claimed as mentioned in s. 45 (1), *post*, by a claim holder who satisfies the provisions of s. 43 (1) or (2), *post*. The decision or order in question may be reviewed, in certain cases, under s. 45 (3) or (4), *post*. The amount of compensation will be governed by s. 44, *post*; in general the amount is limited to the value of the claim holding, as affected by Part I of this Act, *ante*, as on 1st January 1955; and as affected as at that date by any compensation payable under this Part (Part V) by reference to an earlier decision or order; see sub-s. (2), *supra*, and s. 46 (2) and (3), *post*. Within this limit, compensation will depend on the depreciation in value of an interest, so far as it subsisted in land in the area of a relevant claim holding or holdings (see sub-s. (2), *supra*, and s. 44, *post*) measured, in the case of planning decisions, on the artificial basis of s. 26, *ante*, or, in the case of orders revoking or modifying permission, on the rather vague basis of s. 43 (5), *post*. Special provisions affect mineral land.

The claimant, under s. 43 (1) and (2), *post*, must be:

(1) a person still entitled to the interest affected by the decision or order (or one in which that interest has merged);
(2) a person who would have been so entitled but for a private sale of the interest after 17th November 1952; or
(3) a mortgagee by assignment of the claim holding, where the mortgagor of the holding would otherwise be the claimant;

and in every case must be the holder of the relevant claim holding (or holdings) defined in sub-s. (2), *supra*. As to claims by mortgagees of land, rentcharge owners and trustees, see s. 66, *post*, and the Regulations thereunder (S.I. 1955 No. 38), *post*.

Compensation may be reduced or excluded where planning permission has been subsequently granted, or where an undertaking to grant permission has been given; see s. 43 (3) and (4), or s. 43 (5), *post*. The reductions and exclusions are more drastic under s. 43 (3) and (4) which deals with decisions, than under s. 43 (5), which deals with orders. In either case, there is a measure of protection for those claiming by reference to an interest which has been sold, as mentioned, *supra*; see s. 43 (1) (*b*), (3) proviso, (4) proviso, and (5) proviso. The reductions and exclusions are not in general quite so drastic as those in Part II, *ante*; and it may sometimes be of great importance to show that a claim arises under this Part (Part V), *i.e.*, by reason of a planning decision made, or treated under s. 69 (3), *post*, as having been made before 1st January 1955. On the other hand, where compensation is payable it may have to be assumed in future, under s. 26 (3), *ante*, that a decision giving rise to compensation under this Part (Part V) was " to the contrary effect "; this may have an unexpectedly drastic effect on any later claim under Part II, *ante*, or on any other claim under this Part in respect of a later planning decision (see s. 26, *ante*, and that section as applied by s. 43 (3), *post*).

Compensation payable under this Part (Part V) can be regarded as coming from the relevant claim holding, which will accordingly be sub-divided where necessary, reduced in value, or extinguished under s. 46, *post*. Such compensation is registrable against the land, and may be recovered on subsequent development, see s. 28 (4), *ante*. In appropriate cases an amount may be added back to the value of a claim holding, see s. 46 (2) proviso, *post*, and the note to s. 29 (9), *ante*.

It should be remembered that a planning decision, as defined in s. 16 (4), *ante*, normally means only a decision refusing, or granting conditionally, permission for development on an application, under Part III of the principal Act, for express permission. The term applies also to certain permissions granted conditionally by s. 77 or s. 78 of that Act, see notes, *infra*, to sub-s. (1) of this section, but not, for example, to permission granted subject to conditions or limitations by a development order, or to any other refusal, or conditional grant, of permission; *e.g.*, the term does not include a permission granted by s. 32 (1) of the Act of 1947, which relates to advertisement consents which when granted carry with them a corresponding planning permission. As to discovering what planning decisions were made before 1st January 1955, cf. the note " A grant ", to s. 21 (2), *ante*, and see s. 16, *ante*.

Sub-ss. (1) and (2), *supra*, state the scope of this Part and define certain terms; sub-s. (3), *supra*, makes provision for the interpretation of certain decisions where the authorities' requirements were anticipated by the applicant, by applying s. 16 (3), *ante*.

Sub-s. (1).

To be claimed. See s. 22, *ante*, applied by s. 45 (1), *post*. Claims are to be made within six months of 1st January 1955, or such further time as the Minister may allow. They are to be made in respect of a claim holding (the " relevant holding ", see sub-s. (2),

supra) and by reference to the depreciation of an interest (or interests) in land (see s. 43, *post*).

Planning decisions. See s. 16 (4), *ante*. Note that under this Part (Part V) planning decisions following the withdrawal of permitted development, *i.e.*, after the withdrawal of permission granted by a general or special development order, are not dealt with as being equivalent to revocations or modifications of permission. Contrast ss. 19 (5) and 38 (4), *ante*.

The decisions referred to in the present section are those made on or after 1st July 1948 and before 1st January 1955. As to when a decision on an application is deemed to be made, see s. 69 (3), *post*. Certain permissions granted by virtue of s. 77 or s. 78 of the Act of 1947 (Hill, pp. 195–197; 48 Statutes Supp. 149–151) are expressly included in the definition of " planning decision " in s. 16 (4), *ante*. Those sections were transitional provisions for certain cases where development was permitted under previous planning law before 1st July 1948. A permission thereby granted will be a " planning decision " if it was subject to conditions.

A decision made on an application, as mentioned in s. 16 (4), *ante*, may be one where the application was made before 1st July 1948, under previous enactments, but was treated as an application under Part III of the principal Act by virtue of one or other of certain paragraphs of the Tenth Schedule thereto.

Except as mentioned, *supra*, planning decisions are confined to decisions made on an application for express permission under Part III of the principal Act.

Before the commencement of this Act. 1st January 1955 is the day appointed for the commencement of this Act; see s. 72 (2) and S.I. 1954 No. 1598, *post*. If s. 69 (3), *post*, requires a decision to be treated as made before 1st January 1955, compensation should be claimed under this Part (Part V), although an appeal may be pending at the commencement of the Act and the actual decision may be given later.

Permission. See the notes to s. 16, *ante*, and cf. the notes to s. 20, *ante*.

New development. See s. 16 (5), *ante*.

Refused; granted subject to conditions. See the notes to s. 16, *ante*.

Orders . . . under s. 21 of the principal Act. See s. 21 of the Act of 1947 (Hill, p. 87; 48 Statutes Supp. 60); cf. the notes to s. 38, *ante*. S. 21 of the principal Act provides for the express revocation or modification of planning permission by an order confirmed by the Minister. As to when such an order is to be considered to be made, see the note, " Made ", to s. 38 (2), *ante*. In this Part (Part V), planning decisions following the withdrawal of permitted development are not dealt with as equivalent to an order expressly revoking or modifying permission; contrast s. 38 (4), *ante*, making such provision in Part IV, *ante*.

Sub-s. (2).

The following conditions. Both paragraphs of this subsection must be satisfied; in addition the claimant must satisfy s. 43 (1) or (2), *post*.

The time of the planning decision or order. As to the time of a decision made on an application, see s. 69 (3), *post*. A permission granted by s. 77 or s. 78 of the principal Act (see s. 16 (4), *ante*) should perhaps be regarded as a decision made on 1st July 1948, when those sections came into force. *Quære*, whether the time of an order revoking or modifying permission is the date of its preparation or submission pursuant to a resolution of the local planning authority (or delegate authority) or the time of the Minister's confirmation (which may have been given with modifications, and without which the order would be of no effect); cf. the note " Made " to s. 38 (2), *ante*. The better view is that the " time " of such an order is the date of confirmation, but either view involves difficulties.

The land. The land to which this section applies may be the whole or part only of the land to which the decision or order related; it must be the area or part of the area of a claim holding. A claim may be made, in respect of the relevant holding, by reference to any interest in that land as mentioned in s. 43, *post*.

Area of a claim holding. See s. 2, *ante*. Subject to the provisions of this Act, references to a claim holding are references to the benefit of an established claim (in turn defined in s. 1, *ante*), and references to the area of a claim holding are references to the claim area (in turn defined by s. 1 (4), *ante*). The provisions of this Act which may have affected these definitions, at the time of the decision or order, are s. 2 (2) and (3), *ante* (which require claim holdings to be adjusted by reference to pledges of Part VI claims, to payments under the War Damage Scheme and to transactions disposing of part of the benefit of a claim).

Any provision of this Act. The provisions of this Act which require the subdivision of a holding into two or more separate holdings are listed in the notes to s. 17, *ante*. In addition to s. 2 (2) and (3), mentioned *supra*, s. 15 (3), *ante*, requires a subdivision where any payment under Part I, *ante*, is made by reference to an act or event which did not extend to the whole area of the holding in question. S. 46 (2) and (3), *post*, states the effect on a claim holding of the payment of compensation under this Part (Part V). Attention is drawn to the fact that the adjustments required by s. 46 affect the application of this Part to any subsequent decision or order.

Still subsisting. The holding which existed at the time of the decision or order, or one or more derivative holdings, must survive extinguishment under s. 2 (2) and (3), s. 15 (1) (*a*) and (2), and (in the case of any but the first decision or order in point of time, if more than one must be considered under this Part), s. 46 (2) (*a*), *post*. In other words, the Part VI claim under the principal Act may have been exhausted—

(1) by pledge to the Central Land Board, and consequent set-off under s. 2 (2) (*a*), *ante*, and the Second Schedule, *post*;
(2) by payment in the form of a War Damage Scheme payment; see s. 2 (2) (*b*), *ante*, and the Third Schedule, *post*;
(3) indirectly, by the effect of an apportionment required to give effect to a disposition of part of the benefit of a claim. This will not, in itself, exhaust the claim but it may alter the amount of the claim holding attaching to particular land (cf. s. 2 (4), *ante*). If this amount is, as a result, less than the amount " properly attributable " the claim holding may the more readily be exhausted under some other provision;
(4) by one or more payments under Part I, see s. 15, *ante*;
(5) by payment of compensation under this Part in respect of an earlier decision or order; see s. 46, *post*.

As the claimant under this Part (Part V) will be the holder of the relevant claim holding, or holdings, he will be in less difficulty than a claimant under Part II, *ante*, in finding out what remains of the Part VI claim or claims made under the principal Act. Attention is drawn, however, to s. 11, *ante*, which may be relevant where the holder has sold the land as mentioned in s. 43 (1) (*b*), *infra*. See also s. 60, *post*.

At the commencement. 1st January 1955 is the day appointed for the commencement of this Act. The provisions for the adjustment of the claim holding mentioned, *supra*, are regarded as operating " immediately before " the commencement, or at some earlier time.

Qualified land. This term should be used with some care. It must be related to a particular claim for compensation in respect of a particular claim holding, although in certain circumstances the values of holdings attaching to the same land may be aggregated; see s. 44 (1) proviso, *post*.

Sub-s. (3).

S. 16 (3). That provision, *ante*, affects the meaning of certain decisions granting permission on an application where particular buildings or works were included only in anticipation of the planning authorities' requirements. If the Minister's certificate is obtained, the claim holder claiming under this Part (Part V) of the Act will be placed in a position as favourable as if the application had been made in a less acceptable form, and the requirements had been imposed by conditions on the permission.

43. Right to compensation in respect of past planning decisions, or past revocations, etc. of planning permission.—(1) Subject to the provisions of this Part of this Act, the holder of the relevant holding shall be entitled to compensation under this Part of this Act in respect of such a planning decision or order as is mentioned in the last preceding section if—

(*a*) he is entitled to an interest in any qualified land; or
(*b*) having been entitled to an interest in any qualified land at the date of the decision or order, he sold that interest (otherwise than to a public authority possessing compulsory purchase powers) in pursuance of a contract made after that date and during the period beginning with the eighteenth day of November, nineteen hundred and fifty-two, and ending immediately before the commencement of this Act,

and the value of that interest or of another interest which has merged therein or, in the case of an interest extending to other land, the value of that or of that other interest in so far as it subsisted in that qualified land, was depreciated by the decision or order:

Provided that compensation shall not be payable under this Part of this Act in respect of an order under section twenty-one of the principal Act so far as it relates to any particular land if—

(i) compensation in respect of that order is or was payable by the local planning authority under section twenty-two of that Act; and
(ii) by virtue of paragraph (*b*) of the proviso to subsection (1) of the said section twenty-two (which relates to development exempt from development charge by virtue of Part VIII of that Act) the com-

pensation includes or included compensation in respect of loss or damage consisting of the depreciation in value of an interest in that land.

(2) A person who is entitled to the relevant holding as mortgagee shall be entitled to such compensation as aforesaid, notwithstanding that he does not satisfy the conditions set out in paragraphs (*a*) and (*b*) of the preceding subsection, if the mortgagor would have been entitled to such compensation if he had continued to be the holder of the relevant holding.

(3) For the purposes of this Part of this Act any question whether, or to what extent, the value of an interest in land or of an interest in so far as it subsisted in qualified land was depreciated by a planning decision shall be determined in accordance with the provisions of section twenty-six of this Act:

Provided that those provisions shall apply for the purposes of this Part of this Act—

(*a*) as if the reference in subsection (1) of the said section twenty-six to Part II of this Act were a reference to this Part of this Act; and

(*b*) as if Part VII of the principal Act had not been enacted,

and in the application of subsection (2) of the said section twenty-six in a case to which paragraph (*b*) of subsection (1) of this section applies, no account shall be taken of any grant of, or undertaking to grant, planning permission made or given after the making of the contract of sale.

(4) For the purposes of the application of this Part of this Act with respect to such a planning decision as aforesaid, subsections (2) to (4) of section nineteen, subsections (1), (2), (6) and (7) of section twenty, and section twenty-one of this Act shall have effect as they have effect for the purposes of Part II of this Act:

Provided that, in a case to which paragraph (*b*) of subsection (1) of this section applies, for the reference in the said section twenty-one to the Minister's giving notice of his findings in respect of the claim for compensation there shall be substituted a reference to the making of the contract of sale.

(5) In determining for the purposes of a claim for compensation under this Part of this Act whether, or to what extent, the value of an interest in land was depreciated by such an order as aforesaid—

(*a*) regard shall be had to any compensation which has become payable to the person entitled to that interest in respect of that order under section twenty-two of the principal Act otherwise than by virtue of the proviso to subsection (1) of that section;

(*b*) any grant of, or undertaking to grant, planning permission made or given during the period between the making of the order and the time when the Minister gives notice of his findings in respect of that claim, being a grant or undertaking which is in force at the end of that period, shall be taken into account as if it had been in force at the beginning of that period;

(*c*) Part VII of the principal Act shall be deemed not to have applied after the date when the order was made:

Provided that, in a case to which paragraph (*b*) of subsection (1) of this section applies, no account shall be taken of any grant or undertaking made or given after the making of the contract of sale.

(6) Where the interest to which the holder of the relevant holding is entitled or, as the case may be, which he sold, is or was an interest in reversion immediately expectant upon the termination of a tenancy granted after the planning decision or order and on or after the eighteenth day of November, nineteen hundred and fifty-two, the preceding provisions of this section shall have effect as if that tenancy had not been granted.

NOTES

Sub-ss. (1) and (2), *supra*, state the circumstances in which the holder of a claim holding may claim under this Part (Part V). Sub-ss. (3) and (4), *supra*, apply certain provisions of Part II, *ante*, to cases where the claim is in respect of a planning decision; this provides a means of measuring the "depreciation" caused by the decision, and excludes compensation in many cases. Sub-s. (5), *supra*, makes somewhat similar provision for measuring the depreciation caused by an order expressly revoking or modifying permission, but the basis is more favourable. The provisos to sub-ss. (3)–(5) afford some protection to a claim holder where the interest in land was sold, as mentioned in sub-s. (1) (*b*), by private sale after 17th November 1952 and after the decision or order; permission granted, or an undertaking to grant permission, which might otherwise reduce or exclude compensation will be disregarded if it was not available when the sale was made.

Where an interest has merged in another interest, see sub-s. (1), *supra*. As to leases granted immediately out of the claim-holder's interest, see sub-s. (6), *supra*.

Associated companies. See s. 47 (2), *post*.

Rentcharge owners, trustees and mortgagees of land. See s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, regs. 2 (3) and 4 (mortgagees and certain former mortgagees); Part III (regs. 6–9) and the Schedule (rentcharges); and Part IV (reg. 10, trustees). As to mortgaged land, see also s. 65 (1), *post*.

Mineral land. See s. 54 and the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, particularly reg. 24 (1), which prevents overlap, in calculating the depreciation of an interest in land, with reg. 10; or with the former regulation to the same effect, reg. 5 of S.I. 1953 No. 820 (Hill, 2nd Supp., p. B719).

Sub-s. (1).

The holder. See s. 2 (8), *ante*. The holder is the person entitled to the holding (including a mortgagee by assignment) but, where the holding is subject to a mortgage made otherwise than by assignment, the holder is the person who would be entitled to the holding if it had not been mortgaged. As to certain mortgagees, see sub-s. (2), *supra*. As to assignments, see the notes to s. 60, *post*.

Relevant holding. See s. 42 (2), *ante*. If there has been a sub-division into separate holdings since the time of the decision or order, the reference is to each of these separately if it still exists at the commencement of this Act.

Planning decision; order. See s. 42 (1), *ante*.

Interest in any qualified land. As to "interest in land", see s. 69 (1), *post*. As to qualified land, see s. 42 (2), *ante*. A claimant's interest may subsist in more than one unit of qualified land, and may extend also to land outside the area of any claim holding. Save as provided by s. 44 (1) proviso, *post*, each unit of qualified land must be considered separately. As to interests held by an associated company, see s. 47 (2), *post*. As to ignoring certain tenancies created out of an interest after the decision or order and after 19th November 1952, see sub-s. (6), *supra*. Generally, see the note to similar words in s. 44 (1), *post*.

Sold that interest. Para. (*b*) makes a provision supplementary to Case B, ss. 5 and 6, in Part I, *ante*. A Case B payment is not payable in respect of a private sale unless it was in pursuance of a contract made, or an option granted, before 18th November 1952, whereas in the case of public sales (compulsory acquisition and sales to authorities who were or might have been authorised to acquire compulsorily for the purpose in question) Case B covers transactions effected in pursuance of a notice to treat served, or contract made, before 1st January 1955; see s. 5 (3), *ante*. In the case of private sales, Case B therefore leaves a gap, from 18th November 1952 to 31st December 1954 (both dates inclusive), which is bridged by this paragraph. See also the provisos to sub-ss. (3), (4) and (5), *supra*; and cf. sub-s. (6), *supra*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*, and cf. s. 5 (3) (*a*), *ante*.

Contract. This refers to a contract in writing, or attested by a sufficient memorandum. If there was no preliminary contract, the reference is to the conveyance or assignment, see s. 69 (6), *post*.

18th November 1952. Date of publication of the Bill for the Act of 1953 and the White Paper (see Hill, 2nd Supp., pp. B693–B715).

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

The value . . . was depreciated. In the case of a planning decision, see sub-s. (3), *supra*, applying s. 26, *ante*. In the case of an order revoking or modifying permission, see sub-s. (5), *supra*. Provision is made, by sub-s. (4), *supra*, for excluding certain claims in respect of planning decision. Sub-ss. (3), (4) and (5), *supra*, are subject to provisions protecting a person who sold his interest, as mentioned in this subsection, and who cannot therefore take advantage of permission granted, or of an undertaking to grant permission for development.

S. 21 of the principal Act. See Hill, p. 87; 48 Statutes Supp. 60. That section authorises the express revocation or modification of planning permission; cf. the notes to ss. 38 and 42, *ante*. The present proviso applies only to orders thereunder and not to planning decisions (although, in certain cases, a planning decision may also have led to the payment of compensation, for loss or damage consisting of the depreciation in value of an interest in land, under s. 22 of the principal Act). This accords with s. 3 (5), in Part I, *ante*; mentioned in the next note, *infra*.

S. 22 (1) of the principal Act. The proviso to s. 22 (1) of the Act of 1947 (Hill, p. 88; 48 Statutes Supp. 62) excluded from the heads of compensation for revocation or modification of planning permission any loss or damage consisting of the depreciation in value of an interest in land except where:

(*a*) development charge had been paid in respect of the development in question; or
(*b*) no such charge was payable by virtue of any provision of Part VIII of that Act.

That proviso was preserved by the Act of 1953, see s. 3 (1) thereof (Hill, 2nd Supp., p. B700; 78 Statutes Supp. 136) and see the further special provisions about development charge in s. 3 (3) thereof. That Act abolished, with minor exceptions, liability for development charge in respect of development begun after 17th November 1952, and provided for refunding any charge paid which ought not to have been paid. Repayment was not, however, to be made if, and to the extent that, such repayment had in effect already been secured in the form of compensation for depreciation in the value of an interest in land, under s. 22 (1) of the principal Act, paid to the person otherwise entitled to the repayment of the charge. (Similarly, charge was not to be repaid if it had affected the compensation payable, to the person concerned, on a compulsory acquisition.)

S. 22 (1) proviso (*b*), relating to exemption from charge under Part VIII of the Act of 1947 (ss. 75–92; Hill, pp. 188–220; 48 Statutes Supp. 144–169), continued to operate as if specific exemptions arose under that Part and not from the general exemption under the Act of 1953.

The whole proviso to s. 22 (1) of the principal Act is now repealed for the purposes of assessing compensation for a revocation or modification made on or after 1st January 1955, see, in Part IV, s. 38, *ante*, and the formal repeal, with a saving for earlier revocations and modifications, in s. 71 (2) and (6) and the Eighth Schedule, *post*. But in cases to which this Part (Part V) applies, compensation for depreciation may have been made by virtue of either paragraph of that proviso, as originally enacted or as preserved by the Act of 1953. If such compensation was payable because of payment of a development charge, the claim holder might have expected to secure repayment of the charge under Case A, ss. 3 and 4, in Part I, *ante*. But, under that Case, s. 3 (5), *ante*, requires the Central Land Board or, on appeal, the Lands Tribunal to reduce or disallow the Case A payment as may be determined to be appropriate having regard, in such circumstances, to the compensation or increased compensation payable, under s. 22 of the principal Act, by reason of the payment of the development charge.

S. 3 (5), *ante*, seems to proceed on the basis that the compensation paid for revocation or modification should be taken into account to see whether it can be said that the development charge has thereby, in effect, been recovered. If this is a correct view of that provision, the claim holder can now maintain that he has still never received the 1947 development value of the land, as measured by the Part VI claim under the principal Act; all that has happened is that charge was paid and in effect repaid. The claim holder will therefore expect to be allowed to claim for the lost development value under this Part (Part V). The present proviso, accordingly, does not preclude a claim under this Part where compensation for depreciation was payable, under s. 22 (1) proviso (*a*), because development charge had been paid.

Where, however, compensation for depreciation has been paid because of an exemption from development charge, as mentioned in s. 22 (1) proviso (*b*) of the principal Act, a claim under this Part (Part V) is excluded. Such exemptions are apparently regarded as having been part of the existing use value of the interest; the permission revoked or modified must have been for development the prospective value of which was not reflected in the Part VI claim established under the principal Act. Accordingly it is here considered inappropriate to pay any compensation by reference to a claim holding, which represents the benefit, or some part of the benefit, of such a claim. The land concerned may have had a Part VI claim, based on the loss of value which had been due to the prospect of other development. Compensation based on this may now be payable under this Part of this Act if the claim holder can find some other cause for payment, *i.e.*, a planning decision refusing permission, or granting it conditionally; or some other revocation or modification of permission where compensation for depreciation was not payable under s. 22 (1) proviso (*b*) of the principal Act.

Sub-s. (2).

Person . . . entitled . . . as a mortgagee. This subsection allows certain mortgagees of claim holdings to claim compensation under this Part; for their liability to account for the proceeds, see s. 66, *post*, and reg. 5 (*b*) of the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. As to who may be considered as entitled to a claim holding, see s. 2 (8), *ante*. It seems that a mortgagee, whether by assignment or otherwise, can be said to be " entitled " to the holding; but,

except where the mortgage is by assignment, the mortgagor will be the claim holder. The words, " if the mortgagor . . . had continued to be the holder ", in the present subsection, imply that it operates in favour of mortgagees only where the mortgagor is not still the claim holder, *i.e.*, where the mortgage of the holding was made by assignment. This view accords with explanation given in Parliament; see 189 H. of L. Official Report 1050. As to the meaning and effect of assignments, see s. 60, *post*, and the notes thereto.

Mortgagees of land may claim under this Part as provided by reg. 4 of the above-mentioned Regulations (S.I. 1955 No. 38), *post*, if no claim is made by the person primarily entitled to do so.

Sub-s. (3).

Any question. Questions arise, under s. 44, *post*, as to the effect of a decision or order on the value of an interest in land. The depreciation may have to be measured by reference to the interest as it subsisted in the land affected by the decision or order, or the interest as it subsisted in some one or more parts which are now qualified land as defined in s. 42 (2), *ante*.

Somewhat similar questions arise under s. 46 (3), *post*, where compensation payable under this Part of the Act may have to be apportioned to parts of the land for the purpose of sub-dividing a claim holding in taking account of the effect of payment of compensation under this Part. S. 46 (4), *post*, applying s. 28, *ante*, also requires apportionments in certain cases for the purpose of registering compensation as a local land charge.

Planning decision. See ss. 18 (4) and 42 (1) (*a*), *ante*. As to orders revoking or modifying permission, see sub-s. (5), *supra*.

S. 26. That section, *ante*, provides the measure of compensation under Part II. The general assumption involved is that, but for the decision, development could have been carried out and that, after the decision, only Third Schedule development is available. But regard in effect is had (1) to the possibility of imposing certain conditions without creating a liability for compensation; (2) to permissions granted and undertakings to grant permission, and (3) to certain previous payments of compensation. See the notes to s. 26, *ante*. The general assumption mentioned, *supra*, would be nullified in cases under this Part (Part V) if account were taken of liability to development charge during any period when such charge would have been, or was in fact, payable. Para. (*b*) of this subsection accordingly requires a determination on the assumption that Part VII of the principal Act, relating to development charge, had not been enacted.

A further modification is required where land has been sold, as mentioned in sub-s. (1) (*b*), *supra*, so as to exclude from consideration any permission granted, or any undertaking to grant permission given, when it was too late for the claim holder to take advantage of it because he had parted with his interest in land.

Part VII of the principal Act. See ss. 69–74 of the Act of 1947 (Hill, pp. 172–188; 48 Statutes Supp. 132–143). That Part related to development charges; as to why it is now disregarded, see the previous note, *supra*.

Grant or undertaking to grant. See the notes to s. 26, *ante*.

Sub-s. (4).

S. 19 (2) to (4). These provisions, *ante*, exclude claims in respect of certain land or interests acquired by, belonging to, or disposed of by public authorities and statutory undertakers. Note that s. 19 (5), *ante*, is not applied for the purposes of this Part (Part V).

S. 20 (1), (2), (6) and (7). These provisions, *ante*, provide further important exclusions from compensation. Note that s. 20 (3)–(5), relating to certain applications refused on the grounds of prematurity or the liability of land to flooding or subsidence, are not applied by this Part (Part V). It may therefore be very important to show that there was a refusal before 1st January 1955, where compensation under Part II, *ante*, for a decision made on or after that date would be excluded by s. 20 (3) or (4). As to the date of decisions, see s. 69 (3), *post*.

S. 21. That section, *ante*, excludes compensation where permission for certain development of a residential, commercial or industrial character has been granted, or where the Minister has undertaken to grant such permission. Such development will not be regarded as available, for this purpose, if the permission is (or would be) subject to conditions other than such as are mentioned in s. 20 (2), *ante*. When land has been sold, as mentioned in sub-s. (1) (*b*), *supra*, so that the claim holder cannot now take advantage of permission for such development, it will not be regarded as available, except to the extent that it was available at the time of the contract of sale.

Notice of his findings. See s. 27 (1), *ante*, as applied by s. 45 (1), *post*, and reg. 6 (4) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

Contract of sale. See sub-s. (1) (*b*), *supra*; and s. 69 (6), *post*.

Sub-s. (5).

Order as aforesaid. See the notes to sub-s. (1), *supra*, and s. 42 (1) (*b*), *ante*.

The reference is to an order, expressly revoking or modifying permission, made before 1st January 1955.

S. 22 of the principal Act. See Hill, p. 88; 48 Statutes Supp. 61. Compensation payable otherwise than by virtue of s. 22 (1) proviso, will have been for abortive expenditure or other loss or damage (not being in the nature of depreciation in value of an interest in land) directly attributable to the revocation or modification of permission. Cf. the note " Measure of compensation ", to s. 38, *ante*.

Grant; undertaking to grant. Cf. s. 26, *ante*. An undertaking may be given where an order revoking permission is reviewed under s. 45 (4), *post*. The proviso to this subsection protects the claim holder where the interest has been sold as mentioned in sub-s. (1) (*b*), *supra*.

Part VII of the principal Act. See the note to sub-s. (3), *supra*. If development charge was in fact paid, it should in effect have been recovered in the form of compensation for depreciation under s. 22 (1) proviso (*a*) of the Act of 1947; see note, on the effect of that section, to sub-s. (1), *supra*. Where a determination of charge was varied under Part VII of the principal Act, account will have been taken of that action in assessing compensation under s. 22 of that Act; cf. the note, " Measure of compensation " to s. 38, *ante*, and s. 69 (4) of this Act, *post*.

It must now apparently be assumed, for the purpose of calculating the measuring of depreciation, that by the revocation or modification of permission the person interested lost the development value which he would have realised. If regard were paid to liability for development charge the purpose of this calculation would be nullified, and Part VII of the principal Act must accordingly be disregarded, as under sub-s. (3), *supra*.

Sub-s. (6).

Which he sold. See sub-s. (1) (*b*), *supra*.

Interest in reversion. This means an interest in fee simple or a tenancy (see s. 69 (1), *post*) out of which a tenancy (defined so as to include an underlease) has been granted immediately. This grant must have been made after the date of the decision or order; as to the time of decisions, cf. s. 69 (3), *post*, but note that the present subsection avoids referring to the " time " of the decision. As to when an order is made, cf. the note on the word " Made " in s. 38 (2), *ante*.

The present subsection was inserted, without explanation or discussion, in the House of Lords; see 189 H. of L. Official Report 1052; and cf. also 533 H. of C. Official Report 912. Presumably it is intended to make clear the fact that the interest which was depreciated still subsists although another interest has been created.

44. General provisions as to amount of compensation for past planning decisions, revocations, etc.—(1) Subject to the next following subsection, where a person is entitled to compensation under this Part of this Act in respect of the depreciation of the value of an interest in qualified land by a planning decision or order, the principal amount of the compensation shall be whichever is the less of the following amounts, that is to say—

(*a*) the amount by which the value of the interest, or, in the case of an interest extending to other land, the amount by which the value of the interest in so far as it subsisted in the qualified land, was depreciated by the decision or order; or

(*b*) the value of the relevant holding at the commencement of this Act or, if the qualified land in which the interest subsisted constituted part only of the area of the relevant holding, the fraction of the said value which attached to that qualified land:

Provided that where the same person is entitled to such compensation as aforesaid in respect of more than one relevant holding, or in respect of more than one interest, or in respect both of more than one relevant holding and of more than one interest, the aggregate principal amount payable to that person by way of such compensation in respect of all interests in respect of which he is so entitled in so far as they subsisted in the same land shall not exceed whichever is the less of the following amounts, that is to say—

(i) the aggregate of the amounts by which the value of each respectively of those interests in so far as it subsisted in that land was depreciated by the decision or order; or

(ii) the aggregate of the fractions of the respective values of all relevant holdings of which that person is the holder which attached to that land.

(2) If the whole of the land to which the planning decision or order related in which the interest subsisted is not qualified land, then, for the purposes of paragraph (*a*) of the preceding subsection, the depreciation of the value of the interest by reason of the decision or order shall first be ascertained with reference to the whole of the land aforesaid and shall then be apportioned between the parts of that land which respectively are and are not qualified land according to the nature of those parts and the effect of the planning decision or order in relation thereto.

NOTES

This section sets certain limits on the compensation payable under this Part (Part V) of this Act. There are two matters principally to be taken into account:

(1) the " depreciation " of the interest by the planning decision or order. This is measured, in the case of a planning decision, in accordance with s. 43 (3) and (4), *ante*. S. 26, *ante*, is applied by s. 43 (3); various other provisions of Part II, *ante*, are applied by s. 43 (4) so as to reduce or exclude compensation. In the case of an order, depreciation is measured under s. 43 (5), *ante*; and
(2) the value, as at the commencement of this Act, of the relevant holding or holdings, as defined by s. 42 (2), *ante*, in respect of which a claim is made.

In the rare straightforward case, the interest in land will be the fee simple; the claim holding will relate to the whole of the claimant's interest and be undivided and undiminished by any previous act or event; and the decision or order will have affected all of this land. In this case, the depreciation of the fee simple will be assessed and compared with the value of the claim holding, and, under sub-s. (1), *supra*, the principal amount of compensation will be whichever is less in amount. To this, interest will be added under s. 46 (1), *post*.

There are however other matters to be considered. They differ from those discussed, in relation to the measure of compensation under Part II, in the notes to s. 25, *ante*. This is principally because, for present purposes, claim holdings are not aggregated into an unexpended balance of established development value. Nor may claims be made by every person interested in land affected, but only by claim holders.

A claimant may, however, have more than one interest in any one part of the land, particularly as, under s. 43 (1), *ante*, he may claim in respect of an interest which has merged in another interest. He may also hold more than one relevant holding, as defined in s. 42 (2), *ante*, as more than one Part VI claim may have been established under the principal Act on the same land. Claims thereunder may have been made in respect of the fee simple and one leasehold interest (or more than one); or in respect of two (or more) leasehold interests. Claim holdings, as still subsisting, may now:

(1) be co-extensive in area;
(2) overlap (where part of each is included in part of another); or
(3) have the area of one wholly included within the area of another.

In so far as this is so, they will attach to the same land, or fractions of their values will so attach.

It is not necessary, for the purpose of claiming under this Part (Part V) of the Act, that the relevant holding should represent a Part VI claim or part of the benefit of a Part VI claim, established by reference to the interest in land mentioned in s. 43 (1), *ante*. The claimant, as the holder of the relevant holding, can claim in respect of that holding and by reference to any interest or interests he now has, or has sold as mentioned in s. 43 (1) (*b*), *ante* (or where the claim holder is a mortgagee, by assignment, of the claim holding, by reference to any interest or interests of his mortgagor, or which his mortgagor has so sold). The proviso to sub-s. (1), *supra*, provides a further limit upon compensation.

If a claim is made in respect of more than one relevant holding, the compensation (apart from interest to be added) must not exceed the aggregate of the fractions of the values of all the relevant holdings which attached to the same land. If a claim is made in respect of more than one interest, the aggregate compensation (disregarding interest), in so far as the interests subsisted in the same land, is to be the aggregate depreciation subject to the limit of the value of the relevant holding, or aggregate values of the holdings, attaching to that land.

But for this provision there might be over-payment, *e.g.*, the whole depreciation of an interest might be compensated out of one claim holding and then again out of another relating to the same land.

Example:

The claim holder has two claim holdings, each extending to the whole of Blackacre. At 1st July 1948, there were two interests in Blackacre, a fee simple and a leasehold. A Part VI claim of £2,000 was established on the fee simple, and of £3,000 on the leasehold. The only previous acts or events are the sale of the fee simple reversion to the lessee at an open market price with an assignment of the Part VI claim, and

a refusal of planning permission, six months earlier, in respect of a small part of Blackacre.

Depreciation of fee simple, say:	£200
Depreciation of leasehold, say:	£200
Fraction of fee simple claim, say:	£300
Fraction of leasehold claim, say:	£420

The original lessee, as claimholder, could claim, apart from the proviso to sub-s. (1), *supra*, as follows:

(*a*) in respect of leasehold out of leasehold claim:	£200
(*b*) in respect of leasehold out of freehold claim:	£200
(*c*) in respect of freehold out of freehold claim:	£200
(*d*) in respect of freehold out of leasehold claim:	£200
Total claim under this Part:	£800

Under the proviso, he can claim (whichever is less):

(*a*) Total depreciation:	£400
or (*b*) Aggregate of fractions:	£720
Claim therefore:	£400

The starting point for calculations of depreciation is the depreciation of an interest in land, so far as it subsisted in land affected by the decision or order in question. This land may extend to land which is outside the area of the relevant holding; land outside this area may be in the area of another holding (and compensation in respect of that holding may also be payable) or it may not. Sub-s. (2), *supra*, requires depreciation first to be assessed by reference to the effect of the decision or order on the interest so far as it subsisted in the land so affected, and then to be apportioned between the parts, *i.e.*, to the area of the relevant holding ("qualified land", see s. 42 (2), *ante*), to the areas of any other holdings ("qualified land", when those holdings are considered), and to any other land (not "qualified"). When considering the claim in respect of the relevant holding, under sub-s. (1) (*a*), *supra*, the depreciation apportioned to the land which is the qualified land, for the purposes of the relevant holding, must then be compared with the value of that holding as at the commencement of the Act (or the fraction of its value, if the whole value does not attach to the land in question).

Apportionments, etc. It will be seen that apportionments are likely to be involved in assessing compensation. Somewhat similar apportionments are involved in distributing the effect of a decision or order for the purpose of registering, against the land, any compensation payable (when the amount exceeds £20 and the apportionment is considered practicable). See, as to these matters, ss. 45 (1), 46 (2) proviso and (4), *post*, applying the provisions of ss. 27–29, in Part II, *ante*.

Minerals. See s. 54 and T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, regs. 13, 14 and reg. 24 (2) providing for the adjustment of the values of certain claim holdings. See also reg. 24 (1) which affects the calculation of depreciation, under s. 43, *ante*, to prevent overlap with special provisions relating to abortive expenditure on buildings, plant or machinery.

Sub-s. (1).

Entitled to compensation. As to the scope of this Part (Part V) of the Act, see s. 42, *ante*; as to who may claim, and by reference to what interests in land, and in respect of what holding or holdings, see the General Note, *supra*, s. 42 (2), *ante*, and s. 43 (1) and (2), *ante*, and s. 66, *post*. As to the making of claims, see s. 45 (1), *post*, applying s. 22, *ante*. As to exclusions from compensation, cf. the method of assessing "depreciation" and other provisions in s. 43 (3)–(5), *ante*.

Depreciation. In the case of planning decisions, depreciation is measured as under Part II, *ante*, see s. 43 (3), *ante*, and cf. s. 43 (4). In the case of orders revoking or modifying permission, see s. 43 (5), *ante*.

Interest in qualified land. As to "interest in land", see s. 69 (1), *post*. As to certain interests sold, see s. 43 (1) (*b*), *ante*. As to disregarding certain tenancies, see s. 43 (6), *ante*, and s. 69 (1), *post*, defining "tenancy". As to interests held by an associated company, see s. 47 (2), *post*. As to interests which have merged, see s. 43 (1), *ante*. As to what land is properly described as "qualified land", see s. 42 (2), *ante*. Land is qualified if:

(1) the planning decision or order related thereto;
(2) it then formed the area or part of the area of a claim holding, as defined in s. 2 (1), *ante*. Subject to s. 2 (2) and (3), so far as they may then have operated, the area referred to is that of the original Part VI claim; *i.e.*, the "claim area", see s. 1 (4), *ante*; and
(3) the claim holding, or one derived from it after sub-division, is still subsisting.

If the claim holding has been split, as may be required by ss. 2 and 15, *ante*, or s. 46, *post*, the separate holdings will be considered separately, and each surviving holding

may be a relevant holding; and in relation to that holding the land in its area will be qualified land.

S. 2 (2) and (3), mentioned, *supra*, require adjustments of claim holdings and, in some cases, sub-divisions of holdings into separate holdings, to take account of:

(1) claims pledged to the Central Land Board;
(2) war damage scheme payments;
(3) dispositions of part of the benefit of a claim.

S. 15, *ante*, also mentioned above, may require adjustment, including sub-divisions, to take account of payments under Part I of this Act. Attention is particularly directed to Case D, see ss. 8 and 15 (1) proviso and 15 (3), *ante*, relating to purchases of claim holdings between certain dates; that Case may be very relevant where a person wishes now to claim under this Part (Part V) in respect of more than one claim holding. As to Case B in Part I, ss. 5 and 6, *ante*; cf. the notes to s. 43 (1), *ante*.

S. 46, *post*, also mentioned above, similarly takes account of compensation payable under this Part (Part V) in respect of any earlier planning decision or order.

Sub-divisions must be borne in mind when considering what is the relevant holding and what is qualified land; cf. the notes to s. 42 (2), *ante*.

More than one relevant holding, and more than one unit of qualified land may fall to be considered. As to overlapping claim areas, etc., see the proviso to the present subsection, and the General Note, *supra*.

Planning decision or order. See s. 42 (1), *ante*.

Principal amount. As to adding interest, see s. 46 (1), *post*.

The value of the interest. As to the starting point for calculations of depreciation, see sub-s. (2), and the General Note, *supra*. As to claims in respect of more than one interest in the same land, see the General Note, *supra*, explaining the proviso to this subsection.

The value of the relevant holding. As to the relevant holding, see s. 42 (2), *ante*. As to the value of a holding, see s. 2 (1), *ante*, subject to s. 2 (2) and (3) and s. 15, *ante*, and s. 46 (2) and (3), *post*. As to the effect of ss. 2, 15 and 46; cf. the note " Interest in qualified land ", *supra*, and the notes to s. 42 (2), *ante*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*. Cf. s. 42 (2), *ante*.

Fraction . . . which attached. See s. 2 (4), *ante*.

More than one holding . . . or interest . . . or both. See the General Note, *supra*.

Shall not exceed. Note the grammatical framework of this proviso, which is expressed to operate as a further limit upon compensation (" Provided that . . . the aggregate . . . compensation . . . in respect of . . . the same land . . . shall not exceed "). This accords with the brief mention of its effect at 189 H. of L. Official Report 1053 and 533 H. of C. Official Report 913, and with the explanation suggested in the General Note, *supra*.

Sub-s. (2).

Shall first be ascertained. *I.e.*, in accordance with s. 43 (3), applying s. 26, *ante*, in the case of a planning decision; or under s. 43 (5) in the case of an order. See, as to the effect of this subsection, the General Note, *supra*; and cf. s. 25 (2), *ante*. S. 25 (2) requires a similar approach in Part II cases, but deals also with a problem of competing interests, which does not here arise.

45. Claims for compensation under Part V, and review of past decisions and orders.—(1) The provisions of sections twenty-two and twenty-seven of this Act, shall, with the necessary modifications, apply for the purposes of this Part of this Act:

Provided that subsection (2) of the said section twenty-two shall so apply with the substitution for the reference to the date of the planning decision of a reference to the commencement of this Act.

(2) The following provisions of this section shall have effect where a local planning authority has transmitted to the Minister one or more claims for compensation under this Part of this Act, and the claim, or (if there is more than one) one or more of the claims, has not been withdrawn.

(3) If the claim is in respect of a refusal of permission, or of a grant of permission subject to conditions, and it appears to the Minister that, if an application for the like permission were made, and were referred to him for determination, he would make a decision more favourable to the applicant, the Minister may give a direction substituting that decision for the planning decision to which the claim relates.

In this subsection, the reference to a decision more favourable to the applicant shall be construed—

(*a*) in relation to a refusal of permission, as a reference to a decision granting the permission, either unconditionally or subject to conditions, and either as respects the whole or as respects part of the land to which the application for permission related; and

(*b*) in relation to a grant of permission subject to conditions, as a reference to a decision granting the permission applied for unconditionally or subject to less stringent conditions.

(4) If the claim is in respect of a refusal of permission, or an order revoking permission, and it appears to the Minister that permission could properly be granted for some development of the land in question other than the development to which the application for permission related, the Minister may give a direction that the provisions of the principal Act and of this Act shall have effect in relation to that application, and to the planning decision or order to which the claim relates, as if that decision or order had been a decision of the Minister which included an undertaking to grant permission for that development.

(5) The provisions of section twenty-four of this Act shall, with the necessary modifications, apply for the purposes of this section.

NOTES

A claim for compensation under this Part (Part V) of this Act may be made within 6 months beginning on 1st January 1955, or within such further period as the Minister may allow; see sub-s. (1), *supra*, applying s. 22, *ante*, and the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

Claims are to be sent to the local authority making the decision or order in respect of which the claim is made; see reg. 3 of the Regulations (S.I. 1954 No. 1600), *post*, and s. 22 (4), *ante*, and s. 69 (4), *post*. This seems to refer to the delegate authority, not the local planning authority, if the decision was made, or the order was prepared and submitted, by an authority exercising delegated powers. Where such a claim is made and maintained sub-ss. (2)–(5), *supra*, provide for the exercise of a review power similar to that in s. 23, *ante*, but different in scope.

Sub-s. (3), *supra*, refers only to the review of decisions and does not apply to orders. It can be used to substitute a more favourable decision for the one previously made. This can be done even if that earlier decision was made by the Minister, but sub-s. (3) can be invoked only where it appears to the Minister that he would now give a more favourable decision on an application for the like permission. The Minister however will judge for himself whether he is justified in changing an earlier decision of a local authority or of his own Ministry. A direction under sub-s. (3) will substitute the more favourable decision; it cannot operate to give an undertaking for different development.

Sub-s. (4), *supra*, provides a different form of review. It applies only to a refusal of permission or an order revoking permission. It enables an undertaking to be given as to the grant of permission for other development. This undertaking will be taken into account so as to reduce or exclude compensation, see s. 43 (3)–(5), *ante*, relating to the measure of depreciation, etc., under this Part of the Act. This form of direction cannot be given in respect of a decision which granted permission conditionally, or of an order which modified but did not revoke permission.

Thus sub-ss. (3) and (4), *supra*, allow:

(1) a past refusal to be changed into a grant of permission (as respects all or part of the land, and with or without conditions);

(2) a past refusal to stand, but have a modified effect, where an undertaking is given as to permission for other development;

(3) a past grant of permission (subject to conditions) to be made more favourable (subject to less stringent conditions);

(4) a past revocation to stand, with modified effect, where an undertaking is given; but

(5) a past order modifying permission cannot be changed or affected by review.

Sub-s. (5), *supra*, regulates the exercise of the review power (where it is available) by applying s. 24, *ante*. Thereunder objections may be made to any proposed direction, under sub-s. (3) or (4), *supra*; and provision is made for modifying the form of the claim, if the claim is not withdrawn, when a direction is given under the review power.

It should be borne in mind that, though the scope of the review power is different under this Part (Part V) from the scope under Part II (s. 23, *ante*), regard may also be had, on any determination of a claim under this Part, to certain permissions or undertakings arising otherwise than in the course of reviewing the particular decision or order in question. S. 43, *ante*, sets a limit to this where the claim relates to an

interest which the claimant has sold as mentioned in s. 43 (1) (*b*). It should be remembered, however, that the relevant time is normally " immediately before the Minister gives notice of his findings "; see s. 26 (2), *ante*, applied by s. 43 (3); s. 21 (2), *ante*, applied by s. 43 (4); and s. 43 (5) (*b*). By that time, permission may have been granted on an application, or in reviewing some other (earlier or later) decision or order, or an undertaking may have been given in a similar exercise of a power of review.

Attention is also drawn to s. 23, *ante*, and s. 59 (2), *post*, in connection with certain applications for permission for industrial development. S. 59 applies only to applications for such permission on or after 1st January 1955, and should not normally affect Part V cases. The review of a later application under s. 23 as permitted by s. 59 (2) might, however, affect the determination of an outstanding claim under this Part (Part V), if it led to a grant of permission, or an undertaking.

The Minister will determine the compensation payable under this Part (Part V) subject to a right of appeal, by the claimant or certain other persons, to the Lands Tribunal; see sub-s. (1), *supra*, and s. 27, *ante*. The Minister's findings, subject to such appeal, will include any apportionment necessary for the purpose of distributing, to parts of the land, compensation payable under this Part and registrable as a local land charge. As to the registration of compensation, and its recovery on subsequent development, see ss. 28 and 29, *ante*, applied by s. 46, *post*.

Cross-references.

Review power. See s. 23, *ante*, for comparable provisions in Part II. The notes to s. 24, *ante*, include references to this Part (Part V) as well as to Part II. See reg. 4 (2) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, as to the duty of the local planning authority to state what use, in their view, might be made of the review power, and to furnish information.

Claims under this Part. The procedure under ss. 22 and 27, *ante*, here applied, is discussed in the notes to those sections. The annotations there contain references to this Part (Part V); and to the relevant regulations and rules. As to the scope of this Part, see s. 42, *ante*. As to who may claim, by reference to what interest or interests in land and in respect of what claim holding or holdings, see s. 43 and s. 42 (2), and the notes to s. 44, *ante*. As to claims by mortgagees of claim holdings, see s. 43 (2), *ante*, s. 66, *post*, and reg. 5 of the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. As to associated companies, see s. 47 (2). As to claims by mortgagees of land, see s. 66, *post*, and reg. 4 of the above-mentioned Regulations (S.I. 1955 No. 38), *post*. As to claims by rentcharge owners and trustees, see that section and Parts III and IV of those Regulations, *post*.

Sub-s. (1).

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*. That date is substituted, in Part V cases, for the reference to the date of the decision to which the claim relates, in s. 22 (2), *ante*.

Sub-s. (2).

Local planning authority. See the General Note, *supra*, and cf. s. 69 (4), *post*, and the note to s. 22 (4), *ante*.

One or more claims. Under this Part (Part V) the claimant will be claiming by reference to one or more interests and in respect of one or more claim holdings. There will be no competing interests, such as are considered in Part II cases, but other persons may have other interests in land affected by the decision or order and may be claiming by reason of the same decision or order but in respect of some other claim holding or holdings.

Has not been withdrawn. See note to the same words in s. 23 (1), *ante*.

Sub-s. (3).

Refusal; grant subject to conditions. See s. 42 (1) (*a*) and, generally, s. 16, *ante*.

It appears to the Minister. Cf. notes to s. 16 (3) (" Satisfied ") and s. 22 (5) (" Appearing to him ").

Were referred to him. Cf. the note, " Had been referred ", to s. 23 (2), *ante*. Under this Part (Part V), the Minister may review his own earlier decision in some cases where he could not do so under s. 23 (2), *ante*; see the General Note, *supra*. Under this Part, also, the Minister is not directed to have regard to the matters mentioned in s. 23 (5), *ante*. Under the present subsection, the test of what the Minister may do is what it appears to him he would do in deciding an application under the principal Act.

A decision more favourable to the applicant. Though partly defined, the expression may give rise to difficulty; cf. the General Note to s. 23, *ante*.

A direction. See s. 24, *ante*, applied by sub-s. (5), *supra*, as to the requirement of notice to claimants and the local authority concerned, and their right to be heard in objection.

Sub-s. (4).

Refusal; order revoking permission. See the General Note, *supra*, and s. 42 (1), *ante*.

The application for permission. *I.e.*, the application for permission which was refused, or which, having been granted, was revoked. The present subsection cannot be used to grant, or re-grant, that permission, but only to supplement the effect of the original decision or order by giving an undertaking to grant permission for other development.

A direction. As to notice and rights of objection, see s. 24, *ante*.

46. Payment of compensation under Part V, and supplementary provisions relating thereto.—(1) Where compensation is payable in accordance with the preceding provisions of this Part of this Act, the Minister shall pay to the person entitled thereto the principal amount of the compensation payable, together with interest thereon at the rate of three and one-half per cent. per annum from the first day of July, nineteen hundred and forty-eight, to the date of payment:

Provided that if the payment is made after the thirtieth day of June, nineteen hundred and fifty-five, the interest shall be calculated to that day instead of the date of payment.

(2) Where compensation under this Part of this Act is payable in respect of a planning decision or order by reference to a claim holding, then, for the purposes of the application of this Part of this Act to any subsequent planning decision or order, and for the purposes of Parts II and III of this Act—

(*a*) if the principal amount of the compensation is equal to the value of the claim holding at the commencement of this Act (ascertained apart from this section), the holding shall be deemed to have been extinguished immediately before the commencement of this Act;

(*b*) if the principal amount of the compensation is less than the value of the claim holding at the commencement of this Act (ascertained apart from this section), the value of the holding shall be deemed to have been reduced, immediately before the commencement of this Act, by the principal amount of the compensation:

Provided that if at any time an amount becomes recoverable under section twenty-nine of this Act, as applied by the subsequent provisions of this section, in respect of that compensation, then, for the purposes of Parts II and III of this Act, paragraphs (*a*) and (*b*) of this subsection shall have effect as from that time as if the principal amount of that compensation had been reduced by a sum equal to seven-eighths of the amount which has so become recoverable.

(3) Where, in the case of any claim holding (in this subsection referred to as "the parent holding"), compensation under this Part of this Act is payable in respect of the depreciation of an interest in land by one or more planning decisions or orders, and any such decision or order did not extend to the whole of the area of the parent holding, then, both for the purposes of the last preceding subsection and for the purposes of Parts II and III of this Act—

(*a*) the parent holding shall be treated as having been divided immediately before the commencement of this Act into as many separate claim holdings, with such areas, as may be necessary to ensure that in the case of each holding either any such decision or order extending to the area of that holding extended to the whole thereof or that no such decision or order extended to the area of that holding;

(*b*) the value of each of the separate holdings respectively shall be taken to be that fraction of the value of the parent holding which then attached to the part of the area of the parent holding constituting the area of the separate holding;

(*c*) the authority determining the amount of any such compensation shall apportion that amount between the areas of the separate claim holdings to which the decision or order in question extended in such manner as appears to that authority proper, and the

portion of that amount apportioned to the area of any separate claim holding shall be taken to be compensation payable under this Part of this Act in respect of that claim holding.

(4) The provisions of sections twenty-eight and twenty-nine of this Act, except subsection (9) of the said section twenty-nine, shall have effect in relation to compensation under this Part of this Act, whether by way of principal or by way of interest, as they have effect in relation to compensation under Part II of this Act, and shall so apply as if references in the said section twenty-eight to a planning decision included references to an order under section twenty-one of the principal Act:

Provided that, in a case where the compensation under this Part of this Act specified in a notice registered under the said section twenty-eight as applied by this subsection became payable in respect of an order modifying planning permission, the said section twenty-nine shall not apply to development in accordance with that permission as modified by the order.

NOTES

Sub-s. (1), *supra*, contains the formal requirement for the satisfaction of claims under this Part (Part V) of this Act, together with interest. Sub-ss. (2) and (3), *supra*, require the sub-division, reduction in value or extinguishment of the claim holding to take account of the payment made in respect of the holding. Sub-s. (3) requires the division of the holding into separate holdings in cases where any decision or order did not extend to the whole of its area, and operates in a manner similar to s. 13 (3), *ante*.

From the value of the holding, or of the appropriate separate holding resulting from a sub-division, will be deducted the principal amount of compensation. The holding will thereby be extinguished or reduced in value. This adjustment will affect any other claim under this Part (Part V) and will operate also for the purposes of Parts II and III, *ante*.

Sub-s. (4), *supra*, provides for the registration of compensation, and its recovery on the subsequent carrying out of new development, by applying ss. 28 and 29 (1)–(8), *ante*. The proviso to sub-s. (2), *supra*, operates to restore an appropriate amount to the unexpended balance of established development value if registered compensation is recovered. Its effect is similar to that of s. 29 (9), *ante*, and is explained in the notes thereto.

Sub-s. (1).

Principal amount. See s. 44, *ante*. As to its determination, see s. 27, *ante*, applied by s. 45 (1), *ante*.

Interest. Cf. s. 14 (1), *ante*, making similar provision for interest on payments under Part I; and s. 17 (2), adding a lump sum of one-seventh, representing interest in forming the original unexpended balance of established development value. Cf. also the notes to s. 29 (9), *ante*, explaining the reference to " seven-eighths " in the proviso to the present subsection.

Sub-s. (2).

Subsequent planning decision or order. If a claim is made under this Part (Part V) in respect of a subsequent decision or order, the value of the holding must first be ascertained as at the commencement of this Act on 1st January 1955, and as affected by ss. 2 and 15, *ante*, and apart from the provisions of the present section. That value will then be appropriately reduced, or the holding extinguished, to take account of compensation payable under this Part in respect of the earlier decision or order. If a holding is thus extinguished it cannot again be used as a " relevant holding " as mentioned in s. 42 (2), *ante*. If its value is reduced, it is the reduced value which will then be relevant under s. 44, *ante*, in determining the amount of any further payment.

Parts II and III. Part II (ss. 16–29), *ante*, provides for certain compensation on refusal or conditional grant of planning permission if there is an unexpended balance of established development value arising from surviving claim holdings. Part III (see s. 31), *ante*, provides for the payment of supplementary compensation on certain compulsory purchases of land by reference to such unexpended balances. Both Parts II and III contain further provisions affecting such balances when such compensation is payable and in other circumstances. The unexpended balance may also be relevant in Part IV (see s. 40, *ante*) so far as that Part deals with the Minister's contribution to compensation for depreciation when planning permission is revoked or modified. This subsection is the last provision in this Act which alters the value of a claim holding; thereafter the effect of acts or events is reflected in a reduction, or in cumulative reductions, falling to be made at any time from the original unexpended balance of established development value, see s. 18 (2) and (5), *ante*. Certain provision for " adding back " to balances, however, invent notional claim holdings for the purpose, see ss. 29 (9) and 37 (3), *ante*.

Claim holding. See s. 42 (2), *ante*, as to the " relevant holding ". See s. 44 (1) proviso, *ante*, as to the aggregation of certain holdings held by the same person. See sub-s. (3), *supra*, as to sub-divisions required by the present section. Generally, see s. 2 (1), *ante*, subject to s. 2 (2) and (3) and s. 15, *ante*.

S. 29. S. 29 (1)–(5) is applied by sub-s. (4), *supra*. The purpose of the present proviso is explained in the note to s. 29 (9), *ante*, with which it corresponds.

Sub-s. (3).

One or more planning decisions or orders. This subsection deals with cases where any one of the decisions or orders giving rise to payment of compensation under this Part (Part V) did not extend to the whole of the area of any relevant claim holding. It operates in a fashion similar to s. 15 (3) in Part I, *ante*. The holding must be divided into separate holdings; each separate holding must have an area with a uniform history of decisions or orders, *i.e.*, every decision or order affecting it will have affected the whole of it, or none will have affected it. To these separate areas will be apportioned the fractions of the values of the parent holding which attached to the separate areas. The compensation will be distributed also to these areas when it is determined. The separate holdings will have separate values which will then fall to be reduced, or extinguished, under sub-s. (2), *supra*.

Fraction which then attached. See s. 2 (4), *ante*. " Then " means immediately before 1st January 1955, after the operation of s. 2 (2) and (3) and s. 15, *ante*. Where there has been more than one decision or order giving rise to compensation under this Part (Part V), successive deductions will be called for, under sub-s. (2), *supra*, from the value attaching at the commencement of this Act on 1st January 1955.

Authority determining the amount. The Minister or, on appeal, the Lands Tribunal, see s. 27, *ante*, applied to this Part (Part V) by s. 45 (1), *ante*.

Shall apportion. The value of the parent holding will be apportioned to find the fractions attaching to parts of its area, under para. (*b*) of this subsection. Para. (*c*) requires a similar apportionment of the compensation payable under this Part of the Act. As to disputing apportionments, see s. 27 (1) and (2), *ante*. As to the effect of " previous apportionments ", see s. 69 (1), *post*, and s. 27 (3), *ante*. As to procedure, see regs. 6, 7 and 8 of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*. As to appeals to the Lands Tribunal, see Form 1A of the Lands Tribunal Rules (inserted by r. 15 of and the Schedule to the 1955 Amendment Rules, S.I. 1955 No. 54, *post*) and r. 3 (2A) of the Rules (inserted by r. 3 of the 1955 Amendment Rules, *post*); as to entry of appearance by interested persons, other than the appellant who referred the dispute, see r. 5A of the Rules (inserted by r. 5 of the 1955 Amendment Rules, *post*). Apportionments may also be required under s. 28, *ante*, applied by sub-s. (4), *supra*, for the purpose of registering compensation as a local land charge.

Sub-s. (4).

Ss. 28 and 29. Those sections, *ante*, relate to the registration, and recovery on subsequent development, of compensation paid under Part II, *ante*. Their application to Part V compensation is explained in the notes to ss. 28 and 29, *ante*.

Except sub-s. (9). The proviso to sub-s. (1) of the present section, *supra*, makes a provision similar in effect to s. 29 (9). Its effect is explained in the note to s. 29 (9), *ante*.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

47. Associated companies.—(1) Notwithstanding anything in Part I of this Act, no person shall be entitled to a payment under section five, seven, eight, ten or eleven of this Act by virtue of a disposition between companies which at the time of the disposition were associated companies.

(2) Where a company is the holder of a claim holding, then, for the purpose of ascertaining whether or not that company is entitled to a payment in respect of the holding under Part I or Part V of this Act, any act or event which occurred in relation to another company which at the time of that act or event was, or after that time but before the twenty-sixth day of February, nineteen hundred and fifty-four, became, associated with the company which holds the claim holding shall be treated as having occurred in relation to the company which holds the claim holding, and an interest in land held by any other company for the time being associated with the company which holds the claim holding shall be treated as being held by the company which holds the claim holding.

(3) For the purposes of this section, a company shall be treated as associated with another company if, and only if, within the meaning of section one hundred and fifty-four of the Companies Act, 1948, one of those com-

panies is a subsidiary of the other, or both those companies are subsidiaries of the same holding company.

NOTES

This section was added to the Bill for the present Act to meet, to some extent, certain of the anomalies arising under Parts I and V, *ante*: see 530 H. of C. Official Report 317–321. These anomalies are inherent in the proposals of the White Paper (see particularly paras. 45–54 of Cmd. 8699; Hill, 2nd Supp., pp. B713, B714) as enacted in this Act. Principally they arise from the fact that under Part I, *ante*, the payments are limited to the loss supposed to have been suffered; *e.g.*, a Case B payment (ss. 5, 6, and 9, *ante*) or an analogous payment under s. 10, *ante*, is supposed to reflect a loss of development value suffered by disposing of land at an existing use or restricted value, and is scaled down, or excluded, to the extent that such a value was exceeded (see para. 49 of the White Paper). Similarly, a Case D payment (s. 8, *ante*) is limited to the consideration paid for an established claim in the relevant transaction (see para. 52 of the White Paper).

The present section was particularly designed to meet a specific instance where a company had sold a claim holding at a reduced figure to an associated company. The first company would have had a substantial claim under Case B (s. 5, *ante*); the associated company might indeed have had treatment as least as favourable if it had pledged the claim holding to the Central Land Board (see s. 2 (2) (*a*), *ante*, and the Second Schedule, *post*), *i.e.* it could have used the claim, in certain circumstances at face value, as security for development charges incurred (whatever the " merits " under Case B or Case D); (see para. 54 of the White Paper). These circumstances did not arise, however, and the company with the claim holding could look for payment only under Case D (s. 8, *ante*) being excluded from s. 9, *ante*, by s. 9 (*b*) (i) and (*d*). The Case D payment would have been only of the amount paid for the claim holding to the first company.

The present section meets this, and certain other anomalies, by treating associated companies as one concern, *i.e.*, in the instance given above, the second company could claim under s. 5, as if it had sold the land, without being affected by s. 8 or 9, *ante*. Companies, however, are treated as associated only if one is the subsidiary of the other or both are subsidiaries of the same holding company; see sub-s. (3), *supra*. Another type of anomaly which is avoided, where this section applies, is one where a Part I payment would otherwise be made because of some disposition between companies, but the land or claim holding disposed of remains within the group. For example, land may have been sold to an associated company, by a company holding the claim, at a restricted value. A Case B payment might, but for this section, be made, although the land remained within the group and might have been developed without paying development charge, or might subsequently be developed without refunding the payment. This would happen because, as announced in para. 51 of the White Paper (*ubi supra*), the Government has thought it impracticable to recover Part I payments (except from certain acquiring authorities under s. 52, *post*). S. 29, *ante* (or that section as applied by ss. 39 or 45, *ante*, or s. 57, *post*) provides for recovering certain kinds of payments and compensation registered as a local land charge, as envisaged by para. 44 of the White Paper; but does not permit recovery of Part I payments where land is subsequently developed.

It should be noted that sub-s. (1), *supra*, is designed to exclude Part I payments, where they would be based on a disposition of the land or the claim holding between associated companies. Sub-s. (2), *supra*, is, in general, the favourable counterpart of sub-s. (1). It allows a company holding the claim holding to apply for a Part I payment by reference to acts or events which happened in relation to another company which was an associated company at the time of the act or event, or which became an associated company between that time and 26th February 1954. It also, in many cases, allows the company holding the claim holding to receive compensation under Part V, *ante*. In that Part it is generally immaterial who was the owner of an interest in land at the time of an act or event (a planning decision, or order revoking or modifying permission, made before 1st January 1955), as compensation is claimed in respect of a claim holding by reference to any interest in qualified land to which the claimant " is " entitled (see s. 43 (1) and (2), *ante*), *i.e.*, presumably, at the time when the claim is made. Any interest in land for the time being held by an associated company is to be treated as being held by the company which holds the claim holding. This provision may, it seems, also have an adverse effect, in Part I, see ss. 8 (1) (*b*) and 9 (*c*), *ante*.

It will be noted that many private persons and firms, and companies which are not " associated " within the meaning of the definition in sub-s. (3), *supra*, will have made similar arrangements, for family or business reasons, to those contemplated by the present section, which will not however apply. The present section makes no consequential provision for adjusting the accounts, etc., of associated companies; perhaps its scope was limited to associated companies because of the difficulty of providing for consequential adjustments if other cases were to be covered, *i.e.*, difficulties would have arisen similar to those which follow the operation of the Second Schedule, *post*, where recourse for the purposes of set-off is had primarily to the holding on the land in respect of which development charge was incurred, but no consequential provision is made for adjusting the position of persons concerned.

Cross-references

Persons jointly entitled to a claim holding applying for payment under Case B; see s. 5 (8), *ante*, which to some extent resembles the present section.

Protection afforded to certain purchasers of land; see s. 33 (2) proviso (ii), *ante*, which excludes a company purchasing from an associated company from the benefit of the procedure under that section.

Sub-s. (1).

S. 5. S. 5, *ante*, provides for Case B payments where land has been compulsorily acquired from, or sold by, the claim holder at or near an existing use or restricted price.

S. 7. S. 7, *ante*, relates to certain gifts of land away from the claim holding (Case C).

S. 8. S. 8, *ante*, provides for Case D payments where a claim holding was sold or otherwise disposed of for valuable consideration between certain dates.

S. 10. S. 10, *ante*, provides for payments in cases analogous to Case B, *e.g.*, for leases at restricted value or sales in consideration of a rentcharge.

S. 11. S. 11 provides for residual payments to certain persons who are not claim holders. Applicants under s. 11 must generally rely on a purchase or tenancy taken, by the applicant or a predecessor in title, at a consideration which did not exclude development value; see s. 11 (2), *ante*.

Sub-s. (2).

The holder of a claim holding. See s. 2 (8), *ante*. See also s. 9 in Part I, and s. 43 (2) in Part V, *ante*.

Whether or not that company is entitled. If the company is so entitled, see also s. 66, *post*, and the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

Payment . . . under Part I or Part V. As to payments under Part I, see the sections mentioned in the present section, *supra*, and in addition ss. 3, 4 and 9, *ante*; cf. the note " Act or event " to s. 1 (1), *ante*. As to compensation under Part V, see the notes to ss. 42 and 43, *ante*; the acts or events relevant in that Part are planning decisions, and orders revoking or modifying permission, made or treated as made before 1st January 1955. See the notes to ss. 43 and 44, *ante*, as to the interests in land by reference to which a claim may be made under Part V.

26th February 1954. Date of publication of the Bill for the present Act. The present section was introduced on Report in the Commons (13th July 1954).

Interest in land held by any other company. This is to be treated as being held by the company which is the holder of the claim holding; see particularly s. 43, *ante*. Note, however, ss. 8 (1) (*b*) and 9 (*c*) in Part I, *ante*. If either of these latter provisions applies, the present subsection may have the effect of excluding a payment.

Sub-s. (3).

Companies Act, 1948, s. 154. See 3 Halsbury's Statutes (2nd Edn.) 580. The test of whether companies are associated within the meaning of the present subsection should not be confused with the somewhat similar test used in the Minerals Regulations to decide for certain purposes whether or not land should be regarded as in the ownership of a mineral undertaker (see reg. 8 (*f*) of the T. & C.P. (Minerals) Regulations, 1954; S.I. 1954 No. 1706, *post*, replacing reg. 4 of S.I. 1949 No. 1996; and cf. reg. 3 of the revoked Mineral Set-Off Regulations; S.I. 1951 No. 2156; Hill, 2nd Supp., p. B258). Notice, in particular, that the director of a " one-man company " is not identified with his company by this section.

48. Provision of information as to unexpended balance, etc.—(1) Subject to the provisions of this section, the Central Land Board shall, upon application therefor being made to them at any time by any person, and may at any time, if they think fit, without any application being made therefor, issue a certificate in the prescribed form with respect to any land stating whether or not any of that land has an original unexpended balance of established development value and, if it has such a balance—

(*a*) giving a general statement of what was taken by the Board for the purposes of Part VI of the principal Act to be the state of that land on the first day of July, nineteen hundred and forty-eight; and

(*b*) specifying (subject to any outstanding claims under Part I or Part V of this Act) the amount of that original balance,

and any such certificate may, if the Board think fit, contain additional information with respect to acts or events in consequence of which, by virtue of any provision of this Act, a deduction falls to be made from that original balance in determining the unexpended balance, if any, of established development value of any of that land at any time thereafter.

(2) Where, after the commencement of this Act, a notice to treat has been served with a view to the compulsory acquisition of an interest in any land by any public authority possessing compulsory purchase powers, being such a department, authority, person or body of persons as is mentioned in subsection (1) of section thirty of this Act, that authority may apply to the Central Land Board for, and shall be entitled to the issue of, a certificate showing the unexpended balance of established development value, if any, of any of that land immediately before the service of that notice.

(3) Where the issue of a certificate under this section with respect to any land involves a new apportionment or, in the case of a certificate under the last preceding subsection, involves the calculation of a deduction from the original unexpended balance of established development value of the land by virtue of subsection (4) of section eighteen of this Act, then—

(*a*) except in the case of a certificate under the last preceding subsection or of a certificate which the Board propose to issue without any application being made therefor, the certificate shall not be issued otherwise than on the application of a person for the time being entitled to an interest in the land;

(*b*) before issuing the certificate, the Board shall give notice in writing to any person entitled to an interest in land which it appears to the Board will be substantially affected by the apportionment or calculation, giving particulars of the proposed apportionment or calculation and stating that objections or other representations with respect thereto may be made to the Board within thirty days from the date of the notice; and

(*c*) the certificate shall not be issued before the date of expiration of the said thirty days, and if at that date an objection to the proposed apportionment or calculation has been made by any person to whom notice has been given under the last preceding paragraph, or by any other person who establishes that he is entitled to an interest in land which is substantially affected by the apportionment or calculation, and that objection has not been withdrawn, the next following subsection shall have effect.

(4) Where by virtue of paragraph (*c*) of the last preceding subsection this subsection is to have effect, then—

(*a*) if within a further period of thirty days the person by whom any such objection was made requires the dispute to be referred to the Lands Tribunal, the dispute shall be so referred and the certificate shall not be issued until either the Tribunal has decided the matter or the reference to the Tribunal has been withdrawn;

(*b*) the certificate may be issued before the expiration of the said further period if every such objection has been withdrawn; and

(*c*) the certificate shall be issued at the date of expiration of the said further period, notwithstanding that every such objection has not been withdrawn, if no requirement has by that date been made under paragraph (*a*) of this subsection.

(5) Where, on a reference to the Lands Tribunal under this section, it is shown that a new apportionment relates partly to the same matters as any previous apportionment and is consistent with that previous apportionment in so far as it relates to those matters, the Tribunal shall not vary the new apportionment in such a way as to be inconsistent with the previous apportionment in so far as it relates to those matters.

(6) A certificate under subsection (2) of this section shall be conclusive evidence of the unexpended balance shown therein, and a certificate under subsection (1) of this section shall be sufficient proof of any facts stated therein unless the contrary is shown.

(7) An application for a certificate under this section shall be made in such form and manner as may be prescribed, and shall be accompanied by sufficient particulars, including a map if necessary, to enable the land to be identified and, where a new apportionment will be involved, particulars of the nature of the applicant's interest and such information as to the nature of any other interest in the land and as to the name and addres of the person entitled to that other interest as may be known to the applicant.

(8) On any application under subsection (1) of this section the applicant shall pay in the prescribed manner a fee of five shillings and, if the application involves a new apportionment, the certificate shall not be issued until the applicant has paid in the prescribed manner a further fee of fifteen shillings.

(9) In this section, the expression " new apportionment " means an apportionment which relates wholly or partly to any matters relating to which there has not been a previous apportionment.

NOTES

This section provides for the issue by the Central Land Board of two forms of certificate relating to unexpended balances in any land.

One form will be issued on application made in respect of any piece of land chosen by an applicant at any time. Such a certificate will show the original unexpended balance or balances contained in that land. Until such time as all claims under Parts I and V, *ante*, have been dealt with, all balances will be subject to any outstanding claims under those Parts. This certificate will also contain a general statement of what was taken to be the condition of the land for the purposes of the assessment of the development value claim and information with respect to acts or events by reference to which a deduction may fall to be made, from the original balance or balances in the land, for the purpose of the applicant making his own assessment of the current balance in any of that land. This might be described as an original balance certificate.

The second type of certificate will be issued on the application of an acquiring authority who have served a notice to treat in respect of any interest in land with a view to compulsory purchase. This certificate will show the current balance, if any, on any of that land immediately before the date of the notice to treat. This could be described as a current balance certificate.

The Board may issue an original balance certificate without application at any time if they think fit; but except in such cases if such certificate involves a new apportionment it will be issued only on the application of a person entitled to an interest in the land.

If either an original balance certificate or a current balance certificate involves a new apportionment, or a current balance certificate involves the calculation of a deduction in respect of new development from any original unexpended balance or balances on the land, the Central Land Board are required to give notice in writing to persons whose interests in land appear to the Board to be substantially affected thereby. Provision is made for such persons to receive particulars of the proposed apportionment or calculation. Such persons, and any other person who can establish that his interest is substantially affected, may object to the apportionment or calculation and may appeal to the Lands Tribunal. The Tribunal will not vary a new apportionment so as to be inconsistent with a previous apportionment in so far as both apportionments are related to the same matters.

A current balance certificate is conclusive evidence of the unexpended balance shown therein, and an original balance certificate sufficient proof of the facts therein until the contrary is shown.

On application for an original balance certificate a fee of five shillings is payable, and a further fee of fifteen shillings is payable before issue if the certificate involves a new apportionment.

Sub-s. (1).

Central Land Board. See s. 63, *post*. The duty under this section is imposed on the Board; such duty will be transferred to the Minister on the dissolution of the Board.

Application. The form of application is prescribed in the First Schedule to the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), *post*. The fee of five shillings payable on application is payable by attaching postage stamps to the form of application. The application form is to be sent to the District Valuer of the Inland Revenue Department. The Regulations require a separate application in respect of each parcel which is in separate occupation or separately rated except where a certificate is required in respect of two or more contiguous parcels for the purposes of a transaction relating thereto by a person having an interest in such parcels, an " interest " in this case including a mortgage or a rentcharge.

Certificate in prescribed form. The form of certificate is prescribed in the Second Schedule to the Central Land Board (Provision of Information) Regulations, 1954

(*ubi supra*). No form is prescribed for a current balance certificate to be issued to an acquiring authority.

An original unexpended balance. The section carefully avoids speaking of "the original unexpended balance on the land". The land chosen for the purposes of the application may have an original unexpended balance as a whole. This could occur where it is co-incident in area with the areas of all the claim holdings existing in its area immediately after the commencement of the Act on 1st January 1955, or where it is wholly within the areas of all such holdings; but in the latter case the determination of the original balance will involve an apportionment. Apart from these cases, it is possible that it may have original unexpended balances in parts and there may be such balances on all or any parts of the land chosen. See s. 17, *ante*.

State of that land on the 1st July 1948. This information is relevant to any apportionment of development value upon which the original unexpended balance is based, see s. 2 (4), *ante*. It is also relevant in calculating any deduction by reference to new development under s. 18 (4), *ante*.

Additional information. The additional information in consequence of which a deduction may fall to be made would include the following—

(i) compensation paid under Part II;
(ii) compensation paid under Part III in respect of a compulsory acquisition of an interest in land. In considering this deduction, however, regard should be had to the proviso to s. 37 (1), *ante*. The deduction may be different in effect if the purpose in assessing a current balance is a further acquisition, or is for the purposes of Part II, *ante*;
(iii) compensation paid under Part III in respect of severance or injurious affection (see s. 37, *ante*);
(iv) any contribution made by the Minister by reference to the unexpended balance in case of compensation for revocation or modification of a planning permission under Part IV (see s. 40, *ante*);
(v) any new development since the 18th November 1952, or in certain cases since the 1st July 1948 (see s. 18, *ante*).

The Board have stated that they propose to give information as to any acts or events which would give rise to deductions under heads (i) to (iv) of which they have definite knowledge. As to (v) they explain that that information may not be in their knowledge. (See the memorandum issued with the Board's Press Notice, C.L.B./51).

Sub-s. (2).

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

Notice to treat. See note to s. 30, *ante*.

Interest in land. See s. 69 (1), *ante*. Means only an interest in fee simple or a tenancy.

With a view to the compulsory acquisition. This is consistent with the established view that the service of the notice to treat is not in itself an exercise of compulsory powers; see *Guest* v. *Poole & Bournemouth Ry. Co.* (1870), L.R. 5 C.P. 553; 11 Digest (Repl.) 183, *501*; *Re Uxbridge & Rickmansworth Ry. Co.* (1890), 43 Ch.D. 536, C.A., at pp. 546, 562 and 563; 11 Digest (Repl.) 190, *572*; *Goodwin Foster Brown, Ltd.* v. *Derby Corpn.*, [1934] 2 K.B. 23; 11 Digest (Repl.) 190, *573*.

Public authority. See note to s. 30, *ante*.

May apply. The form of application by an acquiring authority is prescribed in the Third Schedule to the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), *post*.

Unexpended balance. Any balance certified in this certificate is a current balance on any of that land immediately before the service of the notice to treat. To determine this amount the Board may have to apportion development value and calculate deductions by reference to the heads set out in the note "Additional information" to sub-s. (1), *supra*. To determine the appropriate amount of any deduction in relation to any balance on the land, it may be necessary to apportion the amounts arising on previous acts or events on larger areas so as to relate them to any balance on the land now being considered; see s. 18 (5), *ante*.

Sub-s. (3).

New apportionment. See sub-s. (9), *supra*. See also the definition of "previous apportionment" in s. 69 (1), *post*. That definition refers to "an apportionment for any of the purposes of this Act". It is submitted that apportionments within the provisions of this subsection include apportionments for any of the purposes of the Act including apportionments under s. 18 (5), *ante*, as well as apportionments of development value. See also note "An apportionment" to s. 13 (2), *ante*.

Calculation of a deduction. See s. 18 (4), *ante*. In the case of other deductions an amount has already been settled and, provided it is not necessary to make a new apportionment thereof, the amount of any deduction which was or could have been challenged on the occasion of the previous act or event will not now be open to review.

In the case of new development (as defined in s. 16 (5), *ante*) however, the deduction to be made under s. 18 (4), *ante*, and the Fourth Schedule, *post*, is one which is normally calculated by reference to the value of a permission to carry out the development, and is recalculated afresh on the occasion of each subsequent act or event when it is taken into account; see the notes to s. 18 (4) and (5), *ante*.

Appears to the Board. Cf. note " Appears to the Minister " to s. 27 (1) (*c*), *ante*.

Thirty days from the date of the notice. As to the giving of notices, see s. 67 (3), *post*, applying s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186). See also *Donegal Tweed Co., Ltd.* v. *Stephenson* (1929), 98 L.J. K.B. 657.

Substantially affected. See note " Substantially " to s. 13 (2), *ante*.

Who establishes. See note to s. 13 (3), *ante*.

Sub-s. (4).

Lands Tribunal. The form of appeal to the Tribunal is an appeal against a determination under the Lands Tribunal Rules, 1949 (S.I. 1949 No. 2263). See r. 3 of those rules, as amended by r. 3 of the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. The form of notice in such appeal is set out in Form 1A in the Schedule to the Amendment Rules. See also rr. 5, 6, 7 of those rules, set out in the notes to the Amendment Rules (S.I. 1955 No. 54), *post*.

Sub-s. (5).

Previous apportionment. See s. 69 (1), *post*; substantially it means an apportionment made for any of the purposes of the Act before the present apportionment made, confirmed or varied by the Lands Tribunal on a reference; or which could have been referred thereto, for such making, confirmation or variation; or an apportionment made by or with the approval of the Board in connection with their approval of an assignment of part of the benefit of an established claim under s. 2 (2) of the Act of 1953. See also s. 27 (3), *ante*, and notes thereto.

Sub-s. (6).

Conclusive evidence. The current unexpended balance of any land shown in the certificate issued to an acquiring authority is conclusive of the balance on any land immediately before the date of service of the notice to treat. If there is only one interest in the land, this will settle the amount of the unexpended balance on any of the land by reference to which any payment is to be made. If there are several interests, however, it may possibly still be necessary to apportion payments or divide any balance in relation to those interests. See ss. 25 and 31, *ante*, and the Fifth Schedule, *post*. As to the meaning of conclusive evidence, see *Kerr* v. *John Mottram, Ltd.*, [1940] 2 All E.R. 629; 2nd Digest Supp.; *A.-G.* v. *Bournemouth Corporation*, [1902] 2 Ch. 714, C.A.; 22 Digest (Repl.) 317, *3302*.

Sufficient proof. See *Bowker* v. *Woodroffe*, [1928] 1 K.B. 217, at p. 225; Digest Supp. *Re Duce and Boots Cash Chemists (Southern), Ltd.'s Contract*, [1937] 3 All E.R. 788; Digest Supp. Cf. *Allison* v. *Johnson* (1902), 46 Sol. Jo. 686; 9 Digest 571, *3797*. The original balance certificate will contain a number of statements of fact. Its issue may be made *ex parte* so far as subsequently interested parties are concerned. The effects of this provision and of that contained in sub-s. (5), *supra*, limiting the variation of new apportionments will limit the possibility of challenging the basis of past determinations.

Sub-s. (7).

Form and manner prescribed. See the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), *post*.

Particulars of the applicant's interest. If an apportionment is involved the certificate can only be issued to a person entitled to an interest in the land. This appears to mean only a person having the freehold or a leasehold interest in the land; see s. 69 (1), *post*, and para. 3 (ii) of the First Schedule to the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), *post*. If on a sale it is desired to have this information the vendor can make the application. In this regard, however, it should be appreciated that if the apportionment involves interests other than those held by the vendor it may result in " having the neighbours in " on proceedings which may go to the Lands Tribunal, or even further. The Board advise applicants who are in doubt as to whether they can make an application to seek the advice of the District Valuer. He may also be prepared to advise as to the interests which may be involved in asking for a certificate which requires an apportionment. The application must be signed by the applicant or an agent duly authorised by him.

Any other interest in the land. Here again the Board only ask for particulars of freehold or leasehold interests in the land. See para. 3 (iii) of the First Schedule to the Central Land Board (Provision of Information) Regulations, 1954 (*ubi supra*). This information is not likely to be very helpful to the Board in carrying out their duty under sub-s. (3) (*b*), *supra*. Presumably they are relying on the information contained in the Part VI claim File to enable them to trace interests in land likely to be affected by any apportionment. As the years go by and land changes hands the period of thirty days, from the date of the notice, for making objections under sub-s. (3) (*b*) may be little protection. If the Central Land Board give notice in writing to a former

owner it may be very problematical whether a person now interested will get to know in time.

Sub-s. (8).

Pay in the prescribed manner. The fee of five shillings is to be paid by affixing five shillings in postage stamps. The Board treat this as non-returnable if the certificate involves an apportionment and the applicant does not have a sufficient interest to entitle him to such a certificate. If the applicant is entitled to such a certificate (and is aware that an apportionment is involved) he can send a crossed cheque, money order or postal order for one pound payable to the Board with his application instead; or he can wait until told that the further fee of fifteen shillings is payable.

49. Cancellation or reduction of liability for development charges.—(1) The provisions of this section shall have effect in cases where at the commencement of this Act the whole or part of a development charge remains unpaid and, apart from this section, the charge or the unpaid balance thereof would then be payable, or would thereafter become payable, to the Central Land Board.

(2) If under Part I of this Act the Board set off the whole of the charge, or the unpaid balance thereof, against a payment thereunder, as being a payment which (but for the set-off) would be payable by the Board under the said Part I, or would have been so payable if applied for, the development charge and any liability of any person in respect thereof shall thereupon be discharged.

(3) If under Part I of this Act the Board set off part of the charge, or of the unpaid balance thereof, as mentioned in the last preceding subsection, the development charge, or the unpaid balance thereof, shall be treated as reduced by the amount so set off and any liability of any person in respect thereof shall be modified accordingly.

(4) Where, for the purposes of the Second Schedule to this Act, one or more development charges such as are mentioned in subsection (1) of this section are covered by a pledge of one or more claim holdings to the Central Land Board, and by virtue of the provisions of that Schedule one or more of those claim holdings are deemed to have been extinguished or reduced in value by reference to the unpaid balance of the charge or, as the case may be, the aggregate of the unpaid balances of the charges, as therein mentioned, a sum equal to, or to the aggregate of—

(*a*) the value of any such holding which is deemed to have been extinguished; and

(*b*) the amount of the reduction in the value of any such holding which is deemed to have been reduced in value but not extinguished,

shall be deducted from that balance or that aggregate of balances and—

(i) if that sum is equal to that balance or aggregate of balances, the charge or charges and any liability of any person in respect thereof shall be discharged;

(ii) if that sum is less than that balance or aggregate of balances, the charge or charges, or the balance or respective balances thereof remaining unpaid at the commencement of this Act, shall be reduced by an amount, or, as the case may be, shall be reduced rateably by an aggregate amount, equal to that sum:

Provided that where paragraph 2 of the Second Schedule to this Act applies, any development charge in connection with which the claim holding in question was pledged in accordance with the arrangements mentioned in sub-paragraph (1) of that paragraph and any liability of any person in respect thereof shall be discharged without regard to the treatment of the claim holding in question.

(5) Where the Central Land Board agreed that payment of a development charge should be postponed in accordance with the special arrangements relating to the accommodation of agricultural workers, the Board shall treat the development charge and any liability of any person in respect thereof as discharged.

(6) In the case of a development charge which is discharged by virtue of paragraph (i) of subsection (4) of this section—

(*a*) if no sum had been paid to the Central Land Board on account of the charge, the charge shall for the purposes of Part I of this Act be treated as not having been incurred; and

(*b*) if any sum had been so paid, then, notwithstanding anything in subsection (3) of section four of this Act, the amount of the charge shall for the said purposes be treated as the amount or aggregate amount of the sum or sums so paid, other than any sum paid by way of interest;

and a development charge which is treated as discharged by virtue of the last preceding subsection shall, for the purposes of any other provision of this Act except subsection (3) of section fifty-two thereof, be treated as not having been determined to be payable.

(7) References in this section, except in subsection (4) thereof, to the unpaid balance of a development charge include references to any arrears of interest in respect of the charge.

NOTES

This section modifies or extinguishes outstanding liability to make payment of development charge in three sets of circumstances:

(*a*) Where development was carried out, and charge was postponed, under the special arrangements for farm-workers' dwellings. These charges are now waived altogether; sub-s. (5), *supra*.

(*b*) Where claim holdings have been reduced in value or extinguished, as provided by s. 2 (2) (*a*), *ante*, under the Second Schedule, *post*. In effect, the Central Land Board have received payment, of the development charge or charges concerned, out of the value of the claim holding or holdings; see sub-s. (4) *supra*.

(*c*) Where the Central Land Board set off outstanding liability for charges against any Part I payment that was, or would otherwise have been, payable, or which would have been so payable if duly claimed; see s. 14, *ante*, and sub-ss. (2) and (3), *supra*.

In the first case ((*a*), *supra*) the charge is simply cancelled. Except for a special purpose (s. 52 (3), *post*) charge will not be taken to have been paid; and the benefits conferred by this Act where charge was paid will not ensue. In the second case ((*b*), *supra*) the charge will be taken to have been paid to an appropriate extent, for all purposes except that, under Part I, *ante*, a Case A payment (ss. 3 and 4) cannot to that extent be based on it, for that would involve having resort to the claim holding twice. Single plot owners, under their special arrangements, will be taken to have paid the charge in full. In the third case ((*c*), *supra*), the charge will be taken to have been paid to the extent of the set-off under s. 14 (2) or (3), *ante*.

Sub-s. (1).

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

Development charge. See, generally, Part VII (ss. 69–74) of the Act of 1947 (Hill, pp. 172–188; 48 Statutes Supp. 132–143). As to applications to the Central Land Board to determine, confirm or vary a charge, see also the T. & C.P. Development Charge Application Regulations, 1950 (Part II of S.I. 1950 No. 728; Hill, 2nd Supp., p. B204). If a determination has been varied, references in this Act are to the determination as varied, see s. 69 (5), *post*.

Development charge was abolished generally by the Act of 1953, ss. 1 and 3 (Hill, 2nd Supp., pp. B695, B700; 78 Statutes Supp. 133, 136); see, however, as to minerals, s. 54, *post*, and notes thereto. Where a determination was made but ceased to have effect under the principal Act, or no charge was payable by reason of the Act of 1953 (particularly referring to cases where operations did not begin or a use was not instituted before 18th November 1952), the charge is deemed not to have been determined, see s. 69 (5) (*a*), *post*.

Charge may have been postponed, but is nevertheless deemed to have become payable; see s. 69 (5), (6), *post;* except in the case of the special housing arrangements for agricultural workers; see sub-ss. (5) and (6), *supra*. Charges under these special arrangements were postponed and are now waived altogether; they accordingly are deemed not to have been determined.

The present Act confers certain advantages on persons who have paid development charge; normally the advantage is made dependent on the determination that a charge was payable, not on actual payment. Payments under Case A in Part I (ss. 3 and 4), *ante*, are, however, dependent on charge having been "incurred", which has, *prima facie*, a similar meaning (see s. 4 (1), *ante*), varied, however, by sub-ss. (4) and (6), *supra*.

The present section is largely concerned to state in what circumstances, for what purposes, and to what extent, set-off under s. 2 (2) (*c*), *ante*, and the Second Schedule, *post*, or under s. 14 (2) or (3), *ante*, is to be treated as equivalent to payment; and to reduce liability for payment of development charge accordingly.

Central Land Board. See generally ss. 2 and 3 and s. 69 (1) of the principal Act (Hill, pp. 40, 41, 175; 48 Statutes Supp. 26, 27, 134), subject to s. 63 of this Act, *post*, providing for the dissolution of the Board and transfer of certain outstanding functions.

Sub-s. (2).

Part I. The set-off referred to is a set-off against a Part I payment which would, or would if claimed, otherwise have been made under s. 14 (1), *ante*, see s. 14 (2) and (3) and the General Note to s. 14. This set-off affects the principal amount of the Part I payment (s. 14 (2), *ante*) and the principal amount of the development charge (s. 14 (2) proviso). References in the present subsection and the next (sub-s. (3), *supra*) to an unpaid balance of charge are, however, to include arrears of interest; see sub-s. (7), *supra*. If the Part I payment, which would have been made, was enough to allow set-off of the whole principal amount of the charge or unpaid balance, the present subsection operates, and arrears of interest are also extinguished. Broadly speaking, interest is thus set off against interest (ignoring any disparity in rates of interest).

Sub-s. (3).

Modified accordingly. In view of the provisions of sub-s. (2), it seems that the liability for charges will be reduced by the amount set off under s. 14, *ante* (which was the principal amount of the Part I payment, which would otherwise have been made with interest) and a necessary modification of the outstanding liability for charge will be an appropriate reduction of any arrears of interest.

Sub-s. (4).

Second Schedule. That Schedule, *post*, has effect by virtue of s. 2 (2) (*a*), *ante*, and operates to sub-divide, reduce or extinguish claim holdings comprised in a pledge to the Central Land Board, as defined by para. 1 (1) of the Schedule. Pledges were transactions whereby:

(*a*) the holder of the claim holding mortgaged it to the Board as security for charge;
(*b*) the holder and the Board agreed to set-off charge against a payment to be made by reference to the holding; or
(*c*) the Board took a mortgage of the holding and refrained from making a determination of the charge.

The Schedule operates to set off the development charge covered by the pledge against the value of one or more claim holdings, having recourse primarily to holdings related to the land in respect of which the charge was payable. The amount in effect paid from claim holdings by this set-off will now operate to extinguish or reduce liability for the charge or charges.

Unpaid balance of charge. In this subsection this expression presumably has the same meaning as in the Second Schedule, *post*, see para. 1 (5) of that Schedule.

Arrangements mentioned in para. 2 (1). The arrangements mentioned in para. 2 (1) of the Second Schedule, *post*, related to owners of single house plots. They were described in Central Land Board pamphlets: see House 2 (2nd Revision) issued in January 1951 (Hill, 2nd Supp., pp. B569–B571), which replaced earlier pamphlets. Such owners were assured that, in general, their payment under Part VI of the principal Act and the development charge for building a house would be equated. The Second Schedule provides for an appropriate form of set-off. The present proviso accordingly discharges any liability for development charge in such cases.

Sub-s. (5).

Accommodation for agricultural workers. The special arrangements referred to were originally described in Ministry of T. & C.P. Circulars 62 and 64, and in Appendix C to the Central Land Board's Practice Notes on Development Charge (Hill, pp. 1114, 1116, 1277). Appendix C was headed, and was issued separately as, Form D.1B. The original circulars were cancelled by Ministry of Local Government and Planning Circular 6, usually cited as 6/51, dated 28th March 1951; and revised arrangements were published in Central Land Board leaflet, Form D.1B (Revised March, 1951), Hill, 2nd Supp., pp. B581–B583. (Separate arrangements were made for local authority housing for such workers; local authorities were informed of these in Central Land Board Circular No. 3/52, dated 14th July 1952.)

The special arrangements applied to the erection or extension of ordinary-sized houses (not more than 17,500 cu. ft. capacity by external measurement) intended for occupation by farm or forestry workers; they did not apply to larger farm-houses, though they extended to ordinary-sized houses for smallholders and to certain hostels for farm workers.

The original concessions implemented an undertaking given in Parliament by the then Government when the principal Act was debated. The present concession goes further; charges are waived altogether in such cases. Sub-s. (6), *supra*, accordingly provides that, except for one purpose of the present Act, the charge is deemed not to

have been determined. In dealing with such land in future it will be very important to remember s. 18 (4), *ante*, which will require a deduction from any unexpended balance of established development value in view of the development carried out.

Sub-s. (6).

Treated as not having been incurred. Ss. 3 and 4 (Case A) in Part I, *ante*, provide for payments to claim holders who incurred development charge or who derive title to an interest in land from a person who paid charge (and who may, in effect, have passed on the burden). See also s. 9, extending Case A, and s. 11 (residual payments). Part I payments come, in effect, out of the claim holding. Where liability for development charge is discharged by s. 4 (i), *supra*, the charge, or unpaid balance, can for most purposes be regarded as having been paid by set-off (under the Second Schedule) against the claim holding. Such " payment " is here prevented from operating inappropriately, to release a further amount from the claim holding. The formula adopted is not that the charge shall be deemed not to have been " determined " (which would exclude other benefits conferred by this Act, e.g., by s. 18 (4) proviso) but that it shall be treated as not having been " incurred " (thus confining its effect to Part I, *ante*, where the benefit depends on charge having been " incurred ").

S. 4 (3) of this Act. See that subsection, *ante*, dealing with the amount of development charge which is normally taken, for Part I purposes, to have been incurred. Para. (*b*) of the present subsection will allow a Case A payment to be made to the extent that charge was actually paid (otherwise than by set-off under this section and the Second Schedule).

Last preceding subsection. Sub-s. (5), *supra*, cancels liability for charge on houses within the special arrangements for agricultural workers.

Charge is therefore regarded as not having been determined. This will exclude such cases from all but one of the possible benefits given by this Act (*e.g.*, by s. 18 (4) proviso, *ante*) where charge was determined.

S. 52 (3). That provision, *post*, relates to one of the exceptions to the general liability of an acquiring authority to refund, to the Central Land Board, Part I payments made by the Board in respect of the purchase of an interest in land (compulsorily or quasi-compulsorily) by that authority.

50. Exchequer grants to local authorities.—Subject to the next following section, the following section shall be substituted for section ninety-three of the principal Act:—

" 93.—(1) Regulations made under this section with the consent of the Treasury may provide for the payment by the Minister to local authorities of grants of such amounts, and payable over such periods and subject to such conditions, as may be determined by or under the regulations in respect of expenditure incurred by those authorities, whether before or after the passing of this Act—

(*a*) in connection with the acquisition of land approved by the Minister for the purposes of the regulations, or in connection with the clearing or preliminary development of land acquired by those authorities with such approval;

(*b*) in the payment of compensation under Part III or Part VIII of this Act (other than compensation payable in respect of land compulsorily acquired by virtue of section nineteen of this Act), or in taking any action under section twenty-four, twenty-five or twenty-six of this Act, or under the said section twenty-four as applied by any of the provisions of Part III of this Act;

(*c*) in connection with the carrying out of any work of restoring, repairing or adapting buildings acquired by those authorities, being work approved by the Minister for the purposes of the regulations in the case of a building as respects which, immediately before the acquisition thereof, a building preservation order was in force or could have been made.

(2) Regulations made under this section may provide for the payment of grants thereunder, in such cases and subject to such conditions as may be prescribed by or under the regulations, in respect of land appropriated by local authorities (whether before or after the passing of this Act) for any purpose approved by the Minister in accordance with

the regulations, as if the land had been acquired for that purpose at a cost of such amount, and defrayed in such manner, as may be determined by or under the regulations.

(3) Without prejudice to the generality of the foregoing provisions of this section, any regulations made under this section may provide—

(*a*) for the inclusion, in the expenditure incurred by local authorities in the acquisition of land approved by the Minister for the purposes of the regulations, of any sums, or any part of sums, paid by those authorities in connection with any restriction imposed on the development or use of the land by or under any enactment (whether by way of compensation or by way of contribution towards damage or expense incurred in consequence of the restriction);

(*b*) for the calculation of grants payable under the regulations by reference to the amount of the annual costs incurred or treated as being incurred by local authorities in respect of the borrowing of money to defray expenditure in respect of which the grants are made, or by reference to the excess of such annual costs over receipts of those authorities which are attributable to such expenditure, or over the annual value of such receipts, as may be prescribed by the regulations.

(4) The amount of any grant paid to a local authority in accordance with regulations made under this section—

(*a*) where that amount is calculated by reference to annual costs incurred or treated as incurred by the authority in respect of the borrowing of money to defray expenditure in respect of which the grant is made, or by reference to the excess of such annual costs over the receipts, or the annual value of receipts, mentioned in paragraph (*b*) of the last foregoing subsection, shall not exceed an amount equal to fifty per cent. of those costs, or of that excess, as the case may be;

(*b*) in any other case, shall not exceed an amount equal to fifty per cent. of the amount of the expenditure in respect of which the grant is made:

Provided that, in relation to—

(i) land acquired for use as a public open space; or

(ii) such part, if any, of any land appropriated as mentioned in subsection (2) of this section as is intended for such use,

the regulations may provide that, if in any particular case the Minister is satisfied that, having regard to the expenditure in respect of which the grant is to be made and the financial circumstances of the local authority concerned, it is just that a higher grant should be made, the amount of the grant in that particular case shall be an amount equal to such percentage, exceeding fifty but not exceeding seventy-five per cent., of the costs, excess or expenditure aforesaid as the Minister may determine.

(5) Any expenses incurred by the Minister in the making of grants in accordance with regulations made for the purposes of this section shall be defrayed out of moneys provided by Parliament.

(6) In this section the expression 'preliminary development', in relation to land approved for the purposes of regulations made thereunder, means the carrying out of any work determined in accordance with the regulations to be work preparatory to the development of the land for the purposes for which it was acquired or appropriated, or work comprised in the initial stages of such development."

NOTES

This section is an amendment of the Act of 1947 which consolidates, as amended, the provisions as to Exchequer grants to local authorities contained in ss. 93 and 94

of that Act (Hill, pp. 220–224; 48 Statutes Supp. 169–172). The provisions of the Act of 1947 distinguished between grants payable in respect of lands in redevelopment areas and grants in respect of expenditure incurred in taking any action under Part III or VIII of that Act.

Substantially, the regulations as to grants under the old s. 93 provided for rates of grant in areas of extensive war damage of ninety per cent. of the annual cost to the authority for an initial period of five years, with a possible extension to eight years; and of fifty per cent. for a final period making, in total, sixty years. In the case of other areas of redevelopment, the grants were scaled in a manner which took account of the rateable values per head of population of the areas concerned. These grants varied from eighty per cent. in an initial period, followed by fifty per cent. in an intermediate period, and fifty per cent. continued in a final period, down to cases where the initial grant was fifty per cent., followed by thirty per cent., with a final period of twenty per cent.

The grants under s. 94 were on a basis resembling that of the final period grant, in respect of redevelopment of areas other than war damaged areas, under s. 93; namely, between twenty per cent. and fifty per cent. See the T. & C.P. (Grants) Regulations, 1950 (S.I. 1950 No. 88), printed as amended by the T. & C.P. (Grants) Amendment Regulations, 1950 (S.I. 1950 No. 706; Hill, 2nd Supp., pp. B140 *et seq.*). See also the Minister's explanatory memorandum on those regulations (Hill, 2nd Supp., p. B404), and the further amending Regulations (S.I. 1954 No. 177), H.M.S.O., 2*d*.

The present section provides for the making of regulations which will prescribe a maximum of fifty per cent. as an overall rate of grant, with certain limited and exceptional cases where a higher rate may be paid. In committee, the then Minister stated that he intended fifty per cent. to be a minimum as well as a maximum (H. of C. Official Report S.C.C., 16th June, 1954, col. 652). Where action has been initiated before the 26th February 1954, however, see s. 51 (2), *post*.

Grants may be payable in respect of expenditure incurred in connection with the acquisition, clearing or preliminary development of land, or the payment of compensation under Part III of the Act of 1947; see ss. 20, 22, 27, 28, 29, 32, 35 and the Fifth Schedule (Hill, pp. 80, 88, 101, 103, 105, 113, 116 and 274; 48 Statutes Supp. 58, 61, 71, 73, 75, 81, 84 and 217). Grants may be payable towards compensation under Part VIII of that Act, but this is substantially limited to compensation arising under regulations made under ss. 81 and 90 of the Act of 1947 (Hill, pp. 201 and 217; 48 Statutes Supp. 154 and 166). See s. 54, *post*, and the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*; see also s. 79 of the Act of 1947 (Hill, p. 197; 48 Statutes Supp. 151) as applied by reg. 10 of the Minerals Regulations. In its original application, s. 79 of the 1947 Act is now virtually a spent provision. The regulations under s. 90 are the T. & C.P. (National Coal Board) Regulations, 1941 (S.I. 1951 No. 716; Hill, 2nd Supp., p. B237).

Grants may be payable towards expenditure incurred in taking action under s. 24, 25, or 26 of the Act of 1947 (Hill, pp. 94, 96, 98; 48 Statutes Supp. 67, 68, 69); in connection with buildings which have been acquired which were or could have been the subject of building preservation orders (see ss. 29 and 30 of that Act; Hill, pp. 105–110; 48 Statutes Supp. 75, 77); or in connection with any special form of enforcement action under Part III of that Act, *e.g.*, under s. 33 (2) (Hill, p. 114; 48 Statutes Supp. 82).

The regulations may also provide for the payment of grants in relation to lands which have been appropriated for any purpose approved by the Minister in accordance with the regulations; see sub-s. (2), *supra*, and cf. sub-s. (3) of the repealed s. 93 (Hill, p. 221; 48 Statutes Supp. 170).

Sub-s. (3), *supra*, follows in paras. (*a*) and (*b*), sub-s. (4) of the old s. 93 (Hill, p. 221; 48 Statutes Supp. 170). Para. (*b*), however, provides additionally for calculation of the grant by reference to the excess of annual costs over annual value of receipts. See in this regard the repeal of s. 95 (1) of the Act of 1947 (Hill, p. 224; 48 Statutes Supp. 173) by s. 71 and the Eighth Schedule, *post*. Paras. (*c*) and (*d*) of the repealed s. 93 are not re-enacted. The grants are now at a flat rate throughout the whole period (see sub-s. (4), *supra*), and differential rates ("weighting") in favour of more heavily burdened authorities are no longer provided for. The only exception to the fifty per cent. grant is where land is acquired or appropriated for use as a public open space, and the Minister is satisfied that the financial circumstances of the authority justify a higher grant; seventy-five per cent. may then be paid.

The following annotations relate to the new s. 93 of the principal Act. The section should be read subject to s. 51 of this Act, and to s. 97 (5) of the National Parks and Access to the Countryside Act, 1949 (65 Statutes Supp. 201) (as amended by s. 71 of and the Seventh Schedule to this Act, *post*).

Sub-s. (1) of s. 93.

Regulations. As to regulations generally, see s. 111 of the Act of 1947 (Hill, p. 245; 48 Statutes Supp. 192). No regulations have yet been made under this new section (s. 93 of the principal Act).

Local authorities. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 202).

Amounts; Periods. The amount will be calculated either by reference to the annual cost incurred in borrowing to defray the expenditure or by reference to the excess of such annual costs over receipts attributable to the expenditure or over the annual value of such receipts. In the explanatory memorandum, on the similar provision in the repealed s. 93 (Hill, 2nd Supp., p. B408) it is explained that the grant would be by reference to notional loan charges on moneys borrowed by the authority in respect of the total cost of acquisition and clearing until appropriated or transferred to a new use and thereafter the excess of the cost of acquisition and clearing over the value for the new use. The notional loan charges were to be assessed on the annuity basis over a period of sixty years at a rate of interest equivalent to that charged by the Public Works Loans Commissioners on sixty year loans to local authorities. See also sub-s. (4) (*b*), *supra*. There may be cases where the grant will be payable as a lump sum in respect of fifty per cent. of the expenditure.

Conditions. These conditions are left to be determined by or under the regulations. The statutory conditions imposed by s. 95 (1) of the Act of 1947 (Hill, p. 224; 48 Statutes Supp. 173) are repealed by s. 71 and the Eighth Schedule, *post*, subject to s. 51, *post*.

Acquisition . . . or clearing. As to items to be included in the cost of acquisition or clearing, cf. Appendices A and B to the explanatory memorandum on the old system of grants to local authorities (Hill, 2nd Supp., pp. B421, B422). "Clearing" means removal of buildings or materials from the land, levelling the surface, and the carrying out of such other operations as may be prescribed by regulations; see s. 119 (1) of the Act of 1947 (Hill, p. 258; 48 Statutes Supp. 202).

Preliminary development. See sub-s. (6), *supra*. This is to be determined in accordance with regulations as work preparatory to its development for the purpose for which it was acquired or work comprised in the initial stages of the development. This presumably means something in excess of the cost of clearing.

S. 19. This exception refers to land acquired as a result of an owner's purchase notice served under s. 19 of the Act of 1947 (Hill, p. 81; 48 Statutes Supp. 56). Such acquisitions are excluded from para. (*b*) because they are already in para. (*a*). Under the Act of 1947 grants for acquisitions under s. 19 were divided between s. 93 (1) and s. 94 (1) (*b*), depending on whether or not the land was in an area of redevelopment.

Sub-s. (2) of s. 93.

Land appropriated. See s. 42 of the Act of 1947 (Hill, p. 128; 48 Statutes Supp. 93), and s. 163 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 441). As to powers of appropriation, cf. the General Note to s. 19, *ante*. See also s. 19 of the Act of 1944 as re-enacted in the Eleventh Schedule to the Act of 1947 (Hill, p. 311; 48 Statutes Supp. 250).

Passing of this Act. 6th August 1947.

Sub-s. (3) of s. 93.

Expenditure incurred. The expenditure incurred can include any payment made in connection with restrictions imposed on the development or use of the land by or under any enactment. Provision in this regard will be made by the regulations. In the old regulations, the T. & C.P. (Grants) Regulations, 1950 (S.I. 1950 No. 88; Hill, 2nd Supp., p. B144) provision is made in reg. 6 (2) that the expenditure will be such as may be approved by the Minister. As to the matters which the Minister will approve under those regulations, see Appendix A of the Explanatory Memorandum on Grants to Local Authorities (Hill, 2nd Supp., p. B421). There are some seventeen items in that list including such matters as compensation for interference with easements, compensation payable in respect of restrictions under ss. 77 to 85 of the Railway Clauses (Consolidation) Act, 1845 (19 Halsbury's Statutes (2nd Edn.) 633–638), or sums paid by a local authority in connection with any restriction previously imposed on the development or use of the land; provided that a grant or contribution is not already payable in respect of the compensation by any government department. See also in this latter regard, s. 52 (9) of the Act of 1954, *post*: where a sum is recoverable from the acquiring authority on compulsory acquisition, by reason that the compensation or price payable on that acquisition has been reduced by reason of a previous payment of planning compensation or a payment by the Central Land Board, the sum recovered under s. 52 can be regarded for grant purposes as expenditure incurred.

Annual costs. See note, "Amounts and periods", *supra*.

Sub-s. (4) of s. 93.

Amount of any grant. Whatever basis is provided by the regulations, the amount of the grant is not to exceed fifty per cent. of the annual loan cost, or deemed annual cost, or annual excess, or the amount of expenditure incurred, as the case may be.

Public open space. This is a commonly used expression in planning practice. It does not appear in the Act of 1947, though it was used in s. 10 (6) of the Act of 1932 (Hill, p. 381). Generally it can be regarded as an open space which is open without payment to the public generally, and is not devoted exclusively to some profit-making purpose. See, in this regard, paras. 10 and 11 of Circular 71 (Hill, 2nd Supp., pp. B322 and B323) and cf. the note to s. 52 (2), *post*.

Financial circumstances of the authority. This consideration will be provided for in the regulations. If the provisions of the Act of 1947, and the old regulations, can be taken as a guide, account will be taken of the rateable value per head of population and the existing financial liability of the authority.

51. Supplementary provisions as to Exchequer grants.—(1) Nothing in the last preceding section, or in the amendments and repeals effected by the following provisions of this Part of this Act, shall affect the payment of any grant in respect of a year or part of a year ending on or before the thirty-first day of March, nineteen hundred and fifty-five.

(2) As respects land of any of the following descriptions, that is to say—

(*a*) land comprised in a compulsory purchase order made by a local authority under the Town and Country Planning Act, 1944, or the principal Act, and confirmed before the twenty-sixth day of February nineteen hundred and fifty-four, being land acquired for any of the purposes specified in paragraph (*a*) of subsection (5) of section ninety-three of the principal Act;

(*b*) land acquired by agreement for any of those purposes with the consent of the Minister given before that date;

(*c*) land appropriated by a local authority for any of those purposes before that date;

(*d*) land acquired or appropriated for any of those purposes (whether before or after that date), being land contiguous or adjacent to land falling within any of the preceding paragraphs,

paragraph (*a*) of subsection (4) of the section which, by the last preceding section, is substituted for the said section ninety-three shall apply as if for the reference in that paragraph to fifty per cent. of the annual costs or excess therein mentioned there were substituted a reference to ninety per cent. of those costs or of that excess, as the case may be:

Provided that this subsection shall not authorise the payment in the case of any land of a grant at a higher rate in respect of a year or part of a year which, together with the preceding years or parts of years in respect of which grants at a higher rate have been paid in the case of that land, would extend beyond a total period of eight years.

(3) For the purposes of any regulations made under section ninety-three of the principal Act (whether before or after the commencement of this Act), the definition in that Act of the expressions " area of extensive war damage " and " area of bad lay-out or obsolete development " shall apply, and be deemed always to have applied, as if in that definition the words " being in each case land comprised in an area which is defined by a development plan as an area of comprehensive development " had been omitted.

(4) In this section, references to section ninety-three of the principal Act are references to that section as it has effect apart from the last preceding section, and references to a grant at a higher rate are references to a grant of an amount authorised by the said section ninety-three as it so has effect, but not authorised (otherwise than by virtue of subsection (2) of this section) by the provisions substituted for that section by the last preceding section.

NOTES

This section provides for the continuance of the old rates of grant in cases where the liability of the authority arises under action taken before the introduction of the present Act as a Bill. The action taken is specified as the confirmation of a compulsory purchase order, the Minister's consent to purchase by agreement, or an appropriation. The lands to which this concession is granted are lands acquired or appropriated for the redevelopment of areas of war damage or for relocation or replacement purposes in connection with the development of such areas. The concession is also widened to include land which is contiguous or adjacent to such land already acquired or appropriated. The acquisition or appropriation of the contiguous or adjacent land may be before or after the 26th February 1954.

Sub-s. (3), *supra*, widens the grant-making power under the old s. 93, by including in the areas of " blitz " and " blight " there mentioned any such areas although they

may not have been defined by a development plan under the Act of 1947 or by a declaratory order under the Act of 1944.

Sub-s. (1).

Amendments and repeals. See s. 71 and the Seventh and Eighth Schedules, *post*.

31st March 1955. The end of the grant year following the commencement of the Act.

Sub-s. (2).

Town and Country Planning Act, 1944. See Hill, pp. 434 *et seq*; 28 Statutes Supp. 20 *et seq.*; and see paras. 16–19 of the Tenth Schedule to Act of 1947 (Hill, p. 306; 48 Statutes Supp. 245); orders under the repealed Part I of the Act of 1944 continue in force and have effect as if made under the Act of 1946 as applied by Part IV of the Act of 1947.

Principal Act. The Act of 1947. See particularly ss. 5 (2) and (3) and 38 (Hill, pp. 46 and 121; 48 Statutes Supp. 30, 31, 88).

26th February 1954. Date of publication of the present Act as a Bill.

S. 93 (5) (a) of the principal Act. " . . . Land acquired or appropriated for the redevelopment as a whole of areas of extensive war damage, or for the relocation of population or industry or the replacement of open space in the course of such redevelopment. . . ." (Hill, p. 221; 48 Statutes Supp. 170.)

Acquired by agreement. See s. 40 of the principal Act (Hill, p. 126; 48 Statutes Supp. 91). Under that section the consent of the Minister is required for any acquisition. Here it is the date of giving consent that is relevant.

Appropriated by a local authority. See s. 42 of the principal Act (Hill, p. 128; 48 Statutes Supp. 93) as to the appropriation of certain lands. See also s. 163 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 441) as to general powers of appropriation, and cf. the General Note to s. 19, *ante*.

Contiguous or adjacent. See *Waihi Grand Junction Gold Mining Co. Ltd.* v. *Dudson* (1909), 29 N.Z.L.R. 499, at p. 505; *Haynes* v. *King*, [1893] 3 Ch. 439 at p. 448; 26 Digest (Repl.) 321, *546*; *Southwark Revenue Officer* v. *Hoe (R.) & Co., Ltd.* (1930), 143 L.T. 544; Digest Supp. See also *Wellington Corporation* v. *Lower Hutt Corpn.*, [1904] A.C. 773 at p. 775; 44 Digest 148, *158*. The purpose of para. (*d*) of sub-s. (2) seems to be to permit authorities who are committed to substantial schemes of redevelopment in war damaged areas to continue such schemes. The extent to which redevelopment may be continued in accordance with the former system of grants is widened by this provision.

S. 93 (4) (a). The amended section provides for grants at a rate of fifty per cent. The reference to ninety per cent. in this provision permits the continuance of the former grants in relation to the exceptions listed in the present subsection.

Total period of eight years. The original section 93 (4) (*c*) provided for payments at different rates in respect of different parts of the period during which the grants were payable. Under the old regulations, the T. & C.P. (Grants) Regulations, 1950 (S.I. 1950 No. 88), reg. 7 (4) (Hill, 2nd Supp., p. B145), provided, in case of war damaged areas, that the rate should be ninety per cent. for an initial period of five years (which might be increased to eight) followed by a rate of fifty per cent. for the remainder of the period of grant. Para. (*c*) of s. 93 (4) is not re-enacted; but statutory limitation is now imposed on the period of the higher grant.

Sub-s. (3).

Regulations. See T. & C.P. (Grants) Regulations, 1950 (S.I. 1950 No. 88; Hill, 2nd Supp., p. B140), as amended, for the existing regulations.

S. 93 of the principal Act. *I.e.*, the original s. 93 of the Act of 1947 (Hill, p. 220; 48 Statutes Supp. 169). See sub-s. (4), *supra*. Cf. also the wording of sub-s. (2), *supra*, which provides modifications of the new s. 93, substituted by s. 50 of this Act, *ante*.

Area of extensive war damage, etc. See s. 119 (1) of the Act of 1947 (Hill, p. 258; 48 Statutes Supp. 202), and the old s. 93 of that Act, *ubi supra*.

Defined by a development plan. See s. 5 (3) of, and paras. 16 and 17 of the Tenth Schedule to, the Act of 1947 (Hill, pp. 47, 306; 48 Statutes Supp. 31, 245). The Tenth Schedule transitional provisions relate to declaratory orders under the Act of 1944 (Hill, pp. 434 *et seq.*; 28 Statutes Supp. 20 *et seq.*)

52. Recovery of certain sums from acquiring authorities.—(1) Where, under Part I of this Act, a payment becomes payable by the Central Land Board in respect of the compulsory acquisition of an interest in land by, or the sale of such an interest to, a public authority possessing compulsory purchase powers (in this section referred to as " the acquiring authority "), the Board shall, subject to the provisions of this section, be entitled to recover the amount of the payment from the acquiring authority.

(2) The preceding subsection shall not apply if—

(*a*) the acquiring authority is a government department and the interest was acquired in pursuance of a notice to treat served, or a contract made, before the twenty-sixth day of February, nineteen hundred and fifty-four; or

(*b*) the interest was acquired, in pursuance of a notice to treat served, or a contract made, before the eighteenth day of November, nineteen hundred and fifty-two, for the purposes of the development or re-development of any area as a whole; or

(*c*) the interest was acquired, in pursuance of such a notice to treat or contract as is mentioned in the last preceding paragraph, for the purposes of the use of the land as a public open space or as allotments:

Provided that paragraph (*b*) of this subsection shall not affect the application of the preceding subsection—

(i) if the interest was acquired by a development corporation under the New Towns Act, 1946; or

(ii) if it is certified by the Minister that the interest was acquired for the purposes of the development or re-development of an area as an industrial estate.

(3) If, before the eighteenth day of November, nineteen hundred and fifty-two, operations were begun in, on, over or under any land in which an interest such as is mentioned in subsection (1) of this section subsists, or a use of any such land was instituted, being operations or a use—

(*a*) in respect of which, whether before or after the commencement of this Act, a development charge has been determined to be payable, or it has been determined that no development charge is payable; or

(*b*) comprised in a scheme of development exempt from development charge,

the said subsection (1) shall not apply to so much of any payment referred to in that subsection as is attributable to any land in relation to which the determination was made or, as the case may be, which is included in that scheme of development.

(4) If such a payment as is mentioned in subsection (1) of this section would have been payable, or the amount of such a payment would have been greater, but for the existence of either or both of the following circumstances, that is to say—

(*a*) that by virtue of the Second Schedule to this Act a claim holding relating to the whole or part of the land comprised in the acquisition or sale was treated as extinguished, or reduced in value, by reference to a development charge relating to other land;

(*b*) that by virtue of subsection (2) of section fourteen of this Act a sum was set off against the payment by reference to such a development charge,

the preceding provisions of this section shall apply as if neither of those circumstances had existed and the payment had become payable or (as the case may be) the amount of the payment had been increased accordingly.

(5) Where, under subsection (3) of section fourteen of this Act, a sum was set off against a payment, as being a payment which would have been payable under Part I of this Act if applied for, the preceding provisions of this section shall apply as if that payment had been payable under the said Part I and the set-off had been effected under subsection (2) of the said section fourteen.

(6) Where, in the case of a compulsory acquisition to which Part III of this Act applies, the compensation payable in respect of the acquisition is diminished—

(*a*) by an amount exceeding twenty pounds owing to the fact that compensation under Part II or V of this Act or compensation to which Part IV of this Act applies has become payable in respect of a planning decision or order made before the service of the notice to treat; or

(*b*) owing to the fact that by virtue of the Second Schedule to this Act a claim holding relating to the whole or part of the land comprised in the acquisition was treated as extinguished, or reduced in value, by reference to a development charge relating to other land,

the Minister (in a case falling within paragraph (*a*) of this subsection) or the Central Land Board (in a case falling within paragraph (*b*) thereof) shall be entitled to recover from the acquiring authority a sum equal to the amount by which the compensation is less than it would have been if the circumstances referred to in paragraph (*a*) or (*b*) of this subsection, as the case may be, had not existed.

(7) Where an interest in land is compulsorily acquired by, or sold to, a public authority possessing compulsory purchase powers, in pursuance of a notice to treat served, or a contract made, after the commencement of this Act, or was so acquired or sold in pursuance of a notice to treat served, or a contract made, on or after the sixth day of August, nineteen hundred and forty-seven, and before the commencement of this Act, and a payment exceeding twenty pounds has become payable under section fifty-nine of the principal Act in respect of that interest, or becomes so payable after the commencement of this Act, the Central Land Board shall be entitled to recover the amount of the payment from the acquiring authority:

Provided that—

(*a*) the provisions of subsections (2) and (3) of this section shall have effect in relation to this subsection as they have effect in relation to subsection (1) of this section;

(*b*) no amount shall be recoverable by the Central Land Board under this subsection in relation to any land in relation to which an amount has become recoverable by the Minister under section twenty-nine as applied by section fifty-seven of this Act;

(*c*) if the acquisition or sale does or did not extend to the whole of the land to which the payment related, the amount recoverable under this subsection shall be so much of that payment as is by virtue of subsection (4) of section fifty-seven of this Act to be treated as apportioned to the land in which the interest acquired or sold subsisted.

(8) Regulations made under this section with the consent of the Treasury may provide—

(*a*) for reducing the amount recoverable from the acquiring authority under subsection (1) of this section, or under the last preceding subsection, in cases where, since the interest was acquired by that authority and before the eighteenth day of November, nineteen hundred and fifty-two, the land in question or part thereof was the subject of a disposition of a description specified by the regulations, not being a disposition in favour of a public authority possessing compulsory purchase powers;

(*b*) for enabling the acquiring authority to recover a contribution, determined in such manner as may be prescribed by the regulations, from another public authority possessing compulsory purchase powers, in cases where, since the interest was acquired by the acquiring authority and before the commencement of this Act, the land in question or part thereof was the subject of a compulsory acquisition by that other authority, or of any other

disposition in favour of that authority of a description so prescribed;

(*c*) for applying the provisions of subsection (6) of this section, subject to such adaptations and modifications as may be prescribed, to purchases of land by agreement, by public authorities possessing compulsory purchase powers, in pursuance of contracts made after the commencement of this Act, where the purchase price is determined in accordance with the regulations to be diminished as mentioned in that subsection.

(9) Where a sum is recoverable from an authority under this section by reference to an acquisition or purchase of an interest in land, and in respect thereof, or of a subsequent appropriation of the land, a grant became or becomes payable to that or some other authority under any enactment, the power conferred by that enactment to pay the grant shall include, and shall be deemed always to have included, power to pay a grant in respect of that sum as if it had been expenditure incurred by the acquiring authority in connection with the acquisition or purchase.

(10) In this section, references to a scheme of development exempt from development charge are references to a scheme of development such that, if the operations and uses of land comprised in the scheme had all been begun or instituted before the eighteenth day of November, nineteen hundred and fifty-two, all those operations and uses would have been exempt from the provisions of Part VII of the principal Act by virtue of regulations made thereunder; and references to the amount of a payment shall be construed as including any interest payable on the principal amount of the payment.

NOTES

Under this section the Minister and the Central Land Board are given certain rights for the recovery of sums from acquiring authorities, where planning compensation has been paid, or where the Board has made a payment under Part I of this Act, *ante*, or the Planning Payments (War Damage) Scheme, 1949. The underlying principle may be said to be that the authorities, having acquired at an existing use or other depressed value, will be at liberty to realise a higher value by developing the land without paying development charge, and it has been thought proper to pass on to them financial responsibility for the compensation or payments for depreciation already paid.

Sub-s. (1), *supra*, empowers the Central Land Board to recover payments made under Part I, *ante*, in respect of an acquisition before 1st January 1955. If the acquiring authority paid more than an existing use price, as was authorised by Circulars 41/53 and 40/54 mentioned in the notes to s. 6, *ante*, there should be no Case B payment under Part I, *ante* (and no liability under the present section) except in so far as the price paid may have fallen short of the sum of the existing use value and the value of the claim holding. The amount to be recovered under sub-s. (1), *supra*, will include any amount which would have been paid but for set-off; see sub-s. (2), *supra*. Sub-s. (3) includes any amount set off under s. 14 (3), *ante*, although no application was made under Part I.

Sub-s. (7), *supra*, provides for the recovery of War Damage Scheme payments, where the land concerned has been acquired or is acquired in future.

Sub-ss. (2) and (3), *supra*, provide exemption from the recovery of Part I or War Damage Scheme payments by the Board in certain cases. Sub-s. (2) (*b*) is concerned with land bought for large-scale redevelopment which may not prove remunerative; the exclusion of New Town development corporations from this benefit has been explained to be a matter of accounting. It is important to note that sub-s. (2) (*b*) will not provide an exemption from liability unless notice to treat was served or a contract made before 18th November 1952, however far the authority were otherwise committed to making a purchase. In many cases, however, notice to treat will be deemed to have been served on the registration of a compulsory purchase order providing for expedited completion, under the Sixth Schedule to the Act of 1944 (Hill, p. 342; 48 Statutes Supp. 277). Sub-s. (3) is concerned with land in respect of which development charge has been determined to be payable in respect of development begun before 18th November 1952, and with land where development began before that date which did not involve charge. In many cases the acquiring authority itself will have paid the development charge, or possibly will have bought the land, from a vendor who had paid the charge, at a price which in effect included the amount of the charge. Schemes of development exempt from charge will not often have been of a remunerative nature.

Sub-s. (6), *supra*, and that subsection as applied by regulations to be made under sub-s. (8) (*c*), refer to acquisitions made on or after 1st January 1955, and provide for the recovery of the amount by which an acquiring authority are benefited by a prior

payment of compensation for planning decisions or orders revoking or modifying planning permission. An amount is similarly recoverable if there has been a set-off of a claim holding relating to land acquired, where the claim holding was pledged as security for development charge relating to other land. Sub-s. (6), dealing with compulsory acquisitions by authorities having the benefit of the Act of 1919, requires a comparison of the diminished compensation payable with that which would have been payable if the circumstances mentioned had not existed.

The amount by which compensation for the acquisition can be said to be diminished in such circumstances may give rise to argument. It is thought that the subsection was intended to refer primarily to the diminution of the current unexpended balance of established development value before the notice to treat in the circumstances mentioned, *i.e.*, to the amount:

(*a*) then falling to be deducted, under s. 18 (3), *ante*, by reason of the payment of compensation under Part II;

(*b*) then falling to be deducted, under s. 18 (3) as applied by s. 40, *ante*, and reg. 11 (1) of the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, by reason of the payment of an Exchequer contribution by the Minister towards compensation to which Part IV of this Act applies;

(*c*) by which the balance was less because of the extinguishment or reduction in value of a claim holding or holdings under s. 46, *ante*, on the payment of compensation under Part V; or

(*d*) by which the balance was less because of the extinguishment or reduction in value of a claim holding or holdings under the Second Schedule.

This view accords with the fact that sub-s. (6) makes no provision, in the case mentioned in (*b*), *supra*, for repayment of any sum to the authority which paid the prior compensation for revocation or modification; this is reasonable on the supposition that the power of recovery from the acquiring authority is limited to the amount of the Minister's contribution. Such a diminution of the unexpended balance would cause a corresponding reduction in compensation payable under s. 31, *ante*, as a supplement to compensation on the basis of existing use.

This view of the purpose of sub-s. (6), *supra*, does not, however, accord very clearly with its wording.

Sub-s. (8), *supra*, enables regulations to be made, also, for the purpose of modifying sub-ss. (1) and (6) in cases where an acquiring authority has disposed of land to a private person or to another authority; in the case of a disposition to another authority, financial liability may be passed on. Sub-s. (9), *supra*, passes on liability in another form; any power to make a grant to the acquiring authority will extend to the payment of grant towards the financial liability under the present section. A grant may be so payable in respect of the acquisition itself or on the occasion of a subsequent appropriation of the land to another purpose.

Cross-references. As to general financial provisions, see s. 64, *post*.

As to development charges on accommodation for agricultural and forestry workers, see s. 49 (6), *ante*, which contains a saving for the purposes of sub-s. (3), *supra*.

Sub-s. (1).

Payment. Note sub-ss. (4), (5) and (10), *supra*. The present subsection in effect re-imburses the Central Land Board (and ultimately the Exchequer) and is extended to cover development charges which the Board would have received but for set-off under ss. 2 (2) (*a*) and 49, *ante*, and the Second Schedule, *post*, or set-off under ss. 14 (2) and (3) and 49, *ante*. Neither form of set-off is to affect the measure of the acquiring authority's liability.

Compulsory acquisition . . . or sale. See Case B in Part I, *ante* (ss. 5, 6 and 9), the analogous payments (s. 10, particularly s. 10 (2) (*c*), *ante*), and the residual payments (s. 11). Certain cases where a payment might have been made under Case A (ss. 3 and 4) are in effect passed over into Case B, see the note " S. 51 (4) of the principal Act " to s. 3 (5), *ante*, and the notes on existing use value to s. 5 (1) and to s. 6, *ante*. This might produce an anomalous result in the present section, as the acquiring authority will already have paid the vendor an enhanced price by reason of prior payment of development charge; this anomaly is largely prevented by sub-s. (3) (*a*), *supra*.

Interest in land. See s. 69 (1), *post*; and s. 5 (1), *ante*, and the other provisions mentioned in the previous note, *supra*.

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*.

Recover. Presumably by action; no other mode is provided.

Sub-s. (2).

Government department. Cf. the definition of " Minister " in s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204).

Notice to treat. For the relevance of the date of service of such a notice, cf. the notes to ss. 6 (5), 30 (1) and 37 (4), *ante*. As to the inclusion of notices deemed to be served, see s. 119 (3) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205).

Contract made. See s. 69 (6), *post*.

26th February 1954. Date of introduction of the Bill for this Act.

18th November 1952. Date of publication of the White Paper and of the introduction of the Bill for the Act of 1953.

Development . . . of any area as a whole. See s. 5 (3) of the Act of 1947 (Hill, p. 47; 48 Statutes Supp. 31) which provides that a development plan may define as an area of comprehensive development any area which the local planning authority think should be developed or redeveloped as a whole for any of the purposes there mentioned, which include dealing with " blitz ", " blight " and " overspill ", and the replacement of open space. See also ss. 5 (2), 38, and 40 of that Act for powers of purchase (Hill, pp. 46, 121, 126; 48 Statutes Supp. 30, 88, 91); and cf. the notes to s. 51 of this Act, *ante*. Those provisions of the principal Act continue and extend the repealed powers of the Act of 1944 (Hill, pp. 434 *et seq.*; 28 Statutes Supp. 20 *et seq.*) and land so acquired will be subject to the redevelopment code contained in the unrepealed provisions of the Act of 1944 (Hill, pp. 310–348; 48 Statutes Supp. 249–283). Transitional provisions were made by the Tenth Schedule to the Act of 1947, paras. 16–19 (Hill, pp. 306, 309; 48 Statutes Supp. 245, 248). See also the special power of appropriation under s. 42 (Hill, p. 128; 48 Statutes Supp. 93), which may be relevant if land bought under a general power was appropriated for planning purposes. Acquisitions at 1939 prices, on the basis of the repealed Part II of the Act of 1944 (Hill, pp. 480–484; 28 Statutes Supp. 95–102), will not have given rise to a Case B payment under Part I of the present Act, see s. 5 (2) (*a*), *ante*.

Part VIII of the principal Act made special provision as to Part VI claims and development charges in respect of land held (*i.e.*, acquired or appropriated) for the purposes of development or redevelopment of any area as a whole, and for the land of New Town development corporations; see s. 83 (1) and (2) of the Act of 1947 (Hill, pp. 206, 207; 48 Statutes Supp. 158). There was power to require the payment of certain block charges, in lieu of development charge, under s. 83 (3) and (4) of that Act; but those subsections are repealed by s. 71 (2) and the Eighth Schedule, *post*. Under s. 92 of the Act of 1947 (Hill, p. 219; 48 Statutes Supp. 169), the Minister may determine whether or not land is within s. 83 of that Act. S. 92 is applied for a different purpose by s. 67 (4) of this Act, *post*, but is not expressed to apply to the determination of the question, arising under the present section, of whether the interest in land was acquired " for the purposes of the development or redevelopment of any area as a whole ". Where those words occur in s. 83 of the principal Act they are qualified by a reference to an acquisition or appropriation under the Act of 1944 or the comparable provisions of Part IV of the Act of 1947. Here there is no qualification, and it is suggested that the words may refer also to land acquired for similar purposes under other enactments.

Grants under Part IX of the principal Act were payable on a special basis towards expenditure incurred under that Act in connection with the acquisition and clearing of land for redevelopment (see s. 93 of that Act, and the notes to ss. 50 and 51, *ante*).

Public open space. " Open space " is defined in s. 119 (1) of the principal Act, together with " common " and " fuel or field garden allotment ", as having the same meaning as in the Acquisition of Land (Authorisation Procedure) Act, 1946 (39 Statutes Supp. 4), where the terms are used in connection with the special degree of protection against compulsory purchase afforded to such lands. In that Act, " open space " means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.

In s. 119 (1) of the Act of 1947 (Hill, p. 260; 48 Statutes Supp. 205) there is a wider definition of " replacement of open space ", which is relevant in considering development or redevelopment. Cf. also s. 5 (2) (*a*) of that Act (Hill, p. 46; 48 Statutes Supp. 30). The replacement of open space was one of the matters eligible for grant under s. 93 of the Act of 1947 and Part II of the T. & C.P. (Grants) Regulations, 1950; see now the special provision which may be made under the new s. 93 (4) proviso of that Act as substituted by s. 50 of the present Act, *ante*.

In planning practice, in connection with the survey and preparation of development plans required by Part II of the principal Act (ss. 5 to 11; Hill, pp. 46–64; 48 Statutes Supp. 30–43), public open space has been understood to mean an area of land available for public use during the greater part of the year without payment or charge. Private open space has been understood to include statutory or non-statutory allotments, cemeteries, golf courses, market gardens, school playing fields, etc.

Allotments. See previous note, *supra*, for reference to the definition of " fuel or field garden allotment " in the principal Act. Such allotments are those set out under an Inclosure Act. The present section, it is submitted, refers to all forms of allotment.

Development corporation. See the New Towns Act, 1946 (Hill, pp. 593 *et seq.*; 25 Halsbury's Statutes (2nd Edn.) 427). As to Part VI claims and development charge, see s. 83 of the Act of 1947 (Hill, p. 206; 48 Statutes Supp. 158). As to the acquisition of land by development corporations, see the New Towns Act, *ubi supra*, and s. 46 of the Act of 1947 (Hill, p. 136; 48 Statutes Supp. 99).

New Towns Act, 1946. See previons note, *supra*. That Act has been modified by s. 46 of the Act of 1947 (Hill, p. 136; 48 Statutes Supp. 99); the New Towns Act, 1952 (Hill, 2nd Supp., p. B74; 77 Statutes Supp. 199); s. 18 of the Town Development

Act, 1952 (Hill, 2nd Supp., p. B80; 77 Statutes Supp. 215); and the New Towns Act, 1953 (81 Statutes Supp. 63).

The Town Development Act widens the Minister's power to consent to disposals of land by a development corporation. The later New Towns Acts amend the financial limit on advances to such corporations under s. 12 of the New Towns Act, 1946. A New Towns Bill, 1955, with a similar purpose is at present before Parliament.

Industrial estate. Land held for an industrial estate is excepted from s. 82 of the Act of 1947 (Hill, p. 205; 48 Statutes Supp. 157) by reg. 2 of the Regulations thereunder (S.I. 1948 No. 1461; Hill, p. 828), but note the proviso to that regulation. The Minister (of Town and Country Planning) was advised that such land might fall within s. 83 (see Ministry Circular No. 71, dated 4th April 1949, Hill, 2nd Supp., pp. B321–B327). Development of such land might involve liability for development charge, because of the exception from s. 82; or liability for a " block " charge, in lieu of development charge, under s. 83 of that Act.

Sub-s. (3).

18th November 1952. Cf. note to sub-s. (2), *supra*. Development charge was, in general, abolished as from that date by ss. 1 and 3 of the Act of 1953 (Hill, 2nd Supp., pp. B695, B700; 78 Statutes Supp. 133, 136). Part VII of the principal Act (ss. 69–74; Hill, pp. 172–188; 48 Statutes Supp. 134–143), accordingly does not apply to development begun on or after that date. S. 1 of the Act of 1953 also provided exemption from Part VII of the principal Act in respect of certain building or works retained on land, and certain uses continued, after that date.

Operations; use. See, by virtue of s. 69 (2), *post*, the interpretation section, s. 119 of the Act of 1947; and cf. ss. 12 and 69 of that Act (Hill, pp. 257, 65, 175; 48 Statutes Supp. 202, 44, 134). Cf. also the notes to s. 20 of this Act, *ante*. Note that no reference is made to retaining buildings or works, or continuing a use, as mentioned in s. 69 (4) and (2) of the principal Act. Contrast the wording of s. 57 (1) proviso, *post*.

Before or after the commencement. 1st January 1955 is the day appointed for the commencement of this Act; see s. 72 (2) and S.I. 1954 No. 1598, *post*. When Part VII of the principal Act applies, a determination of development charge can still be made thereunder, as that Part is not repealed; see the note " 18th November 1952 " to the present subsection, *supra*. Application for a determination should be made in accordance with the T. & C.P. Development Charge Applications Regulations, 1950 (Part II of S.I. 1950 No. 728; Hill, 2nd Supp., pp. B204 *et seq.*). The Central Land Board may determine a charge without application; see s. 74 of the Act of 1947 (Hill, p. 186; 48 Statutes Supp. 142). The same procedure may be used to obtain a " nil " determination in the case of development begun before 18th November 1952.

Development charge has been determined. See s. 69 (5), *post*, and s. 49 (6), *ante*. Determinations will not have ceased to have effect under the Act of 1953 if operations were begun or a use was instituted before 18th November 1952. As to applications for a determination, see the previous note, *supra*. The present subsection makes no reference to development charge determined in respect of the retention on land of buildings or works as mentioned in s. 69 (4) of the Act of 1947, or that provision as applied by s. 76 (3) (*b*) of that Act (Hill, pp. 175, 193; 48 Statutes Supp. 134, 148); cf. s. 1 (4) of the Act of 1953 (Hill, 2nd Supp., p. B696; 78 Statutes Supp. 134), which made express provision for such cases. Where the original operations which gave rise to the presence of buildings or works on land were carried out, under a temporary permission, consent, or compliance, before 1st July 1948, charge will not have been determined in respect of the operations, but may have been determined in respect of the retention of the buildings or works. Charge may have been paid by the acquiring authority, or by the vendor (who will have received compensation or a price fixed on the basis of having paid charge). It seems unlikely that the Board will seek to recover an amount from the acquiring authority under this section in such circumstances.

Note also that where operations were not begun, and no use was instituted, before 18th November 1952, the vendor may nevertheless have paid a development charge, and been paid greater compensation or a higher price by the acquiring authority. The vendor cannot reclaim the charge from the Central Land Board under s. 1 (5) of the Act of 1953, because of s. 3 (2) of that Act (Hill, 2nd Supp., pp. B696, B701; 78 Statutes Supp. 134, 137). The acquiring authority, however, appear to obtain no benefit, in such a case, from the present subsection. To that extent, there may arise the anomaly referred to in the note " Compulsory acquisition . . . or sale ", to sub-s. (1), *supra*.

Scheme of development exempt from development charge. This refers to a scheme where all the operations or uses involved were, or would (before 18th November 1952) have been, exempt from development charge by virtue of regulations made under Part VII of the principal Act. It does not refer to other forms of exemption from charge; but see sub-s. (2), *supra*, which covers many such cases.

Sub-s. (4).

Payment. This includes the interest that was or would have been payable; see sub-s. (10), *supra*, and s. 14 (1), *ante*.

Second Schedule. That Schedule, *post*, should be read with ss. 2 (2) (*a*) and 49 (4), *ante*. The circumstances contemplated, in the present paragraph (para. (*a*)) of this subsection, are that a Part I payment or a larger payment would have been made but for the fact that the Board used up some or all of the value of a claim holding or holdings relating to the land acquired in " paying " themselves development charge, relating to other land, by set-off under the Schedule. The acquiring authority as such are strangers to that transaction, and it is not to affect the measure of their liability under this section.

S. 14 (2) of this Act. That subsection, *ante*, should be read with s. 49 (2) and (3), *ante*. The set-off thereby provided affects the amount of a Part I payment where the person entitled is under an outstanding liability for development charge. The present section operates, in such cases, as it would have done but for the set-off, *i.e.*, as if the Board had made the Part I payment in full to the applicant with interest. Sub-s. (5), *supra*, makes similar provision for the circumstances mentioned in s. 14 (3), *ante* (where no application is made for a Part I payment, but the Board set off against outstanding liability for charge, the payment that might have been made).

Sub-s. (6).

Compulsory acquisition to which Part III of this Act applies. See s. 30 (1), *ante*. That Part applies to every compulsory acquisition of an interest in land, in pursuance of a notice to treat served on or after 1st January 1955, by a government department or other authority having the benefit of the Act of 1919. As to sales by agreement in comparable circumstances, see sub-s. (8) (*c*), *supra*.

Diminished. See the General Note, *supra*.

Exceeding £20. Cf. ss. 28 (4), 39 (4) and 46 (4), *ante*, and the General Note, *supra*. Note, however, that the question arising under the present subsection is whether compensation for the compulsory acquisition is diminished by an amount exceeding £20; this is not necessarily the same question which arose in determining whether the previous compensation was registrable. *Semble*, the diminution of compensation for several interests acquired at the same time cannot be aggregated so as to exceed £20.

Part II. See ss. 16–29, *ante*. Note the provision against overlapping liability in s. 28 (6), *ante*.

Part V. See ss. 42–46, *ante*. See particularly s. 46 (4) applying the provisions of Part II, *ante*, as to the registration and recovery of compensation.

Part IV. Compensation to which Part IV applies is defined in s. 38, *ante*, as meaning the compensation payable under s. 22 (1) of the Act of 1947 in consequence of an order, revoking or modifying permission, made on or after 1st January 1955. For the purposes of applying Part IV to planning decisions following the withdrawal of permitted development, references to such an order include references to such decisions; see s. 38 (4), *ante*. It is not expressly provided that this extension of Part IV affects the definitions in s. 38 for the purposes of the present section.

Planning decision. See s. 16 (4), *ante*.

Order. See ss. 38 and 42 (1) (*b*), *ante*. *Quaere*, as to the effect of s. 38 (4) proviso, *ante*, for the purposes of the present section.

Notice to treat. See the note to sub-s. (2), *supra*.

Second Schedule. Cf. the note to sub-s. (4), *supra*.

The Minister. The Minister (of Housing and Local Government) is the authority responsible for paying compensation under Parts II and V, *ante*.

He is not the authority responsible for paying compensation to which Part IV of this Act applies, though he may make a contribution towards it (s. 40, *ante*), and pay grant in respect of it. The Minister is the authority who may recover compensation for depreciation registered under s. 39, *ante*, but where he does so he will account to the local planning authority for the amount of that compensation paid by them (other than the Minister's contribution or grant); see s. 41, *ante*. There is no parallel provision in the present subsection, and when the Minister recovers an amount from an acquiring authority hereunder he cannot also recover under s. 29 as applied by s. 41 (1); see s. 29 (6), *ante*. See also the General Note, *supra*.

Sums received by the Minister are to be paid into the Exchequer; see s. 64 (4) (*c*) and (9), *post*. There is no saving power enabling the Minister to pay over Part IV compensation, so far as recoverable under the present subsection, to the authority who paid it.

Central Land Board. Cf. the note " Second Schedule " to sub-s. (4), *supra*, and s. 64 (4), *post*.

Sub-s. (7)

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*.

Notice to treat; contract made. See the notes to sub-s. (1), *supra*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

6th August 1947. Date of passing of the Act of 1947. Part V of that Act (ss. 50–57; Hill, pp. 143–155; 48 Statutes Supp. 105–115) and certain related provisions affecting the law of compensation for compulsory purchase came into force on 6th August 1947 in accordance with s. 120 (2) (repealed) of that Act (Hill, p. 266; 48 Statutes Supp. 209).

Payment . . . under s. 59 of the principal Act. See sub-s. (10), *supra*, and s. 57, *post*. Payments not exceeding £20 are not considered worth recovering; cf. sub-s. (6), *supra*. Payments under s. 59 of the principal Act are made under the War Damage Scheme, and are normally recoverable on subsequent development of the land; see s. 57, *post*. This subsection provides an alternative form of recovery from acquiring authorities. Recovery is excused in the cases mentioned in sub-ss. (2) and (3), *supra*. Over-lap of powers of recovery under this section and s. 57, *post*, is prevented by para. (*b*) of this subsection and s. 57 (1) proviso (*a*), *post*.

S. 57 (4) . . . apportioned. S. 57 (4), *post*, provides that a War Damage Scheme payment is to be treated as apportioned, on the same principles as applied to its determination, as between different parts of the land to which it related.

Sub.-s. (8).

Regulations. Generally as to regulations under this Act, see s. 68, *post*.

18th November 1952. See the note to sub-s. (3), *supra*.

Disposition. Regulations giving effect to this paragraph (para. (*a*)) will enable account to be taken of dispositions of land to private persons before development charge was abolished. On some dispositions the authority will have received a particularly low price under s. 19 (6) of the Act of 1944 (Hill, p. 311; 48 Statutes Supp. 250). In other cases land may have been sold on the basis that the purchaser would be exempt from development charge by virtue of s. 82 (4) of the Act of 1947 (Hill, p. 205; 48 Statutes Supp. 157).

Public authority possessing compulsory purchase powers. See s. 69 (1), *post*. Where there has been a disposition by the acquiring authority to such an authority, regulations may allow the liability of the acquiring authority under this section to be passed on to the appropriate extent. An authority should not be regarded as possessing compulsory purchase powers unless it was or could have been authorised to acquire land compulsorily for the purposes for which the disposition was effected.

Contracts made. See s. 69 (6), *post*. Contracts made on or after 1st January 1955 may be regarded as analogous to compulsory acquisitions to which Part III of this Act applies; see sub-s. (6), *supra*, and s. 30 (1), *ante*. Note that s. 30 (1), *ante*, is confined to acquisition by authorities having the benefit of the Act of 1919.

Sub-s. (9).

Appropriation. Cf. the notes to s. 19, *ante*.

Grant. As to grants under Part IX of the principal Act, see ss. 50 and 51, *ante*. The present subsection provides that, for grant purposes, the sum recovered under this section can be regarded as part of the cost of acquisition. The grant-making power in question will be that which applied or applies to the acquisition, or that which applies where land is appropriated to a different purpose after the acquisition.

Sub-s. (10).

Exempt . . . from Part VII . . by . . . regulations. For the regulations made under s. 69 (2) (*b*) of the Act of 1947 (Hill, p. 175; 48 Statutes Supp. 134) see the original regulations of 1948 (S.I. 1948 No. 1188; Hill, pp. 779–783), and the T. & C.P. (Development Charge Exemptions) Regulations, 1950 (S.I. 1950 No. 1233; Hill, 2nd Supp., pp. B223–B231).

53. Compensation for damage to requisitioned land.—(1) Subject to the provisions of this section, any compensation accruing due in respect of any land after the commencement of this Act by virtue of paragraph (*b*) of subsection (1) of section two of the Compensation (Defence) Act, 1939 (which relates to compensation payable in respect of damage occurring to requisitioned land during the period of requisition) shall not exceed the amount (if any) by which the value mentioned in paragraph (*a*) of the next following subsection falls short of the price mentioned in paragraph (*b*) of that subsection.

(2) The said value and price are—

(*a*) the value, at the time when the compensation accrues due, of a freehold interest in the land in question, free from incumbrances but subject to any easement or other restriction affecting the land at that time; and

(*b*) the price which would be the compulsory purchase price of the land at that time if it were then in the state in which it was when

possession of the land was taken in the exercise of emergency powers.

(3) Neither of the following provisions, that is to say—

(*a*) paragraph (ii) of the proviso to subsection (1) of the said section two (which provided that the compensation payable under paragraph (*b*) of that subsection should be limited to the value of the land at the time when it was requisitioned); and

(*b*) subsection (1) of section ten of the Requisitioned Land and War Works Act, 1948 (which substituted a different limit, by reference to the compulsory purchase price of the land in its existing state and in the state in which it was when requisitioned),

shall apply to compensation to which subsection (1) of this section applies.

(4) Subsection (3) of section ten of the said Act of 1948 (which makes provision as to the matters to be taken into account in calculating the compulsory purchase price of the land in its existing state) shall apply for the purposes of this section, with the substitution for references to the compulsory purchase price of land of references to the value of such a freehold interest as is mentioned in paragraph (*a*) of subsection (2) of this section; and subsection (4) of that section (which provides for increased compensation in certain cases above the limit imposed by subsection (1) of that section) shall apply for the purposes of this section, with the substitution for the reference to subsection (1) of that section of a reference to subsection (1) of this section.

(5) In this section the expression " compulsory purchase price " has the meaning assigned to it by subsection (2) of the said section ten.

NOTES

S. 10 of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21) limited the compensation payable in respect of damage to land while held in requisition under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939 (Statutes, Vol. 153), to the difference between the compulsory purchase value of the land in the state in which it was at the ending of requisition and the compulsory purchase value which it would have had, at that date, if it had been in the same state as that in which it was at the commencement of requisition. This provision was part of the general intention of the Act of 1947 to limit land prices to existing use value. With the abolition of development charge, that intention has been abandoned.

The intention of the present provision is to provide compensation on a basis limited to any amount by which the present open market value of the land falls short of the theoretical current compulsory purchase price (including any unexpended balance) of the land in its pre-requisition state.

The section is not altogether clear as to the position which arises when the land is in fact a liability when de-requisitioned. This provision should also be considered with s. 75 (3) and (4) of the Act of 1947 (Hill, p. 189; 48 Statutes Supp. 144, 145) and s. 7 (6) of the Building Restrictions (War-Time Contraventions) Act, 1946 (Hill, p. 586; 36 Statutes Supp. 112). The period for taking enforcement action in relation to contraventions of previous planning control (arising from Crown occupation) under the latter Act will not begin to run until the ending of the requisition. The grant of a temporary permission for the retention of war works under s. 75 (4) of the Act of 1947 (*ubi supra*), would deprive the landowner of the protection of sub-s. (3) of that section on a subsequent enforcement notice. If the works had to be removed the land might have a negative value. It would appear that an owner who accepts any works on land, and who seeks planning permission to retain them, does so at his peril, unless he obtains compensation from the requisitioning authority in respect of compliance with any probable enforcement notice.

A further difficulty may arise on determining the open market value referred to in sub-s. (2), *supra*. Apart from the adjustments required by sub-s. (4), *supra*, the value of the unencumbered freehold is presumably to be found as mentioned in s. 65, *post*, which refers only to certain of the rules in s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977). Presumably, in the open market today, the provisions of the development plan must be present in the mind of any purchaser. Also the possibility of compulsory purchase or the provision of s. 20, *ante*, may affect the price. If land before requisition had, for example, consisted of a house and land, and the house had been demolished to make way for a gun site, its current pre-requisition " compulsory purchase price " would be that of the house and land. If the development plan now shows the area zoned for shops or industrially the market value may well exceed this theoretical compulsory purchase price, and so exclude compensation

on the de-requisition. If the land is in fact acquired compulsorily, the factual compulsory purchase price would be that for a housing site plus Third Schedule tolerance, including a possible, but unlikely, supplement from an unexpended balance or balances; *i.e.*, it would not cover the cost of re-building, which one would expect to be covered by the compensation on de-requisition, but which has been excluded therefrom by the present section.

Cross-reference. As to Part I payments, under s. 10, *ante*, in cases analogous to Case B, in respect of de-requisition, see s. 10 (2) (*d*).

Sub-s. (1).

Accruing due. Compensation accrues due at the end of the requisition and is payable to the person who is then the " owner " of the land. See s. 2 (3) of the Compensation (Defence) Act, 1939 (31 Statutes Supp. 221). As to who is then the " owner ", see *Borthwick-Norton* v. *Collier*, [1950] 2 All E.R. 204; [1950] 2 K.B. 594, C.A.; 17 Digest (Repl.) 447, *137*; but see *Truman, Hanbury, Buxton & Co.* v. *Kerslake*, [1894] 2 Q.B. 774; 30 Digest (Repl.) 507, *1473*, and *London Corpn.* v. *Cusack-Smith*, [1955] 1 All E.R. 302.

Commencement of this Act. 1st January 1955; see s. 72 (2), and the appointed day order (S.I. 1954 No. 1598), *post*. As to requisitions ending before that date, see s. 10 (2) (*d*), *ante*.

S. 2 (1) (b) of the Compensation (Defence) Act, 1939. 31 Statutes Supp. 220. That paragraph provides for the payment of a sum equal to the cost of making good any damage to the land which occurred during the period of requisition. Under proviso (ii) to that subsection the payment was made subject to a ceiling, that it was not to exceed the value of the land at the time of requisition. There were later variations of the effect of that Act. S. 10 (1) of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21) amended the proviso, as from the 19th February 1948, to make the ceiling the difference in the compulsory purchase price of the land under Part V of the Act of 1947 at the date of de-requisition (*a*) in its damaged state and (*b*) in its pre-requisition state.

This amendment was made to take account of the Act of 1947 and the fact that compensation for loss of development value in the land would have been payable by way of the Part VI claim under that Act. By reason of a delay in bringing the Act of 1947 into operation, lands de-requisitioned between 19th February 1948 and 1st July 1948 did not have the benefit of s. 89 of the Act of 1947 (Hill, p. 215; 48 Statutes Supp. 165) in the assessment of the development value claim. This anomaly is corrected by s. 1, *ante*, and para. 7 of the First Schedule, to this Act, *post*.

The present section substitutes another new ceiling, namely, the amount (if any) by which the land valued in the open market in its present state falls short of what would have been its compulsory purchase value, at the date of de-requisition, if it had been at that date in its pre-requisition state.

Damage occurring. This does not include " war damage " as defined by s. 2 of the War Damage Act, 1943 (7 Statutes Supp. 122); *ibid.*, s. 109 (4). See also s. 10 (3) of the Requisitioned Land and War Works Act, 1948 (3 Halsbury's Statutes (2nd Edn.) 1116).

Sub-s. (2).

Value. See s. 65, *post*. Under that section generally in calculating value for any purpose of this Act the calculation is to be made by reference to rules (2) – (4) of s. 2 of the Act of 1919 (Hill, p. 703; 3 Halsbury's Statutes (2nd Edn.) 977); and if the interest is subject to a mortgage it is to be treated as not being subject thereto. That section also provides for the making of certain assumptions as to the continuance or determination of tenancies. See also the General Note, *supra*.

Compulsory purchase price. See sub-s. (5), *supra*, and note thereto, *infra*. The definition contained in s. 10 (2) of the Requisitioned Land and War Works Act, 1948 (3 Halsbury's Statutes (2nd Edn.) 1116) is still valid as a definition, but in respect of any acquisition after 1st January 1955, that definition would include the effect of the provisions of Part III of the present Act. In appropriate circumstances, it will include any unexpended balance or balances on the land; see s. 31, *ante*.

Sub-s. (3).

S. 2 (1) (ii) of the Compensation (Defence) Act, 1939. See note, on s. 2 (1) (*b*) of that Act, to sub-s. (1), *supra*.

S. 10 of the Requisitioned Land and War Works Act, 1948. See note, on s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939, to sub-s. (1), *supra*. And note " Matters to be taken into account ", to sub-s. (4), *infra*.

Sub-s. (4).

Matters to be taken into account. Sub-s. (3) of s. 10 of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21) gave certain directions as to the calculation of the " after damage " compulsory purchase price under that Act.

These directions required that war damage occurring during requisition was to be disregarded. So also any work done on the land, during that period, was to be ignored if it was work in respect of which a payment had been or would be made by some person

interested in the land; *i.e.*, the compensation on de-requisition was not to be reduced by taking into account works which had been or were to be paid for by persons interested in the land. Such works would be reflected in the compulsory purchase price here referred to, which must therefore be adjusted by disregarding them in the circumstances mentioned. Regard was required to be had to any other damage, however, and also to any works which did not fall within the exception; see further s. 41 of the Requisitioned Land and War Works Act 1945 (31 Statutes Supp. 112) and s. 54 of the Act of 1947 (Hill, p. 150; 48 Statutes Supp. 111).

Sub-s. (4) applies these directions to the calculation of the value of the freehold interest, under sub-s. (2) (*a*), *supra*, *i.e.*, the "after damage" open market value of the land.

Increased compensation. Sub-s. (4) of s. 10 of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21), provided that where any works on land had been the subject of any payment by a person interested in the land, the limit placed on the total compensation would be increased as seemed just to take account of such consideration where any damage occurred to such works during requisition. The present subsection makes the same provision in relation to the limit imposed by sub-s. (1), *supra*. In effect, where a person has paid or will pay for works, and they have themselves been damaged, appropriate allowance for this can be made by way of increased compensation.

Sub-s. (5).

Compulsory purchase price. S. 10 (2) of the Requisitioned Land and War Works Act, 1948 (53 Statutes Supp. 21) defines this expression to mean the amount of the compensation (excluding compensation for disturbance, severance or injurious affection) which would be payable by a public or local authority, in pursuance of a notice to treat served immediately before de-requisition, of a freehold interest in the land free from encumbrances but subject to any easement or other restriction affecting the land at the date of notice to treat. This definition must now be read, however, subject to the provisions of Part III of the present Act, *ante*. So far as those provisions alter the basis of compensation, such alteration applies for the purpose of this definition also.

54. Special provisions relating to minerals.—(1) Development charges determined in respect of the winning and working of minerals shall cease to have effect in so far as they require the payment of any royalty or other sum in respect of minerals got after the commencement of this Act.

(2) Where a development charge has been determined in respect of the winning and working of minerals over a period ending after the commencement of this Act, the Central Land Board shall, if application is made to them in that behalf in accordance with the regulations for the time being in force under section seventy-three of the principal Act, vary the determination, and amend, discharge or release any convenants or charges made or given in respect thereof, in such manner as appears to them appropriate for limiting the development charge to the winning and working of the minerals within so much of that period as preceded the commencement of this Act, and shall repay any sums paid thereunder so far as may be requisite for giving effect to the variation.

(3) In relation to interests in land consisting of or comprising minerals, and in relation to claims established wholly or partly in respect of such land, the provisions of this Act shall have effect subject to such adaptations and modifications as may be prescribed by regulations made under this Act with the consent of the Treasury.

(4) Regulations made for the purposes of this section shall be of no effect unless they are approved by resolution of each House of Parliament.

(5) The Mineral Development Charge Set-off Regulations, 1951, shall cease to have effect; but in respect of the winning and working of minerals to which those Regulations applied no development charge shall be payable or be deemed ever to have been payable.

NOTES

Mineral development charges which have been determined now cease to have effect in relation to minerals got on or after 1st January 1955. Where a charge had been determined and operations begun before 18th November 1952, the Act of 1953 provided no relief from development charge during the period for which charge had been determined. In respect of such charges, the owner may obtain relief under a Case A payment, if so entitled in respect of charge incurred up to 31st December 1954. After that date action may be taken by the Central Land Board under s. 73 of the Act of 1947 (Hill,

p. 183; 48 Statutes Supp. 140). In relation to "set-off" minerals, development charges were not abolished under the Act of 1953, but, pending the coming into operation of the present Act, they remained subject to the Mineral Development Charge Set-Off Regulations, 1951 (S.I. 1951 No. 2156) as provided by s. 3 (5) of the Act of 1953 (Hill, 2nd Supp., p. B701; 78 Statutes Supp. 138). With abolition of mineral charges, the set-off regulations are to cease to have effect. It is also to be deemed in respect of minerals to which those regulations apply that no development charge has ever been payable. This deeming has two effects. It excludes any Case A payment under Part I in respect of such minerals as may have been worked before 1st January 1955, and it will bring such working within the provisions of s. 18 (4), *ante*, as "new development" so as to reduce any unexpended balance. "Moratorium" minerals worked up to 30th June 1951 will be excluded from this adjustment, however; see the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

The present Act follows the precedent of the Act of 1947 in leaving the modifications necessary, to apply its provisions to mineral land, to regulations. The same measure of Parliamentary control as was retained under that Act (s. 81 (5); Hill, p. 203; 48 Statutes Supp. 155) is retained in sub-s. (4), *supra*, by making the regulations subject to an affirmative resolution of each House of Parliament.

The regulations under this section are Part III (regs. 11–24) of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*. That instrument contains regulations made under s. 81 of the Act of 1947, as well as under the present section, and the opportunity has been taken to consolidate the existing regulations under that Act, with regulations under the present section.

In relation to the provisions of this Act those regulations provide as follows:—

Severed freehold minerals. That where the freehold interest in the minerals has been severed from the freehold in the remainder of the land since 1st July 1948, the claim holding or unexpended balance on the occasion of any act or event must first be apportioned between the minerals and the remainder of the land; and s. 2 (4), *ante*, is to apply as if the minerals and the remainder were parts of the claim area, and thereafter, for all purposes of the Act, the minerals and the remainder are to be regarded as separate claim areas. In such cases the provisions of the regulations will apply only to the mineral claim holding or balance (reg. 13 (1) of the Regulations, *post*).

There is no need to make specific provision in the case of severances before 1st July 1948. They will already constitute separate claim holdings.

No aggregation of severed mineral claim holdings with non-mineral holdings. Nothing in s. 17, *ante*, is to require an aggregation of any claim holding in respect of land consisting of minerals only with any other claim holding (reg. 13 (1)).

Value of minerals worked, without payment of charge, to be deducted before making Parts I and V payments. Where but for the Set-Off Regulations or sub-s. (5) of the present section, or s. 1 of the Act of 1953, a development charge would have been determined, in respect of minerals got before 1st January 1955, and a payment falls to be made under Part I or V of the Act, there will be deducted from the holding the development value of the minerals (other than "moratorium" minerals) got before the act or event (reg. 14).

Case A payment not to exceed holding as related to worked minerals. A Case A payment in respect of a mineral development charge is not to exceed such part of the holding as was attributable to the prospect of working the minerals worked before 1st January 1955 or, if the charge was determined up to a date before that date, up to that date. If the charge has been paid on a royalty basis the "single capital payment" for the purposes of s. 4 (3) (*b*), *ante*, is to be the gross amount payable in respect of the minerals got in the period (reg. 15).

Case B payments to take account of short workings and rent variations (public acquisitions). Under s. 5 (4) (*a*), *ante*, the principal amount of a Case B payment is the value of the holding reduced by the amount by which the "compensation" on a compulsory or quasi compulsory sale exceeded the existing use value of the interest. In the case of an interest of a lessor or a lessee in land which, at the date of acquisition, was subject to a mining lease (defined in reg. 1 (3)) it is the value of the claim holding, adjusted to take account of the effect of any provisions in the lease relating to short workings, or any provision as to any premium or capital sum paid under the lease, since 1st July 1948, and its effect on any royalty payable; and, in the case of payment to a lessor, to any provision as to variation of the period in which the lessee is liable to pay rent. No adjustment is to be made so as to increase any claim holding except to the extent that it can or will under the regulation reduce another claim holding in respect of the same minerals; and in a case where the minerals acquired are part only of a claim area, regard will be had to the extent to which short workings can be recovered out of leased minerals not in the acquisition (reg. 16 (1)). Where an adjustment is made which reduces the value of the claim holding and the other party to a lease (which subsisted on 1st July 1948) does not have an established claim (see s. 1 (3), *ante*, and reg. 8 (*f*)), the amount by which the claim holding is reduced will be paid to that party (reg. 16 (2)).

Under reg. 5 of the T. & C.P. (Minerals) Regulations, 1949 (S.I. 1949 No. 1996;

Hill, 2nd Supp., p. B94), any claim under Part VI of the Act of 1947 in respect of any interest in land which was the subject of a mining lease on 1st July 1948, was treated as a claim in respect of every other interest. Those other claims might have been excluded under s. 1 (3), *ante*. It may, however, have been by reason of consideration moving from such a party that the claim holding was adjusted; reg. 16 (2) is designed to take account of this fact in cases where that party's claim, or deemed claim, does not give rise to an " established " claim.

Case B payments restricted value of buildings (private sales). Where there has been a Case B payment, on a private sale, similar adjustments are to be made to the principal amount of any payment under s. 5 (1) (*b*), *ante*. A Case B payment, in the case of private sales, is the value of the claim holding reduced by the amount by which the sale price exceeded the " restricted " value of the interest at the time of the sale. This entails also a restricted valuation of any buildings, plant and machinery used in winning, working or processing minerals. The assumptions used for the calculation of development value under s. 61 of the Act of 1947, as modified by reg. 8 (*d*) of the regulations, are not used for this purpose. Instead the buildings are to be valued having regard to any planning permission which existed at the date of the sale (reg. 16 (3) (*b*)). If planning permission had been refused, before the sale, the loss of value on the buildings, plant and machinery will have been the subject of a claim under provisions similar to reg. 10 (1) of the Mineral Regulations, *post*; see reg. 10 of the T. & C.P. (Minerals) Regulations, 1948 (S.I. 1948 No. 1521; Hill, p. 837), as replaced by reg. 5 of the T. & C.P. (Minerals) Regulations, 1953 (S.I. 1953 No. 820; Hill, 2nd Supp., p. B719). Where regard is being had, in this connection, to a planning permission granted under the General Development Order it is to be assumed that the permission was subject to such conditions as the local planning authority might reasonably have imposed (reg. 16 (4)).

Material date. In connection with the accumulation of short workings the regulations make reference to such accumulations since a " material date ". Reference is also made elsewhere in the regulations to a material date.

This date, in the case of leases entered into before 1st July 1948, means 1st July 1951 (the date of the ending of the moratorium under s. 81 (2) (*a*) of the Act of 1947 (Hill, p. 202; 48 Statutes Supp. 154)). In the case of such leases, if there has been no working between those dates it is 1st July 1948. Where the mining lease was after 1st July 1948, it is the date of the lease (reg. 16 (5)).

Case C payments deductions for short workings. Case C payments will be reduced by the value of any increase in short workings accumulated at the date of the disposition over the amount accumulated at the material date, *ubi supra* (reg. 17).

Analogous Case B payments; realised development to be part of consideration. In determining the amount of an analogous Case B payment under s. 10, *ante*, regard is to be had only to the part of the claim holding attributable to the minerals worked before 1st January 1955, and there shall be included in the capital value of the consideration (s. 10 (3) (*a*), *ante*) any realised development value of those minerals. Realised development value means the excess of the gross amount of rents and royalties payable by the lessee before 1st January 1955 over the sum of the gross amount of any existing use rent which would have been obtained in the same period (if the land had been subject to a permanent restriction on new development; see s. 16 (5), *ante*), and the amount by which the value of the interest in the land, as so restricted, is depreciated by mineral working (reg. 18).

New development. The working of set-off minerals after 30th June 1951 (the expiry of the moratorium) is to be treated as new development; but if a deduction has already been made from the holding, on the occasion of a payment under Part I or V, it is not to be made again (reg. 19).

Compensation for refusal of, or conditional grant of, planning permission. The measure of depreciation under s. 26, *ante*, will take no account of depreciation in the value of buildings, plant and machinery so far as compensation has been or can be recovered under reg. 10 (see that regulation, and reg. 20). Strictly, mineral development has no Third Schedule tolerance. Depreciation in the value of buildings, plant, and machinery is a limping tolerance which is payable by way of s. 79 of the Act of 1947 (Hill, p. 197; 48 Statutes Supp. 151) as modified by reg. 10 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*. It is not payable by reference to the unexpended balance. It is grant aided compensation under s. 93 (1) (*b*) of the Act of 1947 (see s. 50 of this Act, *ante*).

Compulsory purchase. Where any interest under a mining lease is compulsorily acquired, the supplemental compensation payable under s. 31 (1), *ante*, to the lessor or lessee will be calculated in the following fashion. The amount of the unexpended balance attributable to the lessor's interest will be the whole balance less the value (at 1947 prices) of any short workings the lessee is entitled to recover, the value of any profit royalty in the lessee's interest and the capital value of the right to receive (up to the date of any break clause) the annual excess (if any) in the actual rent over an existing use rent of the land. The amount of the balance attributable to the lessee's interest will be the sum of the value of any short workings and the capital value of the profit

royalty. If the lease contains unworked minerals not acquired, the short workings to be considered will be such as cannot be recovered from those other minerals and the lessee's profit royalty will be considered in so far as it cannot be recovered by reason of the acquisition. Also, in such case, the deduction from the lessor's unexpended balance of the excess of actual over existing use rent will be so much as is appropriate to the land acquired (reg. 21 (1)).

The deduction of the capital value of the annual excess (if any) in the actual rent over an existing use rent, which is to be made from a lessor's share of an unexpended balance, may at first appear anomalous; but the amount concerned will already appear in compensation to him on the basis of existing use.

Profit royalty. In relation to the foregoing, " profit royalty " means either (1) the amount by which a 1947 tonnage royalty would have exceeded the royalty under the lease or (2) where there is no tonnage royalty, what would have been the 1947 tonnage royalty. Tonnage royalty means a royalty calculated by reference to the minerals got from time to time or by reference to the amount of manufactured articles produced therefrom or by any similar method (reg. 21 (2)).

Protection for future lessees. S. 33, *ante*, which provides protection for purchasers of interests which are subsequently acquired compulsorily, is extended to persons taking leases of minerals (reg. 22). See also s. 47, *ante*, and the notes thereto.

Compensation for disturbance. S. 36 (1) (*b*), *ante*, is to be modified so that compensation for disturbance will not be greater than it would have been if Part V of the Act of 1947, and ss. 30–35 of this Act, *ante*, had not been enacted; or less than it would have been if Part VI of the Act of 1947 had not had effect in relation to development values. The effect of the first part of this provision is intended to prevent any loss caused by limitation to existing use value being recovered by way of a claim for disturbance. This provision and the repeal of s. 119 (4) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205) by s. 71 of this Act and the Eighth Schedule, *post*, should be of assistance in the matter of a claim for trade disturbance. The variation of s. 36 (1) (*b*), *ante*, to provide that the compensation shall not be less because of Part VI of the principal Act, would seem to be intended to the same end. Any claim for disturbance by a mineral operator must be by reference to the amount of mineral got. This provision would seem to exclude any off-setting of the unexpended balance against a trade loss calculated by reference to profit on minerals or articles made therefrom (reg. 23 (*a*)).

Compensation for severance and injurious affection. Loss on buildings, plant or machinery used in winning, working or processing minerals occurring by reason of severance or other injurious affection (where the " relevant land " is mineral bearing land) is to be treated for the purposes of s. 36, *ante*, as part of the loss of immediate value, and not of the loss of development value (reg. 23 (*b*)). Any payment in respect of similar loss, on a planning decision, would not be payable by reference to the unexpended balance. It is therefore consistent to regard such loss as part of the loss of immediate value.

Compensation for past planning decisions or orders. In determining under s. 43, *ante*, the depreciation in value of an interest in any land, no account is to be taken of any depreciation of value of plant, buildings or machinery, if compensation has been paid or is payable under reg. 5 of the T. & C.P. (Minerals) Regulations, 1953 (S.I. 1953 No. 820; Hill, 2nd Supp., p. B719), or reg. 10 of the T. & C.P. (Minerals) Regulations, 1948 (S.I. 1948 No. 1521; Hill, p. 837). This depreciation, in buildings or plant, is really a depreciation in the value of land, but the regulations apply the provisions of s. 79 of the Act of 1947, as if it amounted to abortive expenditure. Reg. 24 (1) can be regarded, in effect, as an extension of s. 43 (1) proviso, *ante*.

Similar provisions in relation to accumulated short workings since the material date (*v. supra*), and in relation to variation in the period during which the lessee is liable to pay a rent, as apply in relation to Case B payments, are applied for the purposes of s. 44, *ante*, to adjust the value of the holding, or the fraction of the value, which attached to the qualified land. No adjustment will be made, however, to increase any holding except to the extent that the regulation also reduces another holding in respect of the same minerals (reg. 24 (2)).

Sub-s. (1).

Development charge. See ss. 4 and 49, *ante*, and s. 69 (5), *post*, and the notes thereto. See also s. 81 (2) (*c*) of the Act of 1947 (Hill, p. 202; 48 Statutes Supp. 155) and reg. 8 of the T. & C.P. (Minerals) Regulations, 1948 (S.I. 1948 No. 1521; Hill, p. 836); and reg. 9 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

Minerals. Includes normally all minerals and substances in or under land of a kind ordinarily worked by underground or surface working. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204).

Royalty. See s. 69 (1), *post*, and s. 41 (1) of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B71; 74 Statutes Supp. 76). That definition includes a dead rent and any periodical or other payment for minerals; but see the notes to s. 69 (1), *post*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

Sub-s. (2).

Central Land Board. See s. 63, *post*, and notes thereto.

S. 73 of the principal Act. See Hill, p. 183; 48 Statutes Supp. 140. As to the regulations in force thereunder, see T. & C.P. Development Charge Applications Regulations, 1950 (S.I. 1950 No. 728; Hill, 2nd Supp., p. B204).

Repay any sums paid. See s. 64 (8) (*d*), *post*, as to the provision of moneys to make such payments.

Sub-s. (3).

Regulations. T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*. For modifications made to the present Act, see the General Note, *supra*.

Sub-s. (4).

Approved by resolution. The present regulations are substantially amending legislation and the affirmative resolution procedure is intended to afford a measure of Parliamentary scrutiny.

Sub-s. (5).

Mineral Development Charge Set-Off Regulations, 1951. S.I. 1951 No. 2156; see Hill, 2nd Supp., pp. B254–B283, and the General Note, *supra*.

55. Modification of mining leases granted before 18th November, 1952.—(1) The Lands Tribunal may, upon application made to them within one year from the commencement of this Act by any party to a lease to which this section applies, by order modify the provisions of the lease so far as may be required in order to secure that the sums payable by the lessee under the lease, in respect of any period beginning on or after the date of the commencement of this Act, are equal to the sums which, in the opinion of the Tribunal, the lessee could, at the time of the lease, fairly and reasonably have been required so to pay if no development charges had been payable in respect of the winning and working of minerals.

(2) This section applies to the following leases, that is to say—

(*a*) any mining lease granted within the period beginning on the first day of July, nineteen hundred and forty-eight, and ending on the seventeenth day of November, nineteen hundred and fifty-two;

(*b*) any mining lease granted after the end of that period by virtue of the exercise before the commencement of this Act of an option granted within that period;

(*c*) any mining lease granted before the beginning of that period, if the terms of the lease as to the payments to be made thereunder by the lessee were varied by an agreement entered into within that period or by an order made within that period under section thirty of the Mineral Workings Act, 1951 (which empowered the Lands Tribunal to modify mining leases granted before the said first day of July).

(3) In determining for the purposes of subsection (1) of this section the sums which a lessee could fairly and reasonably have been required to pay in respect of any period beginning on or after the date of the commencement of this Act, the Tribunal shall have regard to the terms and conditions of the lease, other than terms and conditions as to the sums payable by the lessee thereunder, except sums so payable in respect of any period beginning before that date.

(4) The provisions of this section shall apply in relation to orders made under Part I of the Mines (Working Facilities and Support) Act, 1923, as they apply in relation to mining leases, with the substitution for references to the granting of a lease of references to the making of such an order and for references to the Lands Tribunal of references to the High Court.

(5) The provisions of this section shall apply in relation to an option conferring a right to require the grant of a mining lease, being an option granted within the period beginning on the first day of July, nineteen hundred and forty-eight, and ending on the seventeenth day of November, nineteen hundred and fifty-two, as they apply in relation to a lease to which this section applies, with the substitution for references to the terms and conditions of the lease and the sums payable by the lessee thereunder of references to the terms and conditions of the lease which would be granted if the option were exercised and to the sums which would be payable by the lessee under that lease.

(6) Section thirty of the Mineral Workings Act, 1951, shall cease to have effect.

NOTES

This section provides for the variation of mining leases, or of working facilities orders granted under the Mines (Working Facilities and Support) Act, 1923 (16 Halsbury's Statutes (2nd Edn.) 191), where the operative terms of the existing lease or order reflect the liability of the mining operator to pay development charge.

The variation is to be such as will secure that the sums payable by the lessee are equal to what would reasonably have been payable at the date of the lease if no development charge had been payable. The parties may enter into an agreement as to the appropriate modification; but it should be noted that the Lands Tribunal's power to modify any lease can only be exercised on an application made on or before the 1st January 1956.

The leases or orders which will be affected are mining leases granted between 30th June 1948 and 18th November 1952; leases granted after that period in exercise of an option granted in that period; and leases or orders before the 1st July 1948, which have already been varied (to the opposite effect) by agreement, or by the Lands Tribunal, under s. 30 of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B62; 74 Statutes Supp. 67) to take account of any liability for development charge. It is unlikely that there are many cases in the last category. Most minerals in lease on 1st July 1948, would qualify as set-off minerals; s. 30 of the Mineral Workings Act was applied to these in modified form by the Set-Off Regulations of 1951 (S.I. 1951 No. 2156; Hill, 2nd Supp., pp. B279, B281), but the circumstances there contemplated did not arise.

Sub-s. (1).

Lands Tribunal. See the Lands Tribunal Act, 1949 (Hill, 2nd Supp., pp. B1–B24; 61 Statutes Supp. 32). See also the Lands Tribunal Rules, 1949 (S.I. 1949 No. 2263), as amended by the Lands Tribunal (Amendment) Rules, 1951 (S.I. 1951 No. 2004) (Hill, 2nd Supp., pp. B116–B139 and B249). See also the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

Lease. Generally, this section applies to mining leases, as defined in s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204), granted when development charge was payable; see sub-s. (2), *supra*.

Sums payable . . . after . . . this Act. The process of determining the sums which should be payable will be of the nature of a reversal of the provisions of s. 30 (2) (repealed) of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B63; 74 Statutes Supp. 67). In modifying leases under that section, however, provision was to be made for the transfer of the benefit of the Part VI claim to the lessor under the proposed Treasury Scheme. The sums which the Tribunal are asked to find are dependent on the terms which would have been negotiated at the date of the lease, in the absence of liability for development charge. This is not a question of compensation but what would have been the consideration payable by reference to disposition taking place at a past date. Cf. *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd.* v. *Pontypridd Waterworks Co.*, [1903] A.C. 426; 11 Digest (Repl.) 136, *199*. In many cases where modification arises the circumstances will also be such as will give rise to an analogous Case B payment under s. 10, *ante*, and reg. 18 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*; see further the deductions from a claim holding or holdings which may be required by reg. 14, and see the notes to s. 54, *ante*.

Development charges. See generally Part VII of the Act of 1947 (ss. 69–74; Hill, pp. 172–188; 48 Statutes Supp. 134–143). As to development charges relating to minerals, see s. 81 (2) (*c*) of the Act of 1947 (Hill, p. 202; 48 Statutes Supp. 155) and reg. 9 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*.

Minerals. See generally the notes to s. 54, *ante*; and s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204).

Sub-s. (2).

Mining lease. Means a lease, under lease, tenancy or licence (whether personal or by way of profit á prendre) conferring a right to win or work minerals; see s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204).

1st July 1948. Appointed day for the coming into operation of the Act of 1947; see s. 120 of that Act and S.I. 1948 No. 213 (Hill, pp. 266, 733; 48 Statutes Supp. 209, 294). There is no need here to make any reference to the three-year mineral "moratorium", as this section relates to payments to be made under the lease in respect of periods after 1st January 1955.

17th November 1952. Development charges were abolished generally in respect of development begun on or after the 18th November 1952; see s. 1 of the Act of 1953 (Hill, 2nd Supp., p. B695; 78 Statutes Supp. 133). Leases granted after that date would be negotiated at open market rates. Off-set minerals would still be subject to s. 3 (5) (now repealed) of the Act of 1953 (Hill, 2nd Supp., p. B701; 78 Statutes Supp. 138), but in view of the provisions of reg. 8 of the Mineral Development Charge Set-Off Regulations, 1951 (S.I. 1951 No. 2156) (Hill, 2nd Supp., p. B263) the charge would have fallen to be dealt with by set-off. As to the present position of "near-ripe" minerals, and as to minerals worked without payment of charge, see the notes to s. 54, *ante*.

Option. See s. 69 (4), *post*. An option must have been in writing or attested by a signed note or memorandum. See also sub-s. (5), *supra*, as to the modification of an option.

S. 30 of the Mineral Workings Act, 1951. Hill, 2nd Supp., p. B62; 74 Statutes Supp. 67. That section was applied to "near-ripe" minerals within the set-off scheme by the Mineral Development Charge Set-Off Regulations, 1951 (S.I. 1951 No. 2156), Hill, 2nd Supp., pp. B254, B279, B281; but the circumstances there contemplated did not in fact arise. Applications under the section were stayed by s. 3 (7) of the Act of 1953 (Hill, 2nd Supp., p. B702; 78 Statutes Supp. 138). The section is now repealed, together with s. 31 (1) of that Act and s. 3 (7) of the Act of 1953, by s. 71 (2) of this Act and the Eighth Schedule, *post*; see also sub-s. (6), *supra*.

Sub-s. (3).

Period beginning before that date. Under sub-s. (1), *supra*, the Tribunal are to secure that, for any period beginning after the commencement of the Act, the payments under the lease are to be such as would have been negotiated at the commencement of the lease, if there had been no development charge. See note, "Sums payable . . . after . . . this Act" to sub-s. (1), *supra*. The present subsection requires regard to be had to the terms and conditions of the lease other than those as to the sums payable by the lessee. The words "except sums so payable" grammatically qualify the previous reference to sums payable; *i.e.*, regard is to be had to sums payable in respect of any period beginning before 1st January 1955. This appears to confer on the Tribunal a power to have regard to past circumstances in fixing the future payments, and to allow proper adjustments on that basis.

Sub-s. (4).

Mines (Working Facilities and Support) Act, 1923. See 16 Halsbury's Statutes (2nd Edn.) 191. See also s. 81 (4) of the Act of 1947 (Hill, p. 203; 48 Statutes Supp. 155) and the T. & C.P. (Modification of Mines Act) Regulations, 1948 (S.I. 1948 No. 1522) (Hill, p. 840; see also Hill, 2nd Supp., p. B676), modifying the provisions of the Act of 1923 in accordance with s. 81 of the Act of 1947 (*ubi supra*). (Reg. 6 of S.I. 1948 No. 1522 was excluded by s. 3 (6) of the Act of 1953 as from 20th May 1953.)

High Court. Cf. the Railway and Canal Commission (Abolition) Act, 1949 (19 Halsbury's Statutes (2nd Edn.) 1136).

Sub-s. (5).

Option. The present subsection permits the modification of an option. Where a lease has been granted in pursuance of an option, see sub-s. (2), *supra*.

56. Contribution to Ironstone Restoration Fund.—(1) In respect of ironstone extracted by opencast operations after the commencement of this Act, the rate of the contributions payable under section three of the Mineral Workings Act, 1951 (which provides for contributions to the Ironstone Restoration Fund from ironstone operators) shall be twopence farthing instead of one penny and one eighth per ton:

Provided that this subsection shall not apply—

(*a*) to ironstone which immediately before the fifteenth day of February, nineteen hundred and fifty-one, was subject to a full restoring lease; or

(*b*) to ironstone in respect of which an order under section seven of the said Act of 1951 (which relates to charitable trusts) was in force immediately before the commencement of this Act,

and the Minister may by order made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, direct that, as from the date of the order or such earlier date as may be specified in the order, this subsection shall not apply to such other ironstone as may be so specified, being ironstone an interest in which is held on the date of the order on charitable trusts or for charitable purposes.

(2) Where in accordance with the preceding subsection contributions at the rate of twopence farthing per ton are payable by a lessee under a mining lease or by the person granted a right to work minerals by an order under Part I of the Mines (Working Facilities and Support) Act, 1923, a sum, computed in accordance with the provisions of the Third Schedule to the said Act of 1951, may, notwithstanding anything in the lease or order, be deducted in accordance with the provisions of that Schedule from payments by the lessee under the lease or by that person under the order, or may be otherwise recovered in accordance with those provisions by the lessee or by that person:

Provided that this subsection shall not apply to any mining lease made after the fifteenth day of February and before the first day of August, nineteen hundred and fifty-one, which contained a provision expressly excluding the operation of paragraph (*b*) of subsection (2) of section six of the said Act of 1951 (which conferred on lessees rights corresponding with those conferred by this subsection).

(3) Section five of the Mineral Workings Act, 1951 (which provides for contributions from ironstone owners by reference to payments falling to be made under section fifty-eight of the principal Act) and section six of that Act shall cease to have effect.

NOTES

Contributions to the Ironstone Restoration Fund were formerly payable, as to one penny and one eighth, by the operator; one penny and one eighth by the owner; and three farthings from the Exchequer; see the Mineral Workings Act, 1951 (Hill, 2nd Supp., pp. B37 *et seq.*; 74 Statutes Supp. 42), ss. 3, 5 and 8. See also the Explanatory Memorandum issued by the Ministry of Housing and Local Government (Hill, 2nd Supp., pp. B446–B456). The owner's contribution was to have been payable by way of deduction from the development value claim.

In a case where the ironstone was a set-off mineral, the operator's contribution was to be twopence farthing, with a right to make deductions from payments under the lease in accordance with the provisions of s. 6 of, and the Third Schedule to, the Mineral Workings Act, 1951 (Hill, 2nd Supp., pp. B43, B73; 74 Statutes Supp. 47, 79).

Paradoxically, all minerals have now, in effect, become "set-off minerals" with the abolition of development charges. The present section therefore provides generally for the operator's contribution to include the owner's contribution with a right to recover under the lease; see also s. 3 of, and the Third Schedule to, the Mineral Workings Act, 1951, as correspondingly amended by s. 71 of this Act and the Seventh Schedule, paras. 6 and 7, *post*.

No contribution was payable under the Mineral Workings Act, 1951, by an ironstone owner where the ironstone was subject to a full restoring lease at the date of the introduction of the Bill for that Act (15th February 1951). In such case the operator's contribution is left at one penny and one eighth. Where the land was held on charitable trusts the owner's contribution could be excluded by order; see now sub-s. (1) proviso, *supra*.

The right of the operator to recover under the lease may be excluded in the case of a lease, made between the introduction of the Bill for the Act of 1951 and its subsequent passing into law (1st August 1951), which provided for the exclusion of the corresponding provisions of s. 6 (2) (repealed) of the Act of 1951 (see s. 6 (2) (*b*) thereof, Hill, 2nd Supp., p. B43).

Explanatory Memorandum. As to the Ironstone Restoration Fund generally, see the Ministry of Housing and Local Government Memorandum (Hill, 2nd Supp., pp. B446 *et seq.*). The present position as to contributions to the Fund is somewhat similar to that described in the Memorandum (paras. 13–19) as applying to set-off minerals. References to ss. 5, 6 and 7 (repealed) of the Mineral Workings Act may generally be read as referring to s. 3 as amended by this Act. The Mineral Set-Off Regulations are revoked by s. 54 (5) of the present Act, *ante*; see also the notes, *infra*, to sub-s. (3).

Sub-s. (1).

S. 3 of the Mineral Workings Act, 1951. See Hill, 2nd Supp., p. B40;

74 Statutes Supp. 45. In respect of open cast ironstone extraction in the ironstone district after 30th June 1951, operators were required to pay to the Minister a contribution of one penny and one eighth for each ton of ironstone extracted. See, however, the amendments made to that section by s. 71 (1) and the Seventh Schedule, *post*. That section now accords with the arrangements made by the present section, and includes provisions adapted from ss. 5 (3), 6 and 7 (repealed) of that Act.

15th February 1951. Date of the introduction of the Mineral Workings Act, 1951, as a Bill.

Full restoring lease. See s. 69 (1), *post*, and s. 41 (1) of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B70; 74 Statutes Supp. 76). Substantially it means a lease imposing an obligation to restore the land so as to be fit for agriculture, and containing no provision for payment in lieu of complying with the obligation or by way of liquidated damages for such failure. For the previous provisions of ss. 5 (3) and 6 (1) (repealed) of the Mineral Workings Act, 1951, see Hill, 2nd Supp., pp. B42, B43; 74 Statutes Supp. 46, 47, which excluded the owner's liability to contribute, in so far as there was a full restoring lease, or any increase of operator's contribution in similar circumstances under the set-off scheme.

Charitable trusts. See s. 85 of the Act of 1947 (Hill, p. 209; see also Hill, 2nd Supp., p. B644; 48 Statutes Supp. 160). The power to make orders under s. 7 of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B45; 74 Statutes Supp. 49), expired on 31st December 1952. That section is repealed by s. 71 (2) and the Seventh Schedule, *post*, but its provisions are in effect replaced by the latter part of the proviso to this subsection. Orders made under the former power were the Ironstone (Exemption from Contributions) (No. 1) Order, 1952 (S.I. 1952 No. 695), which was not published in the Statutory Instrument Series by H.M.S.O., and the No. 2 Order (S.I. 1952 No. 2251); see notes in Hill, 2nd Supp., pp. B45, B296. Cf. also s. 3 (2) provisos (*b*) and (*c*) of the Mineral Workings Act, 1951, as amended by s. 71 (1) of this Act and the Seventh Schedule, *post*.

Sub-s. (2).

Mines (Working Facilities and Support) Act, 1923. See note to sub-s. (4) of s. 55, *ante*.

Third Schedule to the Mineral Workings Act, 1951. Substantially that provision enacts a formula for the making of deductions by the operator, to be calculated in relation to his total payment to the Minister so that if a full royalty is payable under the lease half the payment may be deducted. If there is less than a full royalty, the deduction decreases as the " profit royalty " increases. See Hill, 2nd Supp., pp. B43 to B45, B73, B74. See also the amendments made to the Third Schedule to the 1951 Act by s. 71 of the present Act and para. 7 of the Seventh Schedule, *post*. The Third Schedule now has effect under the added sub-s. (2A) of s. 3 of the 1951 Act instead of the repealed s. 6 of that Act.

15th February 1951. See the note to sub-s. (1), *supra*.

1st August 1951. Date of the commencement of the Mineral Workings Act, 1951.

Sub-s. (3).

Ss. 5 and 6 of the Mineral Workings Act, 1951. Those sections and s. 7 are repealed by s. 71 and the Eighth Schedule, *post*. (As to their former provisions, see Hill, 2nd Supp., pp. B41–B45; 74 Statutes Supp. 46–49).

S. 5 provided for a contribution from ironstone owners, generally, by reference to the s. 58 scheme (under the Act of 1947). Under the Act of 1947 it was only owners who had a claim who were being compensated for the loss of the development value in the ironstone. In the case of set-off minerals, however, the owner was being treated as if there was no development charge (the charge was to be treated as being equal to the claim; see reg. 8 (2) of the Mineral Development Charge Set-Off Regulations, 1951 (S.I. 1951 No. 2156), Hill, 2nd Supp., p. B263). In such case, to secure collection of the owner's contribution, the operator's contribution was doubled by s. 6 and he was entitled thereafter to obtain relief under the lease, in accordance with the formula contained in the Third Schedule to the 1951 Act, which took account of how far the lessee-operator shared in the development value.

Generally both the operator's and the owner's contributions are now collected in this fashion under the amended s. 3 of the 1951 Act.

57. Recovery, on subsequent development, of payments under s. 59 of principal Act.—(1) Where a payment under section fifty-nine of the principal Act (other than a payment not exceeding twenty pounds) has become payable in respect of an interest in land, or becomes so payable after the commencement of this Act, the Central Land Board shall cause notice of the payment, specifying the amount of the payment and the land to which it relates, to be deposited with the council of the county borough

or county district in which the land is situated and, if that council is not the local planning authority, with the local planning authority:

Provided that—

(*a*) the preceding provisions of this subsection shall not apply to any amount which is recoverable under subsection (7) of section fifty-two of this Act or which would be so recoverable but for the provisions of paragraph (*a*) of the proviso to that subsection;

(*b*) if a development charge was determined to be payable in respect of the land to which the payment related or relates (in this proviso referred to as " the payment area "), or in respect of land which included the payment area, the preceding provisions of this subsection shall not apply to that payment; and

(*c*) if a development charge was determined to be payable in respect of part of the payment area, or in respect of land which included part (but not the whole) of that area, the preceding provisions of this subsection shall apply as if separate payments of so much of the amount aforesaid as is respectively attributable thereto had been payable in respect of that part of the payment area and the remainder of that area.

(2) Notices deposited under this section shall be registered in the register of local land charges, in such manner as may be prescribed by rules made for the purposes of this section under subsection (6) of section fifteen of the Land Charges Act, 1925, by the proper officer of the council of the county borough or county district.

(3) Section twenty-nine of this Act, except subsection (9) thereof, shall have effect in relation to notices registered under this section as it has effect in relation to notices registered under section twenty-eight of this Act:

Provided that—

(*a*) the said section twenty-nine shall apply for the purposes of this section with the substitution for references to the compensation specified in a notice of references to the payment so specified, and as if that section applied to every description of new development; and

(*b*) no amount shall be recoverable by the Minister under the said section twenty-nine as applied by this subsection in relation to any land in relation to which an amount has become recoverable by the Central Land Board under subsection (7) of section fifty-two of this Act.

(4) For the purposes of this Part of this Act a payment under section fifty-nine of the principal Act shall be treated as apportioned, as between different parts of the land to which it related, in the way in which it might reasonably be expected to have been so apportioned if, under the scheme made under the said section fifty-nine, the authority determining the amount of the payment had been required (in accordance with the same principles as applied to the determination of that amount) to apportion it as between different parts of that land.

(5) References in this section to the amount of a payment under section fifty-nine of the principal Act shall be construed as including any interest payable thereon under subsection (3) of section sixty-five of that Act.

NOTES

This section provides for the registration of War Damage Scheme payments under s. 59 of the principal Act against the land to which they relate, as envisaged by para. 44 of the White Paper (Cmd. 8699; Hill, 2nd Supp., p. B713); and for recovery of the registered amount on subsequent development of the land. Exception is made from the requirement of registration:

(*a*) to prevent overlap or conflict with the provisions for recovery of sums from acquiring authorities (s. 52, *ante*; sub-s. (1) proviso (*a*), *supra*);

(*b*) if development charge was determined to be payable in respect of the payment area of the War Damage Scheme payment (sub-s. (1) proviso (*b*), *supra*), or part of the area (*ibid.*, proviso (*c*)).

The exception from registration where a development charge has been determined prevents, in rough-and ready fashion, the anomaly that would otherwise arise from development value being " bought back " twice, once by way of development charge and again under this section on the carrying out of subsequent development. It will be remembered that the War Damage Scheme payment will have had the effect of reducing or extinguishing a claim holding, or one or more separate holdings, derived from a general Part VI claim established under s. 58 of the principal Act; see s. 2 (2) (*b*), *ante*, and the Third Schedule, *post*.

There may be cases where the opposite form of anomaly arises. For example, a War Damage Scheme payment may have represented, say, half the value of the general Part VI claim on the same land. A small development charge may have been determined and paid in respect of all that land. The claim holding representing the Part VI claim, reduced under the Third Schedule, *post*, may have been sufficient to repay the development charge under Case A (ss. 3 and 4) in Part I, *ante*. It may now be possible to develop the land further without repaying the War Damage Scheme payment under this section.

Where a War Damage Scheme payment is registrable, it will be registered by the proper officer of the appropriate local authority in the register of local land charges; see sub-s. (2), *supra*, and the Local Land Charges (Amendment) Rules, 1954 (S.I. 1954 No. 1677), *post*, and cf. s. 28, *ante*. The payment will be recoverable by the Minister on the subsequent carrying out of any form of new development, subject to the Minister's power, under s. 29, *ante*, as applied by sub-s. (3), *supra*, to remit the amount recoverable, wholly or in part, and leave an appropriate amount registered against the land.

It is not clear what amount is recoverable if part only of the payment area of the registered War Damage Scheme payment is developed. Presumably it is the amount to be treated as apportioned to that part under sub-s. (4), *supra*. Any other interpretation would lead to difficulty in practice. Recovery is excused where, in the case of certain land acquired by public authorities, an amount has become recoverable by the Central Land Board under s. 52 (7), *ante*; see sub-s. (3) proviso (*b*), *supra*. Note, also, that no amount can be recovered under s. 29, *ante*, as applied, unless development is carried out on land in respect of which a notice has already been registered under sub-s. (2), *supra*. Development carried out before registration but after the abolition of development charge will thus involve no liability (for charge or under this section), nor will it affect the amount of any unexpended balance of established development value, see s. 18 (4) proviso, *ante*. The Bill for this Act contained a provision (originally para. (*b*) of the proviso to sub-s. (3), *supra*) which would have given retrospective effect to registration, but that was omitted; see 189 H. of L. Official Report 1085–1088 (Committee) and 1488 (Report).

Sub-s. (1).

S. 59 of the principal Act. S. 59 of the Act of 1947 (Hill, p. 159; 48 Statutes Supp. 118) provides for payments in respect of certain war-damaged land depreciated in value by that Act, where a value payment was appropriate under the War Damage Act, 1943 (7 Statutes Supp. 116) and its amount was reduced by taking into account the prospect of alternative redevelopment; cf. the notes to s. 2 of this Act, *ante*. Under s. 59 of the Act of 1947, the Treasury made the Planning Payment (War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., pp. B94–B106), which came into operation on 12th December 1949. Regulations for the purposes of that scheme, the Planning Payments (War Damage) Regulations, 1949 (S.I. 1949 No. 2255), were made by the Minister (of Town and Country Planning) under ss. 60 and 64 (2) of the principal Act (Hill, pp. 160, 167; 48 Statutes Supp. 119, 127). Part VI of the principal Act, so far as it relates to war damage scheme payments, and the Scheme and Regulations thereunder, mentioned *supra*, were not affected by the Act of 1953.

When the s. 59 scheme was made, it was explained that payments thereunder would be taken into account when the general Part VI scheme came to be made under s. 58 of that Act. See also the Central Land Board's pamphlet, S.1A (War Damage), paras. 7 and 8 (Hill, 2nd Supp., p. B567). The present Act, in a sense, replaces the s. 58 scheme, which will not be made; see s. 2 (1) of the Act of 1953 (Hill, 2nd Supp., p. B697; 78 Statutes Supp. 135), as amended by s. 71 and the Seventh and Eighth Schedules, *post*. The intended set-off is now made by s. 2 (2) (*b*), *ante*, and the Third Schedule, *post*, which extinguish or reduce in value claim holdings (representing the benefit or parts of the benefit of the general Part VI claims established under the principal Act) by reference to War Damage Scheme payments. This set-off operates from the date of the Scheme (12th December 1949), whether the payment is made before or after 1st January 1955.

To that extent, it may be said that the recipient of a War Damage Scheme payment has received part or all of the value of the claim holding or holdings established on the land. The payment will have been assessed on the assumption that the profitable redevelopment, on the prospect of which it was based, was prevented by the Act of 1947. Development may now, however, be permitted, and may be carried out without paying

a development charge. The White Paper, para. 44 (Cmd. 8699; Hill, 2nd Supp., p. B713), proposed that War Damage Scheme payments should be recoverable, if development was subsequently carried out, in the same way as registered compensation paid under Parts II and V, *ante*, is recoverable. (In all these cases, the War Damage Scheme payment, or the registered compensation, has been paid, in effect, out of a claim holding or holdings (or unexpended balances based on such holdings) on the assumption that development is restricted; and is generally made recoverable if new development is allowed).

As War Damage Scheme payments have already operated to reduce the value of claim holdings, under the Third Schedule, *post*, no further deduction from the unexpended balance of established development value is required if new development is carried out; see s. 18 (4), proviso, *ante*.

Not exceeding £20. Small payments are considered not worth registering; cf. s. 28 (1) and (4), *ante*.

Interest in land. See s. 69 (1), *post*, as to the meaning in this Act. See art. 4 of the T. & C.P. (War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., p. B97), for the definition of a " qualified interest " as an interest in respect of which a payment is required to be made under arts. 1–3 of that Scheme. That definition applies also in the Planning Payment (War Damage) Regulations, 1949 (S.I. 1949 No. 2255), see art. 1 (xv) thereof (Hill, 2nd Supp., p. B108); and cf. the definition of the " said interest in land " in art. 1 (ix) as the interest in fee simple or the leasehold interest in land in respect of which a s. 59 claim is, or is deemed to be, made. See the Scheme and Regulations generally, as to who was entitled to claim, and in respect of what interests; and as to how the amount of the payment fell or falls to be assessed and to whom it was or will be paid. Note that the Scheme provided for diverting payments in certain cases (mortgages, rentcharges, settlements, testators dying after 1st July 1948, and contracts of sale pending at that date); see also regs. 11–13 of the above-mentioned Regulations. The present subsection is concerned with registering War Damage Scheme payments against land, not against interests subsisting in land, and is not concerned with the circumstances in which a payment was or is made to some particular person.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*. Neither the Act of 1953 nor the present Act prevents War Damage Scheme payments being made.

Central Land Board. As to making claims, for War Damage Scheme payments, to the Board, see reg. 4 of the above-mentioned Regulations (S.I. 1949 No. 2255; Hill, 2nd Supp., p. B109). The Board are the authority responsible for determining claims (reg. 10) subject to appeal to the Lands Tribunal (reg. 14, as amended by s. 1 of the Lands Tribunal Act, 1947, on 1st January 1950). As to the Board generally, see ss. 2 and 3 of the Act of 1947 (Hill, pp. 40–42; 48 Statutes Supp. 26, 27), subject to s. 63 of this Act, *post*, which provides for the dissolution of the Board by Order in Council.

Amount of the payment. See sub-s. (5), *supra*; interest paid is to be included; but not, of course, any sum allowed by the Board toward's professional fees incurred by the claimant.

Land to which it relates. Cf. the definition of the " said land " in reg. 1 (x) of the above-mentioned Regulations (S.I. 1949 No. 2255; Hill, 2nd Supp., p. B107).

Council of the county borough or county district. As to London and the Isles of Scilly, see s. 62, *post*. Cf. notes to s. 28 (4), *ante*.

Local planning authority. See s. 4 of and the First Schedule to the Act of 1947 (Hill, pp. 42, 268; 48 Statutes Supp., 28, 211). Cf. the notes to s. 16, *ante*.

S. 52 (7). War Damage Scheme payments are not registrable under this section if they are recoverable under s. 52 (7), *ante*, nor if their recovery is excused under s. 52 (2) or (3) as applied by s. 52 (7), proviso (*a*). Similarly, no amount is recoverable under s. 52 if an amount has become recoverable under s. 29, *ante*, as applied by the present section; see s. 52 (7) proviso (*b*), *ante*. See also sub-s. (3) proviso (*b*), *supra*.

Development charge was determined. See s. 69 (5), *post*, and cf. the notes to ss. 14 and 49, *ante*. Contrast the wording of s. 52 (3), *ante*, which refers only to development charge determined to be payable in respect of certain operations or the institution of certain uses.

Separate payments . . . of the amount . . . attributable. Where development charge was determined in respect of part only of the area giving rise to the War Damage Scheme payment (whether with or without other land) an appropriate part of the War Damage Scheme payment is to be disregarded and the remainder registered against the land to which it related (and which was not land in respect of which the development charge was determined). The amount to be attributed to this land will be determined as mentioned in sub-s. (4), *supra*.

Sub-s. (2).

Registered. The present subsection is in the same words as s. 28 (5), *ante*, which relates to the registration of Part II or Part V compensation under s. 27 or s. 46, *ante*,

or compensation for depreciation under s. 39, *ante*. For the rules made for the purposes of this section (and s. 28, *ante*), see the Local Land Charges (Amendment) Rules, 1954 (S.I. 1954 No. 1677), *post*.

Sub-s. (3).

S. 29 of this Act. That section, *ante*, provides primarily for the recovery, by the Minister, of compensation paid by him under Part II, if certain forms of new development are carried out after such compensation has been registered as a local land charge. That section is applied also by s. 41 (1) in Part IV and s. 46 (4) in Part V, *ante*. The present section applies s. 29 to permit the recovery by the Minister of a registered War Damage Scheme payment on the subsequent carrying out of any description of new development (as defined in s. 16 (4), *ante*).

S. 29 (9), *ante*, provides for the " adding back " of an amount to the unexpended balance of established development value where registered Part II compensation is recoverable. Somewhat similar provision is made for Part IV and Part V cases as explained in the notes to s. 29 (*a*), *ante*. If a War Damage Scheme payment becomes recoverable, however, no amount is added back; but s. 18 (4) proviso, *ante*, ensures that no deduction from an unexpended balance will fall to be made, under that subsection, by reason of development value realised in carrying out the subsequent development. This provision is, in a straightforward case, comparable with the effect of s. 29 (9); but it affords no protection, in the form of an unexpended balance, if a compulsory purchase intervenes between the repayment of the War Damage Scheme payment and the realisation of the development.

New development. See s. 16 (4), *ante*, and cf. s. 29 (2), *ante*.

Recoverable under s. 52 (7). See that section, *ante*, and cf. sub-s. (1), *supra*. War Damage Scheme payments will not be registered under sub-s. (1) if an amount is recoverable under s. 52 (7) or if its recovery under that provision is excused by s. 52 (7), proviso (*a*). But if a payment has been registered it will be recoverable by the Minister under this subsection and s. 29, *ante*, unless an amount has actually become recoverable under s. 52 (7). This seems to mean that the benefit of s. 52 (2) or (3) as applied by s. 52 (7), proviso (*a*) is lost, if a payment is registered under sub-s. (1), *supra*, before an interest in land is acquired as mentioned in s. 52, *ante*.

Sub-s. (4).

This Part of this Act. *I.e.*, Part VI, ss. 47–72. *Quaere*, whether this includes s. 29, in Part II, *ante*, as applied by sub-s. (3), *supra*; see the next note, *infra*.

Treated as apportioned. The formula used resembles that used in s. 2 (4), *ante*, in defining the " properly attributable " amount of an established Part VI claim (under s. 58 of the principal Act), and that used in s. 18 (5), *ante*. The present section contains no procedure for carrying out the apportionment. If an apportionment is involved in the registration of a War Damage Scheme payment under sub-ss. (1) and (2), *supra*, it will be carried out by the Central Land Board; no provision is made for an appeal to the Lands Tribunal.

If part only of the land is subsequently developed, it seems that the amount recoverable under s. 29, *ante*, as applied by sub-s. (3), *supra*, will be the amount which is to be treated as apportioned to the land developed; see s. 29 (3) (*b*), *ante*. A notice deposited under the present section will not, apparently, contain an apportionment distributing the amount of the payment to different parts of the land. It may be, therefore, that the amount is to be taken to be distributed rateably according to area; see s. 28 (6), *ante*; this interpretation would lead to great inconvenience.

This section is peculiar in so far as it affords no opportunity for disputing apportionments: cf. ss. 13, 27, 31, 39, 40, 45 and 48, *ante*, and s. 66, *post*. It will be remembered that any War Damage Scheme payment will cause an appropriate reduction in value, or extinguishment, of a claim holding or separate holdings under s. 2 (2) (*b*), *ante*, and the Third Schedule, *post*. Adjustments may also be required in respect of development charge determined and secured by a pledge of a claim holding (see s. 2 (2) (*a*), *ante*, and the Second Schedule, *post*), or when a payment is made under Part I, *ante*. When a claim holding falls to be so adjusted, the nature of the adjustment must usually be determined on any subsequent occasion when the value of a claim holding, or a fraction of such a value, becomes relevant under Part I or Part V, *ante*; or when such values are considered in finding an unexpended balance for the purposes of Parts II and III, or s. 40 in Part IV, *ante*. Such determinations and apportionments may be disputed on an appeal to the Lands Tribunal under ss. 13, 27, 31, 40, 45 and 48, *ante*. Such an appeal may thus relate in part to the same matters as arise on an apportionment under this section.

If a notice under this section has been deposited in respect of part of the payment area of a War Damage Scheme payment, as mentioned in sub-s. (1) proviso (*c*), *supra*, at least one apportionment will have been made by the Board for that purpose; on some subsequent occasion, if an appeal is made to the Lands Tribunal, such an apportionment will not rank as a binding " previous apportionment " as defined in s. 69 (1), *post*. The Tribunal may then find the Board's apportionment under this section was incorrect, but there is no procedure for varying the notice registered under sub-s. (2), *supra*, in such a case.

Another peculiarity arises from the different provisions for assignment of War Damage Scheme claims under s. 59 of the principal Act and for assignment of the general Part VI claims under s. 58 thereof; see the notes to s. 60 of this Act, *post*.

Sub-s. (5).

Interest. Interest on War Damage Scheme payments is payable under s. 65 (3) of the Act of 1947 (Hill, p. 169; 48 Statutes Supp. 129) for the period from 1st July 1948 to the date of payment. The Act of 1953 repealed s. 65 of the principal Act only so far as it related to payments under the general scheme which was to have been made under s. 58 of that Act, and did not affect the payment of interest on War Damage Scheme payments.

58. Provisions as to monopoly value of licensed premises.—(1) The provisions of this section shall have effect where it is certified by the Commissioners of Customs and Excise (in this section referred to as " the Commissioners ")—

(*a*) that on the grant, or provisional grant, of a justices' on-licence to which this section applies a payment was imposed by reference to monopoly value, as mentioned in subsection (1) of section fourteen of the Licensing (Consolidation) Act, 1910 (in this section referred to as " the monopoly payment "); and

(*b*) that in assessing that payment account was taken of the effect of Part VII of the principal Act, and in consequence thereof the payment was increased by an amount specified in the certificate (in this section referred to as " the certified amount "),

and it is certified by the Central Land Board that no development charge has been determined by the Board to be payable in respect of the erection or use of the premises to which the licence related.

(2) This section applies to any justices' on-licence granted, or provisionally granted, after the first day of July, nineteen hundred and forty-eight, and before the eighteenth day of November, nineteen hundred and fifty-two.

(3) Any certificate issued by the Central Land Board under this section shall state whether, before the eighteenth day of November, nineteen hundred and fifty-two, operations for the erection of the premises to which the licence related were begun, or the use of those premises in pursuance of the licence was instituted, in such circumstances that a development charge could have been determined to be payable in respect thereof if the circumstances referred to in paragraphs (*a*) and (*b*) of subsection (1) of this section had not existed.

(4) If it is certified by the Central Land Board that a development charge could have been determined as mentioned in the last preceding subsection, the provisions of Part I of this Act shall apply as if the person who paid the monopoly payment, or, if that payment was not paid in full in the first instance, the person who paid the first instalment thereof, had incurred a development charge in respect of the land on which the operations were begun, or the use instituted, as mentioned in the last preceding subsection, and the amount of the charge had been the certified amount:

Provided that—

(*a*) any payment falling to be made by virtue of this subsection shall be made by the Commissioners instead of by the Board; and

(*b*) subsections (2) and (3) of section fourteen of this Act shall not apply to payments falling to be made by virtue of this subsection.

(5) Where, apart from this subsection, a payment (in this subsection referred to as " the special payment ") would be payable by virtue of the last preceding subsection, then, unless the monopoly payment has been paid in full, the Commissioners shall not pay the special payment to the person entitled thereto, but—

(*a*) if the monopoly payment was payable by instalments, the amount payable in respect of each instalment shall be reduced rateably so that the total reduction is equal to the principal amount of the special payment, and, if one or more instalments have been paid, the Commissioners shall repay so much thereof as by reason of the reduction ought not to have been paid, together with interest on the amount so repaid at the rate of three and one-half per cent. per annum from the first day of July, nineteen hundred and forty-eight, to the date of repayment or to the thirtieth day of June, nineteen hundred and fifty-five, whichever is the earlier;

(*b*) if the monopoly payment was not payable by instalments and has not been paid, it shall be reduced by the principal amount of the special payment.

(6) Where the Central Land Board are satisfied that (apart from the last preceding subsection) a person would have been entitled to a payment by virtue of subsection (4) of this section if he had applied for it within the period prescribed in that behalf, and he has failed to apply for the payment within that period or within any extended period allowed for applying for it, the Board may determine the principal amount of the payment to which he would have been so entitled; and the last preceding subsection shall apply as if that person had become entitled to the payment and the principal amount thereof had been the principal amount determined under this subsection.

(7) Section fifteen of this Act shall apply as respects the principal amount of a payment determined under the last preceding subsection as it applies (by virtue of paragraph (*c*) of subsection (4) thereof) as respects the principal amount of a payment determined under subsection (3) of section fourteen of this Act.

(8) If it is certified by the Board that a development charge could not have been determined as mentioned in subsection (3) of this section, then—

(*a*) if the monopoly payment has been paid in full, the Commissioners shall repay a sum equal to the certified amount;

(*b*) if the monopoly payment was payable by instalments, the amount payable in respect of each instalment shall be reduced rateably so that the total reduction is equal to the certified amount, and, if one or more instalments have been paid, the Commissioners shall repay so much thereof as by reason of the reduction ought not to have been paid;

(*c*) if the monopoly payment was not payable by instalments and has not been paid, it shall be reduced by the certified amount.

NOTES

This section gives statutory recognition to a practice which was adopted, by the Central Land Board and the Commissioners of Customs and Excise, because of the similarity in the nature of the calculation of development charges and monopoly values. Substantially development charge was based on the added value given to the premises by the grant of planning permission. Broadly, monopoly value is calculated on the added value given by the grant of the licence. The practice followed was instead of paying development charge, as such, the added value (if any) arising from the grant of planning permission was collected by the Excise by way of an increase in monopoly value (see H. of C. Official Report, S.C.C., 17th June 1954, col. 694).

The section requires two certificates, one from the Commissioners certifying the amount of increase in the monopoly value, and a further one from the Central Land Board that no development charge has been determined by the Board. The Board's certificate will also state whether any use or operations were begun before 18th November 1952, in such circumstances that, apart from the practice referred to, development charge would have been payable.

If the certificates are granted, the provisions of Part I of this Act, *ante*, will apply as if the person who paid the monopoly value had incurred a development charge equal to the "certified amount". If any special case payment falls to be made, however, it will be made by the Commissioners instead of by the Board. Sub-ss. (2) and (3) of s. 14, *ante*, are excluded and replaced by sub-ss. (5) and (6) of this section,

to provide for the altered circumstances of payment being made by the Commissioners instead of the Board. If the monopoly payment has not been paid in full the " special payment " will not be made; but if the monopoly payment is payable by instalments the instalments shall be reduced rateably so that the total reduction is equal to the principal amount of the special payment. If any instalments have been paid the Commission will repay so much of any instalments which by reason of the reduction in instalments should not have been paid, with interest at 3½ per cent. to the date of payment or 30th June 1955, whichever is the earlier. If the monopoly payment was not payable by instalments and has not been paid it will be reduced by the principal amount of the special payment.

Where it is certified by the Board that a development charge could not have been determined (*e.g.*, by reason that the operations or use had not begun before 18th November 1952) the Commissioners will repay the certified amount. This is the counterpart of s. 1 (5) of the Act of 1953 (Hill, 2nd Supp., p. B696; 78 Statutes Supp. 134). In the case of instalment payments, a rateable reduction will be made by reference to the amount certified by the Board, and any instalments paid repaid. If it has not been paid it will be reduced by the certified amount.

Sub-s. (1).

Commissioners of Customs and Excise. See the Customs and Excise Act, 1952 (32 Halsbury's Statutes (2nd Edn.) 710).

Provisional grant. The provisional grant may be made before premises are constructed. See s. 10 of the Licensing Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 156).

Monopoly value. See now s. 6 (1) of the Licensing Act, 1953 (33 Halsbury's Statutes (2nd Edn.) 151). Under that provision the licensing justices are directed to attach to the grant of a licence such conditions as they think best adapted to secure to the public any monopoly value represented by the difference between the value that the premises will in their opinion bear when licensed and the value of the premises unlicensed.

S. 14 (1) of the Licensing (Consolidation) Act, 1910. The provisions of the 1910 Act have been repealed and replaced by the Licensing Act, 1953. See note " Monopoly value ", *supra*. At the date of the abolition of development charges, under the Town and Country Planning Act, 1953, the provisions relating to monopoly payment were to be found in the 1910 Act. The Licensing Act, 1953, came into force on the 1st November 1953.

Development charge. As to the manner in which the Board proposed in their Practice Notes to take account of monopoly payments in assessing development charges, see paras. 83 and 84 of those notes (Hill, p. 1264). It was proposed that monopoly payments would be disregarded in assessing the charge; but that the monopoly payment would be deducted. In the case of " removals " the notional monopoly value of the old premises would be deducted and where there were surrenders of other licences their notional monopoly value would also be deducted. But see also the General Note, *supra*, as to the practice in fact followed.

Central Land Board. See s. 63, *post*.

Sub-s. (2).

1st July 1948. Date of coming into operation of the relevant provisions of the Act of 1947 (see s. 120 of that Act and S.I. 1948 No. 213; Hill, pp. 266, 733; 48 Statutes Supp. 209, 294).

18th November 1952. Date of introduction of the Act of 1953 as a Bill, and of the publication of the White Paper. Development charge was, generally speaking, abolished, in respect of development begun on or after that date, by the Act of 1953.

Sub-s. (4).

Payment . . . made by the Commissioners. See s. 64 (8) (*e*), *post*, for the authority to make such payment out of moneys provided by Parliament.

S. 14 of this Act. See *ante*. That section authorises the making of payments under Part I. It also authorises the payment of interest. Sub-ss. (2) and (3) provide for the set-off of payments against any outstanding liability for development charge, and for the making of such set-off notwithstanding that no application for payment is made. As to outstanding liabilities which come within the present section, see sub-s. (5) and the General Note, *supra*. See also sub-s. (6) applying in effect the provision of s. 14 (3), *ante*, to fit sub-s. (5), *supra*.

59. Applications for permission for industrial development.— (1) Where, after the commencement of this Act, an application is made to a local planning authority for permission to develop land by the erection thereon of an industrial building, being an application which would, apart from this section, be of no effect by virtue of subsection (4) of section fourteen

of the principal Act (which provides that certain applications for such permission shall be of no effect unless it is certified by the Board of Trade that the development in question can be carried out consistently with the proper distribution of industry), the local planning authority shall consider whether, if the requirements of the said subsection (4) had been satisfied, they would nevertheless have refused the permission sought by the application either as respects the whole or as respects part of the land to which the application relates; and if they are of opinion that they would so have refused that permission, they shall serve on the applicant a notice in writing to that effect.

(2) Where a notice has been served under the preceding subsection as respects the whole or part of any land, the provisions of this Act and of sections nineteen and twenty of the principal Act, and, where by virtue of the preceding provisions of this subsection a direction has been given under subsection (3) of section twenty-three of this Act, the other provisions of the principal Act, shall have effect as respects that land or that part thereof as if the application had been of effect and permission had been refused.

NOTES

This section was added in committee of the House of Lords (see 189 H. of L. Official Report 878–880, 1092; see also 533 H. of C. Official Report 925–930).

Applications for permission to erect or extend industrial buildings, beyond at certain limit of size, must be accompanied by a Board of Trade industrial development certificate. The principal Act provides not merely that permission cannot be granted without a certificate but that unsupported applications shall be of no effect.

The concern of the Board of Trade is to secure the proper distribution of industry. Where the Board's certificate is not issued, the would-be applicant would, apart from the present section, be unable to secure a planning refusal to release a payment of planning compensation. This section gives a limited measure of effect to an unsupported application, so that it may be considered whether or not the application, if it had been effective, would have been refused on planning grounds. If it would have been so refused the local planning authority will serve notice to that effect under sub-s. (1), *supra*. Persons interested in the land may then claim compensation under this Act, as if for a refusal of permission, provided (1) that the refusal relates to new development as defined in s. 16 (5), *ante*, and (2) that any of the land is land which can be said to have an unexpended balance of established development value within the meaning of ss. 17 and 18, *ante*.

On such a claim, compensation may be payable by the Minister, by reference to the unexpended balance or balances on the land, although compensation may be reduced or excluded in the usual circumstances as mentioned in Part II of this Act, *ante*. In particular the Minister may review the decision which is regarded as having been made, with a view to granting, or undertaking to grant, permission for other development, under s. 23 (3), *ante*. His grant or undertaking will exclude or reduce compensation as provided by ss. 21 and 26, *ante*; a grant of permission will be effective under the principal Act, see sub-s. (2), *supra*.

It seems the Minister will not grant permission for the actual development for which application was made. In theory, he might perhaps do so under s. 23 (2), *ante*, but no provision is here made for rendering effective, under the principal Act, a permission so granted; it would therefore seem to be of no value, and would not assist the applicant as a grant of permission nor save public moneys by reducing or excluding compensation. The Minister might, however, grant permission for some alternative industrial development, under s. 23 (3), *ante*, though in practice he may be expected to consult the Board of Trade before so doing in any case where a certificate would usually be necessary.

An unsupported application together with the notice under sub-s. (1), *supra*, will be treated as a valid application and refusal for the purposes also of ss. 19 and 20 of the principal Act, so as to allow a purchase notice to be served or a claim for compensation to be made thereunder. See, however, as to s. 20 of that Act, the note, " Other provisions of the principal Act ", *infra*, to sub-s. (2).

It will be noted that this section does not operate in so far as the local planning authority would, on an effective application, have granted permission (as respects all or part of the land). To the extent that permission would have been granted, the would-be applicant is not regarded as having been refused planning permission. His difficulties arise from the requirements of the Board of Trade and planning compensation will not be payable therefor: see 533 H. of C. Official Report 928, 929. Sir Lynn Ungoed-Thomas, Q.C., remarked, " If development is doubly objectionable . . . compensation will be paid. If . . . it is only singly objectionable, because the local planning authority would not have refused permission, no compensation becomes payable ". The Minister, accepting this interpretation, explained that the Board of

Trade's reasons for refusing a certificate " are very wide and varied, and some . . . are of a purely temporary character ".

Local planning authorities will no doubt realise that where they do not serve notice under sub-s. (1), *supra*, they will to some extent have committed themselves to allowing development if and when the Board's certificate is obtained thereafter. It is not clear whether reasons should be given in a notice, or what the effect of giving reasons will be for the purposes of s. 20 (3) or (4), *ante*.

Sub-s. (1).

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

An application. See the note " On an application " to s. 16 (4), *ante*.

Local planning authority. See s. 4 of, and the First Schedule to, the Act of 1947 (Hill, pp. 42, 268; 48 Statutes Supp. 28, 211), and cf. s. 69 (4), *post*. Where the expression occurs for the second time, in the present subsection, it is not clear whether it can include an authority exercising delegated powers, as it is not clear how such a delegation could arise. There is no express power to delegate functions under this subsection, but perhaps it can be construed with Part III of the principal Act.

Permission to develop. See ss. 12 and 119 (1) of the Act of 1947 (Hill, pp. 65, 260; 48 Statutes Supp. 44, 204), and cf. the notes to ss. 16 and 20, *ante*.

Land. This means any corporeal hereditament including a building as defined; see s. 119 (1) of the Act of 1947 (Hill, pp. 258, 259; 48 Statutes Supp. 203), and cf. the notes to s. 20, *ante*.

Erection. This term includes extension, alteration and re-erection; see s. 119 (1) of the Act of 1947, *ubi supra*.

Industrial building. By virtue of s. 69 (2) of this Act and s. 119 (1) of the principal Act, this means an industrial building as defined in the Distribution of Industry Act, 1945, see s. 15 of that Act; 32 Statutes Supp. 131 (cited in Hill, pp. 263–264; 48 Statutes Supp. 207). This definition somewhat resembles the Factories Act definition of a factory.

S. 14 (4) of the principal Act. Hill, p. 72; 48 Statutes Supp. 49. That subsection provides that an application to the local planning authority for permission to develop land by the erection thereon of any class of industrial building prescribed by Board of Trade regulations shall be of no effect unless it is certified by the Board that the development can be carried out consistently with the proper distribution of industry. This does not apply to a building which will have an aggregate floor space not exceeding 5,000 sq. ft.; see proviso (*a*) to the subsection. A copy of the Board's industrial development certificate (" I.D.C.") must accompany the application, if it is to be effective. Without the certificate, the planning authority cannot effectively either refuse or grant permission. The present regulations under s. 14 (4) are the T. & C.P. (Erection of Industrial Buildings) Regulations, 1949 (S.I. 1949 No. 1025); Hill, 2nd Supp., p. B81); these prescribe all classes of industrial buildings subject, however, to an ingenious proviso. This is expressed to dispense with the requirement of a certificate for an application relating to an extension of a building which, when extended, will have more than 5,000 sq. ft. floor space of which, however, not more than 5,000 sq. ft. will be taken up by the intended extension and any other extension carried out in the three years before the application for permission.

Would nevertheless have refused. Note that this subsection operates only where permission would have been refused (as respects all or part of the land) if an effective application had been made. If the authority would have granted permission, the would-be applicant is not assisted; see the General Note, *supra*.

It is not clear whether the local planning authority must itself consider the question arising under this subsection, or whether this is a matter which can be dealt with under powers delegated under the principal Act (see *ibid.*, ss. 34 and 114, Hill, pp. 115, 249; 48 Statutes Supp. 83, 196) as if it arose under Part III of that Act. Note, also that in certain cases the local planning authority would be bound to refuse permission; see s. 14 (3) of that Act (Hill, p. 71; 48 Statutes Supp. 48) and the notes to s. 16 (4) of this Act, *ante*.

Serve . . . a notice. See s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186) applied by s. 67 (3), *post*. *Quaere*, whether reasons should be stated. *Quaere*, whether the applicant has any remedy if the authority take no action.

Sub-s. (2).

The provisions of this Act. See Part II (ss. 16–29, *ante*) relating to the payment, in certain cases, of compensation by reference to an unexpended balance or balances of established development value where permission for " new development " is refused. As to cases where a refusal of permission is treated as a revocation, following the withdrawal of " permitted development ", see ss. 19 (5) and 38 (4), *ante*; but see art. 3 (1) proviso of the G.D.O. of 1950, and condition 2 imposed on permitted development of Class VIII in Part I of the First Schedule thereto, and condition 1 imposed on Class XI therein (Hill, 2nd Supp., pp. B170, B188 and B190).

Ss. 19 and 20 of the principal Act. S. 19 of the Act of 1947 (Hill, p. 81; 48 Statutes Supp. 56), as amended by s. 70 of this Act, *post*, provides for the service of a purchase notice where it is claimed that land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of such use by permission which is available or treated as available under that section. S. 20 (Hill, p. 84; 48 Statutes Supp. 58) provides, *inter alia*, for compensation under that Act payable by the local planning authority, or a delegate authority, in certain cases where permission for Third Schedule development is refused by the Minister on appeal or on the reference (calling-in) of an application for decision in the Ministry. Provision is made by s. 20 (3) of that Act for cases where a purchase notice, under s. 19, fails to take effect because of a direction that certain permission shall be granted if application is made, but the value of the land, with available permission, is less than its compulsory purchase price. See further, the note " Other provisions of the principal Act ", *infra*.

S. 23 (3) of this Act. That subsection, *ante*, enables the Minister, in reviewing a planning decision, to direct that:

(*a*) the application shall be taken to have related to development other than that for which permission was sought, and the decision shall be taken to have granted permission for this other development (with or without conditions); or

(*b*) the decision shall be regarded as one made by the Minister (and therefore final) but as if it had included an undertaking to grant permission (with or without conditions) for other development.

The effect of a direction, mentioned in the present subsection, is that the application (which was ineffective for want of the Board of Trade certificate) shall be treated as an effective application for all the purposes of the principal Act (not merely for ss. 19 and 20). Thus, if permission is granted by the Minister it will be regarded as a valid planning permission, granted on an application, although in fact no valid application was made. It is thought that the Minister might even grant permission for development, other than that applied for, which would nevertheless have needed a Board of Trade certificate, *i.e.*, for some other industrial building or extension exceeding 5,000 sq. ft. and not within the proviso of S.I. 1949 No. 1025 (*ubi supra*). The purpose of such directions is to reduce or exclude payment of compensation under Part II of this Act; see the notes to ss. 21, 23 and 26, *ante*.

Other provisions of the principal Act. Note that the application is treated as effective, for the general purposes of the principal Act, only when the Minister gives a direction under s. 23 (3) of this Act, *ante*; but is always treated or effective, when a notice is served under sub-s. (1), *supra*, for the purposes of ss. 19 and 20 of the principal Act. This raises the problem of how s. 20 of that Act is to be operated, to allow compensation to be claimed thereunder, if the applicant cannot invoke s. 15 or s. 16 of that Act, and the provisions of the G.D.O. so far as made thereunder, to obtain the decision of the Minister as required by s. 20 (1) of that Act. Perhaps the " owner " should serve a purchase notice, and rely on s. 20 (3) if it fails to take effect by reason of a direction under s. 19 (2) proviso (*b*). This, however, would be a limited remedy. Perhaps, on the other hand, s. 20 of that Act is intended to operate as if there had been a refusal by the Minister, though this seems a doubtful construction.

60. Dispositions of claims under Part VI of principal Act.—(1) An assignment of the benefit, or part of the benefit, of an established claim shall be of no effect if—

(*a*) it is made after the commencement of this Act; or

(*b*) it requires the approval of the Central Land Board under subsection (2) of section two of the Act of 1953, and no application for that approval was made before the commencement of this Act.

(2) Subject to the preceding subsection, an assignment of the benefit, or part of the benefit, of an established claim, if approved by the Central Land Board under subsection (2) of section two of the Act of 1953, whether before or after the commencement of this Act, shall be deemed to have had effect as from the date on which the assignment was made.

(3) Subsection (2) of section sixty-four of the principal Act (which provides that the right to receive a payment under Part VI of that Act shall be transmissible by assignment or by operation of law) shall be deemed always to have had effect in relation to the disposition by will of such a right as is mentioned in that subsection as it has effect in relation to the transmission of such a right by operation of law:

Provided that a disposition of such a right by the will of a testator dying after the commencement of this Act shall be of no effect.

NOTES

The present section ends the system of assigning the claims made for the purposes of s. 58 of the principal Act. A measure of restriction on assignments was introduced by the Act of 1953 as part of the first stage in implementing the proposals of the White Paper; see s. 2 of that Act, set out in the notes, *infra*, to sub-s. (1) of this section, and para. 57 of the White Paper, Cmd. 8699 (Hill, 2nd Supp., p. B715).

The amendment of the financial provisions of the principal Act, as announced in the White Paper and as embodied, with some differences, in the Act of 1953 and the present Act, involves using the s. 58 claims established under the principal Act "as the basis of an *ad hoc* compensation scheme"; see paras. 41 and 42 of the White Paper (Hill, 2nd Supp., p. B712). The present Act operates, so far as practicable, to return claim values to the land. The Act of 1953 anticipated this arrangement to some extent, by restricting assignments of claims away from the land, though it did not operate to prevent a conveyance of land away from the claim. Part I of the present Act (ss. 1–15, *ante*), after defining and explaining certain terms (ss. 1 and 2), is principally concerned with making special payments where the land and the claim have been separated. (It will be noticed that Case B, ss. 5 and 6, *ante*, makes no provision for cases where land was conveyed away from the claim by a private sale after the publication of the White Paper proposals on 18th November 1952; see s. 5 (3) (*b*), *ante*, and cf. Hill, 2nd Supp., p. B694.) Part V (ss. 42–46), *ante*, provides for compensation for past planning decisions and orders, made before 1st January 1955, and to some extent anticipates the re-union of the land and the claim value effected under Part II, *ante*. Compensation under Part V is payable primarily to claim holders in respect of holdings, the areas of which consist of or include land already depreciated by a decision or order, and by reference to interests subsisting in that land (whether or not the holding was related to the interest referred to). In Parts II and III, *ante*, and for the purposes of s. 40 in Part IV, claim holdings are regarded as attached to land in the form of the unexpended balance or balances which arise under ss. 17 and 18, *ante*.

Those Parts of the present Act show a dwindling away of the concept of the s. 58 claim as a species of personalty. Once the transitional provisions of Parts I and V are spent, it will not matter in whose hands the claim is left, high and dry and of no significance save as the basis of an unexpended balance or balances of the land.

The White Paper recognised that anomalies would arise from the attempt to use s. 58 claims as a compensation supplement to be added in certain cases to a current existing use value, or as a payment of compensation to be released in certain circumstances on the failure of an applicant to obtain permission for development. Further difficulties arise from the limits set upon certain forms of Part I payment, where a payment is scaled down to accord with the applicant's supposed loss; cf. the notes to s. 47, *ante*, and the provisions there made to minimise these anomalies in the case of associated companies. Still further difficulties arise from the fact that there was a time when the s. 58 claims were freely assignable, and that during that period they may, for example, have been pledged as security for development charge; see s. 2 (2) (*a*) and (3) (*b*), *ante*. Any such pledge may over-ride the general scheme of this Act, and indeed it operates in priority even to the payments under Part I; see s. 2 (5), *ante*, and the note thereto. Cf. also s. 2 (2) (*b*), *ante*, relating to s. 59 payments.

The present section goes further than the Act of 1953 in preventing the assignment of claims. Claims cannot now be assigned, though they may be transmitted by operation of law, after 1st January 1955; and past assignments may be invalidated by want of notice or approval. No consequential provisions are made, and for the purposes of Parts II, III and IV, *ante*, none are necessary. However, it might well have been advisable to preserve the operation of s. 2 of the Act of 1953, at least for a reasonable transitional period.

There are, for example, executory contracts for the sale of land together with the benefit of the Part VI claim or claims, in the form recommended by the Law Society after consultation with the Central Land Board. Technically it might be argued that all such contracts have been avoided, as performance is now impossible. The parties can no doubt, in many cases, achieve their object simply by conveyance of the land. The unexpended balance or balances should then normally attach to the land under s. 17, *ante*, though they may enure partly for the benefit of some other person having another interest in the same land (as the Act contains no safeguard on the lines suggested in para. 42 of the White Paper, Hill, 2nd Supp., p. B712). It seems, however, that the vendor will be the proper person to make any claim for compensation under Part V (ss. 42–46), *ante*. Whether the purchaser can compel the vendor to do so for the purchaser's benefit, and whether the purchaser may have a remedy in damages if the vendor fails to claim, will depend on what the Courts can make of the terms of the contract in the altered circumstances created by the present section. It will be observed that a purchaser's lien, if any, is most unlikely to confer any right to claim, on default of the vendor, under the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*, because of the dates mentioned in those regulations.

It seems, also, that a testator who makes a specific devise of realty cannot now dispose appropriately, together with the land, of the related Part VI claim under s. 58 of the principal Act. If the amount of the s. 58 claim has not been determined, or has to be re-determined under the First Schedule, *post*, this will be highly inconvenient,

as the right to the claim, and to take part in its determination, would seem to pass as on a partial intestacy, *i.e.*, the present Act may very possibly operate to sever the claim from the land. Similar difficulties arise in connection with bankruptcy and the winding-up of companies.

There are cases also where the invalidation of past assignments would appear to lead to a payment under Part I which otherwise need not have been made. For example, if the purchaser of a claim holding has sold it back to some person entitled to the interest in land to which it related, one would expect that there would be no Case D payment (see s. 8 (1) (*b*), *ante*) but that there would be an unexpended balance or balances based on the full value of the claim (in the absence of any other cause for reduction or extinguishment of the claim). If the assignment back is now disregarded, and is incapable of being validated under the Act of 1953, it seems that a Case D payment will be made. The owner of the interest will find there is correspondingly less claim value attached to the land in which the interest subsists.

Similar anomalies will arise where a purchaser of land has since " bought in ", and taken an assignment of, the claim (as has commonly occurred), and has failed to give notice, or seek approval of an apportionment, in due time. Technically it would appear that the vendor of land may receive a Case B payment (s. 5, *ante*) although he has already received a sum of money as consideration for the claim on the invalid assignment. It may be that the purchaser could recover this sum, if it can be said that the consideration he received has wholly failed. This is in itself open to doubt, as what he bought was presumably a mere hope or prospect of payment. Again the purchaser may be free to develop the land without repaying the Case B payment made to the vendor, as Part I payments are not to be registered or recoverable.

In certain cases where difficulty is experienced in making a claim under Part V of this Act, it may be possible to make a further application for planning permission and claim, if permission is refused or granted subject to conditions, under Part II, *ante*. Attention is, however, drawn to the fact that the basis of compensation may not be the same. It will be noticed that the present Act contains no provisions as to the assignment of payments or compensation thereunder, when the occasion for such a payment or for such compensation has arisen. There would seem to be no objection to transferring a right to claim compensation under Part II, *ante*, as part of any transaction affecting the land. The right to compensation for compulsory acquisition (see Part III, *ante*) is an assignable form of property; see *Dawson* v. *Great Northern & City Ry.*, [1905] 1 K.B. 260; 8 Digest (Repl.) 558, *110*; *Cardiff Corpn.* v. *Cook*, [1923] 2 Ch. 115; 11 Digest (Repl.) 189, *565*.

Sub-s. (1).

An assignment. Part VI of the Act of 1947 (ss. 58–68; Hill, pp. 154–172; 48 Statutes Supp. 115–132) conferred rights to make claims, in respect of the depreciation of land values caused by that Act, both under s. 58 (for the purposes of the general scheme which was to have been made and which is, in a sense, replaced by the present Act) and under s. 59 (for the purposes of the War Damage Scheme, discussed in the notes to ss. 2 and 57 of this Act, *ante*). Certain of the provisions of that Part of the principal Act were applicable to either type of Part VI claim. In either case, the right to receive payment on a claim was dependent on and subject to the provisions to be embodied in the scheme in question, which might provide which claims were to be satisfied and to what extent, and might provide for diverting payments, to one person rather than another, as between vendor and purchaser, mortgagor and mortgagee, etc., and even as between lessor and lessee in the case of leasehold interests; see, generally, ss. 58 (4) and 59 (3) of the Act of 1947 (Hill, pp. 157, 159; 48 Statutes Supp. 116, 119).

Subject to this, claims were to be made in respect of interests in fee simple, or leasehold interests as defined in that Act, and the person *prima facie* entitled to claim was the owner of such an interest on 1st July 1948; see ss. 60 (3) and 64 (1) of the Act of 1947 (Hill, pp. 161, 166; 48 Statutes Supp. 120, 127). Special provision was made for certain cases; *e.g.*, by s. 91 (2) of that Act (Hill, p. 217; 48 Statutes Supp. 167), for an interest in land in the process of being acquired compulsorily. The making and establishment of s. 58 claims were governed by s. 60 of that Act (Hill, p. 160; 48 Statutes Supp. 116) and the Claims for Depreciation of Land Values Regulations, 1948, as amended (S.I. 1948 No. 902, amended by S.I. 1948 No. 2822) (Hill, pp. 738–747 and 902–903), and as modified by the Lands Tribunal Act, 1949, and by certain special provisions relating to mineral claims, etc. The right to receive a payment under the s. 58 scheme (or under the s. 59 scheme), or part of such a payment, was made transmissible by assignment or by operation of law as personal property; see s. 64 (2) of the Act of 1947 (Hill, p. 167; 48 Statutes Supp. 127). This was subject to the proviso that regulations might direct that any assignment (as opposed to a transmission by operation of law, as on bankruptcy or intestacy) should be of no effect for the purposes of any such scheme unless notice had been given to the Central Land Board in a manner, and within a time, prescribed by the regulations. See, in this connection, reg. 7 of S.I. 1948 No. 902 (Hill, p. 744) which required notice of an assignment to be given not earlier than 1st July 1948 and not later than 31st December 1952, if the assignment was to be effective for the purpose of the s. 58 scheme (which was to

have been made in 1953). For the purposes of the War Damage Scheme under s. 59, notice of an assignment is to be given to the Board before the expiration of 30 days from the date when a determination of the payment is treated as conclusive; see regs. 10 (4), 11, 14 and 15 (1) of the Planning Payments (War Damage) Regulations, 1949 (S.I. 1949 No. 2255). Special provision was made for s. 58 claims in respect of near-ripe minerals under the (revoked) Set-Off Regulations of 1951 (S.I. 1951 No. 2156), Hill, 2nd Supp., pp. B254 *et seq.*, as it was essential, for the off-set scheme, that claims should be assignable in certain circumstances until 1973.

It should be noted that the power of assignment arose under s. 64 (2) of the principal Act, and that the requirement of notice arose under the proviso to that subsection. The time limit for giving notice was differently expressed for the different purposes of the two schemes, because payments under the s. 59 scheme are made soon after they are determined. Nevertheless, the two schemes were to be connected as explained in the notes to s. 57, *ante; i.e.*, s. 59 payments would be taken into account when the general distribution under s. 58 came to be made. It should also be noted that the Act of 1953 does not affect s. 64 (2) of the principal Act, or the proviso thereto, so far as it relates to s. 59 payments; see the note, " S. 2 (2) of the Act of 1953 ", *infra*.

Apart from the effect of the Act of 1953, the prospective right to receive a s. 58 payment was personal property. It was assumed that the power of assignment arose even before a claim was made, and this was recognised by the Claims regulations; see reg. 2 (ix) of S.I. 1948 No. 902 (Hill, p. 741). Whether before or after a claim was made, and whether or not the amount of loss of development value had been determined, the owner's prospective right was to receive a payment, on the date of satisfaction (which was intended to be 1953), in the form of government stock with interest in cash, in accordance with the scheme and subject to any provision to the contrary in the Act (*e.g.*, the exclusion of small claims by s. 63) or the scheme itself. It was this prospective right which was assignable or transmissible by operation of law. Where an amount has been, or is hereafter, established, and payment would not have been excluded by s. 63 (or ss. 82–85 in Part VIII of the principal Act), there will now be an " established claim " within the meaning of s. 1 of this Act, *ante*. References to the benefit, or part of the benefit, of the established claim are to be construed in accordance with s. 1 (5), *ante*.

Apart from the effect of the Act of 1953, the prospective right to a s. 58 payment could be regarded as a chose in action or species of statutory personalty, incapable of physical possession and assignable at law or in equity. It was also capable of other forms of disposition, not amounting to an assignment. No statutory formalities were required for assignment, save that failure to give notice thereof in the manner and time prescribed would render an assignment ineffective *for the purposes of the scheme*, without, presumably, affecting the right of the assignee as against the assignor. Since the Judicature Act of 1873, it has been possible to assign at law any legal chose in action, save those regulated by special statutes, by writing under the hand of the assignor. By s. 136 of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 715) any such absolute assignment, " not purporting to be by way of charge only ", of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim the debt or other thing in action, is effectual in law (subject to prior equities) to pass and transfer, as from the date of notice, (1) the legal right to the debt or thing in action, (2) all legal and other remedies for the same, and (3) the power to give a good discharge without the concurrence of the assignor.

To be effective at law, such an assignment must be absolute and " not purporting to be by way of charge only ", but an assignment in this form may be made by way of mortgage; *i.e.*, the common form of mortgage by an assignment with a condition or covenant for re-assignment does not " purport to be by way of charge only " and until re-assignment the assignee can give a good discharge. See, in this connection, s. 2 (8) of the present Act, *ante*. An assignment under the Law of Property Act must be of the whole debt or thing in action: see *Williams* v. *Atlantic Assurance Co.*, [1933] 1 K.B. 81; 8 Digest (Repl.) 553, *83*. See, in this connection, s. 2 (3) of the present Act as to dispositions of part of the benefit of an established claim. An assignment under the Law of Property Act cannot operate at law unless it is in writing and signed by the assignor, nor does it operate at law unless and until express notice is given in writing. There may be a valid equitable assignment of part of a chose in action, and an assignment which does not operate at law may be good in equity. Informal notice will usually be sufficient to make it unsafe to make payment to the assignor.

The present Act appears to draw a distinction between a " disposition " and an " assignment ", the former being a wider term which includes the latter; see s. 2, *ante*. It is to be inferred from the wording of s. 2 (3) and (8), that a person who becomes entitled to the benefit of a claim under a " disposition " will be the claim holder for the purposes of this Act, except in the case of a mortgage otherwise than by assignment. Special provision is made in ss. 9 and 43 (2), *ante*, for mortgagees of holdings whose mortgage was made by assignment; cf. also s. 66, *post*, as to other mortgagees.

The present subsection refers only to assignments, and it therefore raises the question whether there is some form of " disposition " which may have taken place which is neither an assignment nor a mortgage. If there is, the person who thereby became

entitled to the benefit of the claim would seem now to be the holder. As such he might be entitled to claim a payment under Part I, *ante*, or Part V, *ante*, whether or not any notice was given to the Central Land Board. Attention, however, is drawn to the definition of mortgage in s. 119 (1) of the principal Act (Hill, p. 260; 48 Statutes Supp. 202) as including a charge or lien on any property for securing money or money's worth. It would seem that a lien or charge may have been created with little formality: cf. *Thomas* v. *Harris*, [1947] 1 All E.R. 444; 2nd Digest Supp.

One form of " disposition " which was probably neither an assignment nor a mortgage as defined, was a disposition by will, which is now dealt with in sub-s. (3), *supra*. On the testator's death, the benefit of a claim would first vest by operation of law in his personal representatives (or the probate judge) but any specific bequest or gift of residuary personalty would appear to have been a " disposition " if not an " assignment ". It is now exempted from any requirement of notice or approval; see, however, sub-s. (3) proviso, *supra*, and see also s. 11 (4), *ante*.

The transmission of the benefit of a claim by operation of law is distinguished from an assignment, and is not affected by the present section.

Benefit, or part of the benefit. See s. 1 (5), *ante*, and the previous note, *supra*.

Established claim. See s. 1 (4), *ante*.

Commencement of this Act. 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

Requires the approval. See next note, *infra*. Approval under s. 2 (2) of the Act of 1953 was not required in the cases mentioned in s. 2 (3) thereof, provided notice was given in due time. If notice was given late or not at all, approval is required. Thus approval may be required even in respect of assignments before 18th November 1952, if notice was not given until more than one month after 20th May 1953; the last day for giving notice in such cases was either 20th June or 21st June 1953 (according to what is meant by the word " after " in s. 2 (3) of that Act).

S. 2 (2) of the Act of 1953. See Hill, 2nd Supp., p. B698; 78 Statutes Supp. 135. S. 2 of that Act is set out below, showing the amendments made by s. 71 and the Seventh and Eighth Schedules, *post*. Words repealed are printed in italics. The words within the first pair of square brackets, in sub-s. (1) proviso (*b*), are inserted by the Seventh Schedule, *post*. The words referring to the Town and Country Planning (Scotland) Act, 1954, are inserted by the Eighth Schedule to that Act (2 & 3 Eliz. 2 c. 73) for the purposes of the operation of the Act of 1953 in Scotland.

2. Provisions as to payments for depreciation of land values.—(1) The payments directed to be made by section fifty-eight of the Town and Country Planning Act, 1947, and section fifty-five of the Town and Country Planning (Scotland) Act, 1947, shall not be made, and those sections and, so far as they relate to payments under schemes under those sections, sections sixty-five, sixty-six and sixty-eight of the first mentioned Act and sections sixty-two, sixty-three and sixty-five of the second mentioned Act are hereby repealed:

Provided that—

(a) *claims for such payments duly made to the Central Land Board under the said Acts shall be satisfied in such manner, in such cases, to such extent, at such times and with such interest as may hereafter be determined by an Act of Parliament passed for that purpose; and*

(b) *pending the coming into operation of such an Act* [subject to the provisions of the Town and Country Planning Act, 1954] [*or, in Scotland:* subject to the provisions of the Town and Country Planning (Scotland) Act, 1954] sections sixty to sixty-four of the first mentioned Act and sections fifty-seven to sixty-one of the second mentioned Act (which relate to the establishment of such claims as aforesaid and the transmission of the rights to which they relate), and any regulations made or instruments executed before the passing of this Act under or for the purposes of any of those sections, shall have effect as if—

(i) the preceding provisions of this section had not been passed; *but*

(ii) *provision had instead been made by this section for postponing the date for the satisfaction of the payments until such date as Parliament might thereafter determine,*

so, however, that in any instrument of assignment or assignation executed after the passing of this Act affecting any such claim as is mentioned in paragraph (a) of this proviso, the subject matter of the assignment or assignation may be described in any terms which are appropriate having regard to the said preceding provisions.

(2) The proviso to subsection (2) of section sixty-four of the Town and Country Planning Act, 1947, and the proviso to subsection (2) of section sixty-one of the Town and Country Planning (Scotland) Act, 1947 (which provide for invalidating assignments and assignations unless notice is given within a prescribed period to the Central Land Board), shall not apply and shall be deemed

never to have applied to any assignment or assignation, whether made or granted before or after the passing of this Act, affecting any such claim as is mentioned in paragraph (a) of the proviso to subsection (1) of this section, but, subject to the provisions of subsection (3) of this section, no such assignment or assignation shall be of any effect unless and until it has been approved in writing by the Central Land Board.

(3) In the exercise of their powers under subsection (2) of this section the Central Land Board shall act with a view to securing that, as far as may be, any such claim made in respect of an interest in land enures either wholly for the benefit of some person having an interest in all that land or, to the appropriate extent (but only to the appropriate extent), for the benefit of some person having an interest in part only of that land; and where any assignment or assignation (whether made or granted before or after the passing of this Act) either—

(a) only operates to transfer the beneficial interest in a claim made in respect of an interest in land to the person beneficially entitled to that interest in that land or to some interest in which that interest merges by virtue of the same instrument or as part of the same transaction or has already merged; or

(b) does not operate to transfer any beneficial interest in the claim; or

(c) was made or granted before the eighteenth day of November, nineteen hundred and fifty-two,

the approval of the Central Land Board shall not be necessary if, whether before or after the passing of this Act, notice in writing of the assignment or assignation is given to the Central Land Board not later than one month after the passing of this Act or, if the assignment or assignation was made or granted after the passing of this Act, not later than one month from the date of the making or granting thereof.

The effect of s. 2 of the Act of 1953, set out *supra*, on s. 64 (2) of the Act of 1947 (Hill, p. 167; 48 Statutes Supp. 127) appears to be as follows:

(1) It does not affect s. 64 (2) in its application to s. 59 payments under the War Damage Scheme;

(2) The proviso to s. 64 (2), containing the requirement of notice to the Board and reg. 7 of the Claims for Depreciation of Land Values Regulations, 1948 (S.I. 1948 No. 902; Hill, p. 744), does not apply and is deemed never to have applied to s. 58 claims;

(3) S. 64 (2) is formally repealed for the purposes of s. 58 (also repealed) of the principal Act;

(4) The repeal of s. 64 (2) is subject to the proviso to s. 2 (1) of the Act of 1953, set out *supra*. *I.e.*, ss. 60–64 of the principal Act, though repealed, continue to operate as if they had not been repealed and s. 58 had not been repealed;

(5) This continuance of s. 64 (2), etc., is itself subject to the provisions of the present Act. It is necessary to keep alive Part VI of the principal Act generally, as claims have not all been determined, and some must be redetermined under s. 1 (6), *ante*, and the First Schedule, *post*. The assignment, or disposition by will, of a s. 58 claim, is no longer possible in view of the present section of this Act;

(6) Where approval has been, or can now be, given (see sub-s. (2) of the present section) the assignment will be effective as from the date when it was made, despite the words " unless and until " in s. 2 (2) of the Act of 1953. It may include a binding " previous apportionment "; see s. 69 (1) of this Act, *post*;

(7) Where notice only was required and given (*i.e.*, at the latest, it seems, by 31st January 1955 in the case of an assignment not requiring approval and made at the latest on 31st December 1954), the assignment will be effective. It cannot give rise to any binding apportionment;

(8) S. 64 continues to allow transmission of the benefit of a claim by operation of law (not including a " disposition " by the will of a testator dying on or after 1st January 1955).

As to certain difficulties which arise in practice, see the latter part of the General Note, *supra*.

Sub-s. (3).

Disposition by will. S. 64 (2) of the Act of 1947 (Hill, p. 167; 48 Statutes Supp. 127), which provided for the transmission of Part VI claims, distinguished between transmission by assignment and transmission by operation of law; the accepted interpretation was that the proviso, requiring notice to be given to the Central Land Board, applied only to assignments. The present subsection treats dispositions by will in the same way as transmissions by operation of law; *i.e.*, they require neither notice nor approval. However, the proviso to the present subsection invalidates any disposition by the will of a testator dying on or after 1st January 1955. The term " will " includes a codicil, see s. 69 (1), *post*.

61. Crown land.—(1) In this section, the expression " Crown interest " means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; the expression " Duchy interest " means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and the expression " private interest " means an interest which is neither a Crown interest nor a Duchy interest.

(2) Subject to the following provisions of this section—

(*a*) where there is a Crown interest in any land, the provisions of this Act, other than this section, shall have effect in relation to any private interest or Duchy interest as if the Crown interest were a private interest; and

(*b*) where there is a Duchy interest in any land, the said provisions shall have effect in relation to that interest, and to any private interest, as if the Duchy interest were a private interest.

(3) Where, in the case of a compulsory acquisition to which Part III of this Act applies, planning permission was granted before the date of service of the notice to treat, and the person who at that date is entitled to the interest in land to which the acquisition relates is, or derives title from a person who was, entitled thereto under a disposition which—

(*a*) took effect after the grant of the planning permission; and

(*b*) was a disposition of a Crown interest or a Duchy interest, or a disposition creating an interest immediately out of a Crown interest or a Duchy interest,

then, notwithstanding subsection (4) of section fifty-one of the principal Act, that permission shall not be disregarded in assessing the compensation payable in respect of the acquisition.

(4) References in this Act to claims established under Part VI of the principal Act include references to claims so established in accordance with arrangements made under subsection (2) of section eighty-eight of the principal Act (which relates to interests belonging to the Duchies of Lancaster and Cornwall); references to development charges include references to sums determined in accordance with such arrangements to be appropriate in substitution for development charges; and references to the amount of an established claim or of a development charge shall be construed accordingly.

(5) The provisions of this Act shall have effect in relation to the withholding, or the giving subject to conditions, of any approval of a local planning authority required in respect of any development of land in which there is a Duchy interest, being approval required in accordance with an agreement under subsection (1) of section eighty-eight of the principal Act (which provides for agreements for securing the use of Crown land in conformity with development plans), as if the withholding of the approval, or the giving thereof subject to conditions, were a refusal of planning permission, or a grant of planning permission subject to conditions, as the case may be.

(6) An order under section fifty-five of this Act shall not be made in respect of a mining lease where the interest of the lessor is a Duchy interest unless—

(*a*) the lease relates to land in respect of which arrangements under subsection (2) of section eighty-eight of the principal Act are in force; and

(*b*) the order is made with the consent of the appropriate authority as defined by section eighty-seven of that Act.

NOTES

This section makes such provision as is considered necessary to modify the Act in relation to Crown lands so as to accord with the modified application of the Act of 1947 to such lands provided for in ss. 87 and 88 of that Act (Hill, pp. 212–215; 48 Statutes Supp. 162, 164). Under s. 87 (2) development plans could be approved which made proposals relating to the use of land notwithstanding the existence of Crown interests in such land. The land might be designated and powers of compulsory purchase might be exercised in relation to such lands to the extent of any interest therein other than an interest held by or on behalf of the Crown. S. 88 (2) provided for an arrangement to be made between the various authorities responsible for Crown interests and the Central Land Board, with Treasury approval, for the inclusion of Crown interests in right of the Duchies of Lancaster and Cornwall among interests in respect of which payments under Part VI of the Act of 1947 might be made. Provision was also made for payments in substitution for the development charges which would have been payable if the development had not been carried out on behalf of the Crown.

As to the methods of assessing development charge, where Crown interests (including Duchy interests) were disposed of, see the Central Land Board's Practice Notes, para. 34 (Hill, pp. 1252–1253). If land was disposed of at existing use value, charge was payable in the ordinary way; alternatively, the land might be disposed of for a consideration which was regarded as inclusive of charge. In effect, the latter method is now followed as charge has been abolished.

The present section separately defines " Crown interests " and " Duchy interests ". The present Act is to have effect where there is a Crown interest as if that interest, in relation to any private interest or Duchy interest, were a private interest. However, in the case of a Duchy interest the provisions of the Act will generally have effect, both in relation to the Duchy interest and in relation to any private interest, as if the Duchy interest were a private interest.

The provisions of s. 34, *ante*, are in effect applied in the case of a compulsory acquisition of an interest in land which was formerly a Crown or Duchy interest, or which has been created immediately out of such an interest, in relation to a planning permission granted before the cesser of the Crown or Duchy interest or the disposition creating the interest immediately out of such interest. This accords with the practice whereunder such dispositions were made for a consideration which was regarded as inclusive of development charge.

References in the Act to established claims and development charges are to include references to arrangements made under s. 88 (2) of the Act of 1947 (*ubi supra*).

S. 88 (1) of the Act of 1947 (Hill, p. 213; 48 Statutes Supp. 164) provided for the making of agreements, by the appropriate Crown authorities, for securing that the use of Crown lands would be in accordance with the provisions of the development plan. Where such an agreement affects Duchy interests, the provisions of the present Act relating to the refusal or conditional grant of planning permission will apply as if a withholding, or the giving subject to conditions, of any approval under such an agreement were such a refusal or conditional grant.

Finally the provisions of s. 55, *ante*, relating to the modification of mining leases are applied in relation to leases where the lessor's interest is a Duchy interest if the land is subject to a s. 88 (2) agreement under the Act of 1947; this is subject to the consent of the appropriate Crown authority.

Sub-s. (1).

Interest. *Quaere*, whether this must be an " interest " in land, within the definition in s. 69 (1), *post*.

Government department. Cf. the definitions of " government department " and " Minister " in s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 202).

Sub-s. (3).

Compulsory acquisition to which Part III of this Act applies. See s. 30 (1), *ante*.

Planning permission. See s. 119 (1) of the Act of 1947 (Hill, p. 260; 48 Statutes Supp. 202). This means permission for development required by s. 12 of the Act of 1947 (Hill, p. 65; 48 Statutes Supp. 44). Cf. the notes to s. 16, *ante*.

Notice to treat. See s. 119 (3) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205). See also s. 18 of the Lands Clauses Consolidation Act, 1845 (Hill, p. 692; 3 Halsbury's Statutes (2nd Edn.) 902).

S. 51 (4) of the principal Act. See s. 34 of this Act, *ante*, and notes thereto.

Sub-s. (4).

Established claims. See ss. 1 and 2, *ante*.

S. 88 (2) of the principal Act. See General Note, *supra*.

Sub-s. (5).

Local planning authority. See s. 4 of the 1947 Act (Hill, p. 42; 48 Statutes Supp. 28).

Development. See s. 12 of the Act of 1947 (Hill, p. 65; 48 Statutes Supp. 44). Cf. definition of " new development " in s. 16 (5), *ante*, and the notes to s. 20 (1), *ante*.

S. 88 (1) of the principal Act. See Hill, p. 213; 48 Statutes Supp. 164; see also General Note, *supra*.

Crown land. See s. 87 (1) of the Act of 1947 (Hill, p. 212; 48 Statutes Supp. 162); the term refers to land an interest in which is held in right of the Crown or of the Duchies of Lancaster or Cornwall or belonging to a government department or held in trust for Her Majesty for the purposes of a government department.

Development plan. See ss. 5–11 of the Act of 1947 (Hill, pp. 46–64; 48 Statutes Supp. 30–42).

Sub-s. (6).

S. 55. That section, *ante*, provides for the modification of mining leases, the terms of which reflect the lessee-operator's former liability for development charge.

Appropriate authority. In relation to Duchy interests the appropriate authority is, in the case of the Duchy of Lancaster, the Chancellor of the Duchy; in the case of the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints. See s. 87 (6) (*b*) and (*c*) (Hill, p. 213; 48 Statutes Supp. 163).

62. Application of Act to London, and to Isles of Scilly.—(1) In relation to land in the administrative county of London, other than land in the City of London, the provisions of this Act, other than this section, shall have effect as if references to the county borough or county district, or to the council thereof, were references respectively to that county and to the London County Council.

(2) In relation to land in the City of London, those provisions shall have effect as if references to the county borough or county district, or to the council thereof, were references respectively to the City of London and to the Common Council of the City.

(3) In relation to land in the Isles of Scilly, those provisions shall have effect as if the Isles were a county district, and the council of the Isles were the council of that district.

NOTES

In relation to London, this Act follows the provisions of the Act of 1947 (see s. 114 thereof, Hill, pp. 249–253; 48 Statutes Supp. 196). Generally speaking the present Act is not concerned with matters where the London County Council are required to act in relation to the City of London (as in the case of development plans under Part II of the Act of 1947) or with the few matters in respect of which a metropolitan borough council is likely to be directly concerned.

The Act of 1947 was applied, by an order under s. 115 of that Act (Hill, p. 254; 48 Statutes Supp. 199), on 1st August 1949; see the T. & C.P. (Isles of Scilly) Order, 1949 (S.I. 1949 No. 1321; Hill, 2nd Supp., p. B85). The Act applies generally as if the Isles were a separate county; and also as if references in the Act of 1947 to the council of a county district include a reference to the Council of the Isles. It is this latter provision which is followed by sub-s. (3), *supra*.

Certain anomalies may arise in the application of the present Act to the Isles; see the note among the Cross-references, *infra*.

Cross-references.

London. See, generally, s. 114 of the Act of 1947 (*ubi supra*).

As to applications for planning permission in London, see art. 5 (5) (i) of the G.D.O. of 1950 (Part I of S.I. 1950 No. 728); Hill, 2nd Supp., p. B173. In respect of land in the City, the application is to be lodged with the Common Council; in respect of other land, with the L.C.C.

As to delegation of functions to the Common Council of the City, see the notes to s. 69 (4), *post*, and S.I. 1948 No. 1459, there cited.

As to consultation with a Metropolitan Borough by the L.C.C. in considering certain applications for planning permission, see art. 9 (1) (*f*) of the G.D.O. (Hill, 2nd Supp., p. B179), and s. 114 (13) of the principal Act.

As to the registration, in the register of local land charges, of notices deposited under ss. 28 (or that section as applied by s. 39 or 46) and 57 of the present Act, see the notes to s. 28, *ante*, and S.I. 1954 No. 1677, *post*.

As to the register of planning applications required to be kept under s. 14 of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48), see art. 12 (3) of the G.D.O. (Hill, 2nd Supp., p. B182).

Isles of Scilly. See, generally, s. 115 of the principal Act and S.I. 1949 No. 1321 (*ubi supra*).

Attention is drawn to art 3 (1) (*f*) of that order (Hill, 2nd Supp., p. 885), whereby references in the principal Act to the appointed day thereunder are to be construed, in its application to the Isles, as references to 1st August 1949 instead of 1st July 1948. The latter date is frequently mentioned in the present Act, without any express modification for the purpose of applying this Act to the Isles.

Sub-s. (1).

Administrative County of London. Means the City of London, the twenty-eight metropolitan boroughs, and the Inner Temple and the Middle Temple. See s. 1 of the London Government Act, 1939 (15 Halsbury's Statutes (2nd Edn.) 1078).

Sub-s. (3).

Council of the Isles. As to the constitution thereof, see the Isles of Scilly Order, 1943 (S.R. & O. 1943 No. 107).

63. Dissolution of Central Land Board.—(1) Her Majesty may by Order in Council provide for the winding up and dissolution of the Central Land Board and for the transfer to the Minister of any of the functions of the Board exercisable in England or Wales which at such date as may be specified in the Order have not been fully performed.

(2) An Order in Council under this section may contain such incidental, consequential and supplementary provisions as may appear to Her Majesty to be expedient for the purposes of the Order.

(3) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft thereof has been laid before Parliament and approved by resolution of each House of Parliament.

(4) On the dissolution of the Central Land Board by an Order in Council under this section, sections two and three of the principal Act (which relate to that Board) shall cease to have effect.

NOTES

This section provides for the eventual dissolution of the Central Land Board by an Order in Council. Functions (in England and Wales) not fully performed at a date to be specified in the order will be transferred to the Minister of Housing and Local Government. The Board's functions include the determination of Part VI claims under the principal Act, subject to rights of appeal to the Lands Tribunal; the determination and collection of development charges where Part VII of that Act applies (including power to confirm and vary assessments) in respect of development begun before charge was abolished; and further powers and duties arising under the present Act in connection with Part I payments (ss. 1–15, *ante*) and the provision of information as to unexpended balances (s. 48, *ante*).

Similar functions in Scotland are to be transferred to the Secretary of State. When the Board is dissolved, ss. 2 and 3 of the principal Act (which relate to the constitution and functions of the Board), and s. 1 of the corresponding Scots Act, will cease to have effect. An Order in Council under this section is to be laid in draft before Parliament and affirmed by resolution of each House, before Her Majesty is advised to make the Order.

Order in Council. Note the requirement of affirmative resolution under sub-s. (3), *supra*. As to the making of an Order in the form of a statutory instrument and the laying of a draft order before Parliament, see the Statutory Instruments Act, 1946 (36 Statutes Supp. 95), and the Laying of Documents before Parliament (Interpretation) Act, 1948 (56 Statutes Supp. 293).

By virtue of s. 63 of the corresponding Scots Act (the T. & C.P (Scotland) Act, 1954, 2 & 3 Eliz. 2 c. 73) an order under the present section may also provide for a transfer of functions in Scotland to the Secretary of State. S. 1 of the T. & C.P. (Scotland) Act, 1947, 10 & 11 Geo. 6 c. 53, will then cease to have effect.

Minister. *I.e.*, the Minister of Housing and Local Government, appointed under s. 1 of the Minister of Town and Country Planning Act, 1943 (Hill, p. 502; 19 Statutes Supp. 4); see s. 69 (1) and (8), *post*.

Functions. The term includes power and duties, see s. 69 (2), *post*, and s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203).

Ss. 2 and 3 of the principal Act. See Hill, pp. 40–42; 48 Statutes Supp. 26–28.

64. General financial provisions.—(1) The Treasury may issue to the Minister and to the Central Land Board out of the Consolidated Fund such sums as are necessary to enable the Minister and the Board respectively to make any payments becoming payable by him or them under any provision of Part I or V of this Act.

(2) For the purpose of providing sums to be issued under the preceding subsection, or of providing for the replacement of sums so issued, the Treasury may at any time, if they think fit, raise money in any manner in which they are authorised to raise money under the National Loans Act, 1939, and any securities created and issued to raise money under this subsection shall be deemed for all purposes to have been created and issued under that Act.

(3) The provisions of this subsection shall have effect as to the repayment of sums issued under subsection (1) of this section, that is to say—

(*a*) the aggregate of the sums so issued in any financial year, whether to the Minister or to the Central Land Board, shall be repaid by the Minister into the Exchequer, as mentioned in the next following paragraph, with interest thereon at such rate as the Treasury may determine, the said interest accruing, as respects the whole aggregate, from such date in the financial year in which the sums are issued as the Treasury may determine;

(*b*) the said aggregate shall be repaid by twenty equal annual instalments, of principal and interest combined, falling due on the anniversary of the date determined under the preceding paragraph, the first such instalment falling due in the financial year next following the financial year in which the sums in question were issued;

(*c*) subject to the next following subsection, any instalment to be paid into the Exchequer under the last preceding paragraph shall be paid out of moneys provided by Parliament.

(4) Any sums received by the Minister or by the Central Land Board—

(*a*) by virtue of subsection (4) of section forty-six of this Act;

(*b*) under subsections (1) to (5) of section fifty-two of this Act; or

(*c*) under subsection (6) of the said section fifty-two, or under that subsection as applied by regulations made under subsection (8) of that section, not being in either case sums recovered by reference to compensation payable under Part II of this Act or to compensation to which Part IV of this Act applies,

shall be paid into the Exchequer, and shall be treated as paid in satisfaction, or part satisfaction, of such one or more instalments payable under the last preceding subsection as the Treasury may determine.

(5) All sums paid into the Exchequer under the two last preceding subsections shall be issued out of the Consolidated Fund at such times as the Treasury may direct, and shall be applied by the Treasury as follows:—

(*a*) so much thereof as represents principal shall be applied in redeeming or paying off debt of such description as the Treasury think fit;

(*b*) so much thereof as represents interest shall be applied to the payment of interest which would, apart from this paragraph, have fallen to be paid out of the permanent annual charge for the National Debt.

(6) The Minister and the Central Land Board shall each prepare, in respect of each financial year, in such form and manner and at such times as the Treasury may direct, an account of the sums issued to them respectively out of the Consolidated Fund under subsection (1) of this section, and of any such sums received by them respectively as are mentioned in subsection (4) of this section.

(7) On or before the thirtieth day of November in each year, the Minister and the Central Land Board shall transmit to the Comptroller and Auditor General the account prepared by him or them under the last preceding subsection in respect of the last preceding financial year, and the Comptroller and Auditor General shall examine and certify each such account and lay before each House of Parliament copies thereof, together with his report thereon.

(8) There shall be paid out of moneys provided by Parliament—

(*a*) any sums necessary to enable the Minister to make any payment becoming payable by him under any provision of Part II or IV of this Act;

(*b*) any administrative expenses of the Minister under this Act;

(*c*) to such extent as may be sanctioned by the Treasury, any administrative expenses incurred for the purposes of this Act by the Central Land Board with the approval of the Minister;

(*d*) any sum falling to be paid by the Central Land Board under subsection (2) of section fifty-four of this Act;

(*e*) any sum falling to be paid by the Commissioners of Customs and Excise by virtue of section fifty-eight of this Act;

(*f*) any increase attributable to the provisions of this Act in the sums which under any other enactment are payable out of moneys so provided.

(9) Subject to the preceding provisions of this section, and to the provisions of section forty-one of this Act, any receipts of the Minister or the Central Land Board under any provision of this Act other than this section shall be paid into the Exchequer.

(10) As soon as practicable after—

(*a*) the expiration of a period of five years commencing with the date of commencement of this Act; or

(*b*) the expiration of the financial year in which the aggregate of all payments made by the Minister under Parts II and IV of this Act reaches thirty million pounds,

whichever is the earlier, the Minister shall lay before Parliament a report with respect to those payments and to any sums received by him under this Act other than such sums as are mentioned in subsection (4) of this section.

NOTES

The general financial provisions of this section distinguish between the periods before and after the commencement of this Act, on 1st January 1955.

The special payments to be made by the Central Land Board under Part I (ss. 1–15), *ante*, are payable in respect of acts or events which occurred before 1st January 1955, in the period after the general commencement of the Act of 1947 (on the appointed day thereunder, 1st July 1948), or, in some cases, in the period after its passing (6th August 1947), when certain provisions, including Part V (ss. 50–57), amending the law of compensation for compulsory purchase, came into force. Compensation under Part V (ss. 42–46), *ante*, is payable by the Minister in respect of claim holdings relating to land in which there subsist or subsisted interests which were depreciated in value by a decision or order after 30th June 1948, and before 1st January 1955.

The moneys necessary to meet Part I payments and Part V compensation, are to be issued out of the Consolidated Fund (sub-s. (1), *supra*) and repaid by instalments (sub-s. (3), *supra*) over a 20-year period. These instalments will be met in part:

(1) out of moneys arising from the recovery of registered Part V compensation where subsequent new development takes place (ss. 29 and 46 (4), *ante*, and sub-s. (4) (*a*), *supra*);

(2) out of sums recovered by the Board from acquiring authorities, representing Part I payments which were made or set off (s. 52 (1)–(5), *ante*, and sub-s. (4) (*b*), *supra*);

(3) out of sums recovered by the Board or the Minister from acquiring authorities who (after 1st January 1955) purchase land more cheaply by reason of a prior payment under Part I, or of compensation paid under Part V; or by reason of a set-off of development value against development charge where claims had been pledged to the Board (s. 52 (6) and (8) (*c*), *ante*, and sub-s. (4) (*c*), *supra*).

For the rest, repayment into the Exchequer will be made by the Minister (sub-s. (3) (*a*), *supra*) out of moneys provided by Parliament (sub-s. (3) (*d*), *supra*).

The Treasury are empowered to raise moneys, as mentioned in sub-s. (2), *supra*, and are to apply moneys, received in repayment, as mentioned in sub-s. (5), *supra*. Sub-ss. (6) and (7) require the preparation of accounts, and the laying of audited accounts before Parliament.

Sub-s. (8), *supra*, contains more general financial provisions, relating in the main to expenditure on or after 1st January 1955. This subsection covers:

(*a*) compensation to be paid by the Minister under Part II (ss. 16–29, *ante*) in respect of planning decisions made on or after 1st January 1955; or to be contributed by the Minister under s. 40 in Part IV, *ante*, where permission is revoked or modified on or after that date;

(*b*) and (*c*) administrative expenses of the Minister or the Central Land Board under this Act. These provisions appear to be the authority for contributions to be made towards the expenses of applicants and claimants incurred in the employment of persons professionally experienced in valuation; see the notes to S.I. 1954 Nos. 1599, 1600, *post*. Such expenses, to the extent allowed, may be treated, it seems, as incurred on behalf of the Minister or the Board; there will be no contribution in straightforward cases not involving a new valuation or apportionment;

(*d*) mineral development charges to be repaid by the Board, where they relate to working on or after 1st January 1955, and the determination is varied under s. 54 (2), *ante*;

(*e*) monopoly value payments in respect of on-licensed premises, which are repayable to the extent provided by s. 58, *ante*;

(*f*) any consequential increases in expenditure, out of moneys provided by Parliament, under other enactments.

Sub-s. (9) contains a saving for the payments to be made, under s. 41 (2), *ante*, by the Minister, to authorities who have paid compensation for depreciation on the revocation or modification of permission, when such compensation has been recovered by the Minister on the subsequent carrying out of development. Subject to that, and to the earlier subsections of this section, all sums received by the Minister or the Board are to be paid into the Exchequer.

Sub-s. (10), *supra*, is apparently intended to secure parliamentary review of the financial consequences of the present Act, so far as they can be reflected in the book-keeping provision of this section. A report is to be made after 31st December 1959 or after the end of the financial year in which the Minister's payments under Parts II and IV, *ante*, reach an aggregate of £30 million. The report will show also the Minister's receipts (except those which are, in effect, concerned with matters arising out of Parts I and V, *ante*).

It will be observed that the increased expenditure of public moneys and local funds arising from the amendments of s. 22 of, or of the Third Schedule to, the Act of 1947 will not figure in this report except very indirectly in certain items. Cf. paras. 55 and 56 of the White Paper (Cmd. 8699, Hill, 2nd Supp., pp. B714, B715).

Sub-s. (2).

National Loans Act, 1939. See 21 Halsbury's Statutes (2nd Edn.) 1232.

Sub-s. (3).

Financial year. See s. 22 of the Interpretation Act, 1889 (24 Halsbury's Statutes (2nd Edn.) 222).

Sub-s. (4).

Ss. 46, 52. See the General Note, *supra*, and those sections, *ante*.

Compensation to which Part IV of this Act applies. This is defined in s. 38 (3), *ante*. The sums recoverable by reference thereto by the Minister will be the amounts of registered compensation for depreciation; see ss. 38 (4) and 41 (1), *ante*. These amounts will be payable by the Minister to the local planning authority (or delegate authority) which paid the compensation to which Part IV applies, subject to the Minister's right to retain his own contribution made to that compensation (if any) and any grant paid by him. Cf. the saving for this arrangement in sub-s. (9), *supra*.

Sub-s. (7).

Comptroller and Auditor General. See s. 6 of the Exchequer and Audit Departments Act, 1866 (21 Halsbury's Statutes (2nd Edn.) 207), as to the appointment of this functionary.

Lay . . . before Parliament. Cf. the Laying of Documents before Parliament (Interpretation) Act, 1948 (56 Statutes Supp. 293).

Sub-s. (8).

Enactment. This term includes an enactment in a local or private Act, and any order, rule, regulation, bye-law or scheme made under an Act; see s. 69 (2), *post*, and s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203).

Sub-s. (9).

S. 41. See s. 41 (2), *ante*, which relates to the payment of registered compensation, recovered by the Minister, to a local authority which has paid compensation to which Part IV, *ante*, applies, as explained in the note to sub-s. (4), *supra*.

Sub-s. (10).

Commencement of this Act. The five-year period begins to run on 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*.

65. General provisions as to calculation of value.—(1) In calculating value for any of the purposes of this Act—

(*a*) Rules (2) to (4) of the Rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply with the necessary modifications;

(*b*) if the interest to be valued is subject to a mortgage, it shall be treated as if it were not subject to the mortgage:

Provided that Rule (3) of those Rules shall not apply for the purposes of the Fourth Schedule to this Act, and paragraph (*b*) of this subsection shall not apply for the purposes of subsection (2) of section six of this Act.

(2) Where, for the purposes of any of the provisions of this Act, a value falls to be calculated by reference to the duration of a tenancy, and by reason of any option or other contractual right with respect to the determination, renewal or continuance of the tenancy, the date of expiration of the tenancy is not ascertain with certainty, that date shall be taken to be such as appears reasonable and probable having regard to the interests of the party by whom the option is exercisable, or in whose favour the right operates, and to any other material considerations subsisting at the time when the calculation of the value falls to be made.

NOTES

This section deals with the calculation of values for the purposes of this Act, and bears a substantial resemblance to the provisions made by s. 62 of the Act of 1947 (Hill, p. 165; 48 Statutes Supp. 126) for the calculation of development values under Part VI of that Act. The rules of the Act of 1919 are not applied in the present case, however, in quite the same way. There is here no statement, as there is in s. 62 of that Act, saying that the rules are to apply as they apply in relation to the compulsory purchase of interests in land. The provisions of Part V of the 1947 Act (Hill, pp. 143–155; 48 Statutes Supp. 105–115) and of Part III of the present Act (ss. 30–37), *ante*, therefore, clearly do not affect the calculation of value under the present section.

The section is intended to provide machinery for the ascertainment of an " open market " value for various purposes under the present Act. It will be an " artificial " open market, however, arrived at in accordance with the particular directions given in the section for the purposes of which the assessment is to be made. Any ordinary modern open market would seem inappropriate. In the real market a willing purchaser under r. (2) would certainly have in mind the effect of planning control and the possible shadow of compulsory purchase. In most cases, the sections of this Act which employ the machinery of this section are concerned with the measurement of the depreciation caused by just those effects of modern planning legislation.

The effect of this section can be considered in relation to s. 26 (2), *ante*. Under that subsection, the value of an interest is to be taken to be depreciated if and to the extent that one valuation of the interest is less than another. That section is concerned with measuring the depreciation caused by a planning decision. One valuation is to assume the restrictive effect of the decision, but to take account of any permission granted, or any undertaking to grant permission in force, before the Minister gives notice of his findings on the compensation claim. It is also to be assumed, on that valuation, that apart from such permission or undertaking permission would only be granted for Third Schedule development. The other valuation is to be made as if the planning decision causing the depreciation had been a decision to the contrary effect. In that section, therefore, the two different sets of planning assumptions, which are to be made for the purposes of valuation, are given: both, it seems, are " open market " figures, but neither is a figure which would necessarily apply to a real sale in a real market. In relation, however, to s. 36 (2), *ante*, no specific indication is given as to what potential value can be considered to be within the term " new development " in calculating " loss of development value " under that provision. " New development " is defined in s. 16 (5), *ante*, in effect, as any development other than that comprised in the Third Schedule. Without a direction to the contrary, much of that development might be excluded by the straightforward application of r. (2) of the 1919 Act; cf. *Higham* v. *Havant and Waterloo Urban District Council*, [1951] 1 All E.R. 173; [1951] 1 K.B. 509; affirmed, [1951] 2 All E.R. 178, *n.*; [1951] 2 K.B. 527, C.A.; 2nd Digest Supp.

The present section disregards any mortgage affecting the interest which is to be valued; and assumes in relation to any option, or contractual right, to determine, or renew, a tenancy that the person entitled to exercise the right would exercise the right in the manner which appears reasonable in his interest.

For the purposes of the Fourth Schedule, *post*, r. (3) of the 1919 Act rules is excluded. This exclusion of the " special purchaser " rule appears to let in, for the purposes of assessing the value of " new development ", the principles laid down in *Inland Revenue*

Comrs. v. *Clay*, [1914] 3 K.B. 466, C.A.; 39 Digest 226, *63* (which that rule was designed to exclude). Some development value claims were calculated in disregard of this rule, and such disregard has received retrospective validity in para. 10 of the First Schedule, *post*. Where such claims were excluded under this rule, or where no claims were made, because of the inclusion of this rule in s. 62 of the Act of 1947 (*ubi supra*), claims cannot be reopened or new claims raised. It seems not unreasonable, where the rule was disregarded in calculating development value, that it should again be disregarded in assessing " new development ". On the other hand, the provision may operate harshly where no account was taken of some special value when assessing development value for the purposes of a Part VI claim under the principal Act, if account has now to be taken in assessing deductions falling to be made in respect of new development. The exclusion of r. (3), however, may be convenient where the calculations have to be made in respect of a number of very small areas of land each having a separate unexpended balance within the meaning of ss. 17 and 18, *ante*, so long as a certain amount of common sense is used.

In assessing, for the purposes of Case B, the restricted value of a mortgaged interest, under s. 6 (2) (*c*), *ante*, the provision of the present section relating to the disregard of mortgages is excluded. Strictly, s. 6, *ante*, has its own machinery for determining restricted value. It is the amount which, at the date of the sale in question, would have been determined under Part VI of the Act of 1947, *i.e.*, principally under s. 62 of that Act (*ubi supra*). The reference in sub-s. (1) proviso, *supra*, to s. 6 (2), *ante*, seems to have been inserted, from excessive caution, to ensure that there is no conflict between the two sections.

Sub-s. (1).

Purposes of this Act. Calculations of value, for the purposes of this Act, will particularly arise under ss. 18, 25, 26, 32, 36, 43, 44 and 53, *ante*, and s. 66 (1) and the Fourth Schedule, *post*. Such calculations as arise under Part I, *ante*, appear to be within the machinery of the principal Act.

S. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919. S. 2 of the Act of 1919 provides as follows:

> **2. Rules for the assessment of compensation.**—In assessing compensation, an official arbitrator shall act in accordance with the following rules:—
>
> (1) No allowance shall be made on account of the acquisition being compulsory;
>
> (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant;
>
> (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bona fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration;
>
> (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account;
>
> (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
>
> (6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.
>
> *For the purposes of this section, an official arbitrator shall be entitled to be furnished with such returns and assessments as he may require.*

The words italicised were repealed by s. 10 of, and the Second Schedule to, the Lands Tribunal Act, 1949 (Hill, 2nd Supp., pp. B20 and B23; 61 Statutes Supp. 47, 50). Only rr. (2), (3) and (4) are applied for the purposes of the present section. The section is, however, printed as a whole for convenience of reference. (*Quaere*, whether in assessing compensation " in connection with a compulsory acquisition . . ." under s. 36, *ante*, the omission of r. (1) permits account to be taken of the old customary allowance excluded by that rule.)

Necessary modifications. There is a good deal of scope for speculation in these words. Regard will have to be had to the particular provision of the Act for the purpose of which the rules are being used. Otherwise where planning permission is

not available, for example, the use could in certain cases be thought to be contrary to law for the purposes of r. (4). See also the reference to an " artificial " open market in the General Note, *supra*; and cf. para. 2 (*b*) of the Fourth Schedule, *post*.

Subject to a mortgage. The disregard of a mortgage is merely a valuation device. As to the position of certain mortgagees in relation to the present Act, see s. 66, *post*. Note also the exclusion of the present proviso, in relation to the calculation of restricted values under s. 6 (2) (*c*), *ante*.

Rule (3). The exclusion of r. (3), by the present proviso, is expressed to be for the purposes of the Fourth Schedule (as to which see the General Note, *supra*). The operation of this rule is also excluded by s. 6 (2) (*e*), *ante*, in certain cases. There is no provision, in the present section, for the exclusion of the rule a second time; contrast the express reference to s. 6 (2) in connection with mortgages.

Sub-s. (2).

Tenancy. See s. 69 (1), *post*.

Option or contract. See s. 69 (6), *post*, which seems inapposite.

66. Provisions as to mortgages, settlements, ecclesiastical property, etc.—(1) Regulations made under this section may make provision as to the exercise of the right to apply for a payment under Part I of this Act, or to claim compensation under Part II or Part V thereof, and as to the person to whom any such payment or compensation or any part thereof is to be paid and as to the application of any such payment or compensation or any part thereof, in cases where, apart from this section, the right to apply for the payment, or to claim the compensation, as the case may be, is exercisable by reference to—

(*a*) a claim holding which is subject to a mortgage, or which was so subject at a time specified in the regulations; or

(*b*) an interest in land which is subject to a mortgage, or to a rentcharge, or to the trusts of a settlement, or which was so subject at a time specified in the regulations;

and any such regulations may, in a case where any payment or compensation, or any part thereof, is by virtue of those regulations to be paid to the owner of a rentcharge, apply all or any of the provisions of section twenty-five of the War Damage Act, 1943 (which relates to the rights of owners of rentcharges as to payments for war damage), subject to such adaptations and modifications as may be prescribed by the regulations, and may provide for disputes arising under the regulations, so far as they relate to rentcharges, to be referred to the Lands Tribunal for determination by that Tribunal.

(2) The purposes authorised for the application of capital moneys—

(*a*) by section seventy-three of the Settled Land Act, 1925, and by that section as applied by section twenty-eight of the Law of Property Act, 1925, in relation to trusts for sale; and

(*b*) by section twenty-six of the Universities and College Estates Act, 1925,

and the purposes authorised by section seventy-one of the Settled Land Act, 1925, by that section as applied as aforesaid, and by section thirty-one of the Universities and College Estates Act, 1925, as purposes for which moneys may be raised by mortgage, shall include the payment of any sum recoverable under section twenty-nine, forty-one, forty-six or fifty-seven of this Act.

(3) Any sum payable under this Act in relation to land which is, or on the first day of July, nineteen hundred and forty-eight, was, ecclesiastical property, being a sum which apart from this subsection would be payable to an incumbent, shall be paid to the Church Commissioners to be applied for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising, or disposing of the proceeds of, such a sale; and where any sum is recoverable under section twenty-nine, forty-one, forty-six or fifty-seven of this Act in

respect of such land, the Church Commissioners may apply any money or securities held by them in the payment of that sum.

NOTES

Under sub-s. (1), *supra*, the Minister has made the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*. Sub-ss. (2) and (3), *supra*, provide for the raising of moneys, recoverable by the Central Land Board or the Minister on the carrying out of development of land, by trustees of settled land, land held on trust for sale, land belonging to universities and colleges within the Universities and College Estates Act, 1925 (8 Halsbury's Statutes (2nd Edn.) 90), and land which is ecclesiastical property. Under sub-s. (2) such moneys may be provided out of capital or raised by mortgage; in the case of ecclesiastical property, sub-s. (3) enables the Church Commissioners to apply for the purpose any money or securities held by them. By virtue of sub-s. (3), the Church Commissioners will receive any sum relating to ecclesiastical property which, under this Act, would otherwise be payable to an incumbent and the sum will be dealt with as if it arose from a sale of the land concerned.

Certain provisions of sub-ss. (1) and (3), *supra*, resemble the provisions which might have been made under s. 58 of the principal Act if the intended Treasury Scheme thereunder had been made. The remaining provisions of this section are modelled on those of the principal Act relating to moneys required to meet development charge.

Sub-s. (1).

Regulations. See the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), *post*.

To apply for a payment under Part I. Part I (ss. 1–15), *ante*, relates to the making of applications for payments to be made by the Central Land Board in respect of acts or events before 1st January 1955 in the cases mentioned in ss. 3 to 11, *ante*. The making and determination of applications are governed by s. 13, *ante*, and the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *post*. The Regulations under the present section (S.I. 1955 No. 38), *post*, provide for applications under Part I by:

(1) trustees of settled land (reg. 10 (*a*)); and
(2) certain mortgagees and "former" mortgages of land (regs. 2 (3) and 3), in certain cases.

It seems that a valid application in respect of settled land could be made by, for example, a life tenant seised of the legal fee simple, but the payment must be made to the trustees (reg. 10 (*b*)). A mortgagee who is the holder of the claim holding by virtue of an assignment thereof (see s. 2 (8), *ante*) cannot apply under the Regulations in Part I cases (reg. 3 (1) (*c*)), though he may be able to apply, as an original applicant, under the Act itself. Other mortgagees can apply for a Part I payment, under the Regulations, only in certain cases and circumstances (reg. 3).

A mortgagee will not normally apply, but may be entitled to do so on default of the person ("the original applicant") otherwise entitled to do so (reg. 3 (4)). Except where this occurs, the mortgagee's right, if any, will be to ask that he shall receive the amount applied for by the original applicant (reg. 3 (3) and (5)). He must account for the payment (including interest).

Rentcharge owners cannot apply under the Regulations for a payment under Part I of the Act.

To claim compensation under Part II or V. Part II (ss. 16–29), *ante*, relates to claims for compensation in respect of certain planning decisions, refusing permission or granting permission conditionally, made or on after 1st January 1955. Part V (ss. 42–46), *ante*, relates to claims for compensation in respect of planning decisions made after 30th June 1948 and before 1st January 1955, and in respect of orders revoking or modifying permission made in the same period. Such compensation is payable by the Minister by reference to an unexpended balance or balances, in Part II cases; or by reference to a claim holding or holdings, in Part V cases. Claims are made under ss. 22, 27 and 45, *ante*, and the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*.

The Regulations under the present section (S.I. 1955 No. 38), *post*, provide for the making of such claims by:

(1) trustees of settled land (reg. 10 (*a*));
(2) rentcharge owners (reg. 7, and para. 2 of the Schedule);
(3) certain mortgagees of land, in respect of Part II compensation (reg. 4 (1) (*a*) and (4)); and
(4) certain mortgagees and "former" mortgagees, not being the claim holder in respect of Part V compensation (regs. 2 (3), and 4 (1) (*b*) and (4)).

A rentcharge owner will not normally make the claim under Part II or Part V, except so far as may be necessary on default of the person otherwise entitled to do so (reg. 7 (4)). The rentcharge owner will, however, make a separate rentcharge claim (reg. 7 (3)) and the Minister will send a "rentcharge notice" when issuing his findings on the Part II or Part V claim. The purpose of this procedure is to divert, to the rentcharge owner, all or part of the compensation by way of capitalising a part or all

of the periodic sum charged on the land, and that sum will be reduced thereafter accordingly.

A mortgagee may have a right to claim on default of the " original applicant " (reg. 4 (4)); his normal right, if any, will be to ask to receive the compensation claimed by the original applicant (reg. 4 (3) and (5)). When a mortgagee has such rights, he must account for any payment made to him.

Person to whom . . . payment or compensation . . . is to be paid. The regulations provide for payment as follows:

(1) Where any application or claim is made by reference to an interest in land which, at the time when the right to apply or claim is exercisable, is settled land, the payment or compensation (including interest under s. 14 (1) or 46 (1) in Part I and Part V cases) shall be paid to the trustees (reg. 10 (*b*) of S.I. 1955 No. 38, *post*).

(2) In those cases where the " original applicant " applies or claims, a mortgagee (including, in Part I and Part V cases, a " former " mortgagee) will in some cases have a right (regs. 3 (3) and 4 (3)) to ask that he may receive the payment or compensation, so far as it is attributable to the land which is or was subject to the mortgage (reg. 3 (5) and 4 (5)).

(3) In those cases where a mortgagee (including, in Parts I and V cases, a " former " mortgagee) can claim on default of the original applicant (regs. 3 (4) and 4 (4)) the mortgagee will receive the payment or compensation, so far as it is attributable to the land which is or was subject to the mortgage (regs. 3 (5) and 4 (5)).

(4) Where a rentcharge claim is made (on a Part II or Part V claim made by an " original applicant " or the rentcharge owner himself) a rentcharge owner will receive the rentcharge payment (if any) determined to be payable in respect of that rentcharge (reg. 8 and the Schedule, applying and adapting provisions of the War Damage Act, 1943).

The Schedule to the Regulations provides a method of calculating a rentcharge payment, on the basis of the depreciation of the value of the land or interest in land charged as security, so as to give effect to priorities (para. 6).

Where a mortgage has priority over a rentcharge, payment may be made to the mortgagee, provided that he is a mortgagee otherwise entitled to receive the payment under the Regulations (see reg. 4, and para. 4 (*b*) of the Schedule). The mortgagee will then make the rentcharge payment, in effect, out of the moneys for which he must account. If a rentcharge has priority over a mortgage, the rentcharge payment is made by the Minister before making payment of any residue to the mortgagee (para. 4 (*a*) of the Schedule).

As between mortgagees, the first in priority has the best right to ask for payment, provided he is a mortgagee to whom the Regulations (regs. 3 and 4) apply. A mortgagee is not bound to exercise this right (see regs. 3 (3) and 4 (3)), and the Central Land Board or the Minister, as the case may be, will be bound to make payment to the mortgagee first in priority among those who do so. The position is thus different from that under the comparable provisions of s. 24 of the War Damage Act, 1943 (7 Statutes Supp. 177); under the Planning Payments (War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., pp. B94–B106); and under the Fourth Schedule to the Act of 1947 (Hill, pp. 273–274; 48 Statutes Supp. 215–216).

Application of any such payment or compensation. The Regulations make provision for the manner in which a payment or compensation received is to be applied, as follows:

(1) A mortgagee who receives a payment or compensation under the Regulations must account therefor as if the payment or compensation (including interest in Part I and Part V cases) were the proceeds of sale of the mortgaged land, arising on the exercise of a power of sale on the date when the mortgagee receives the payment or compensation (regs. 3 (5) and 4 (5)). A mortgagee may be bound to make a payment to a rentcharge owner in respect of a rentcharge over which the mortgage had priority (para. 4 (*b*) of the Schedule).

(2) A mortgagee who receives a payment under s. 9, *ante*, in Part I of the Act, or compensation by virtue of s. 43 (2), *ante*, under Part V of the Act, must account similarly as if the payment or compensation (including interest) were the proceeds of sale (reg. 5).

(3) A rentcharge owner will receive a special form of rentcharge payment; this will correspondingly affect the amount, thereafter, of the annual sum charged on the land (para. 3 of the Schedule).

(4) Trustees of settled land will receive the payment or compensation (including interest in Part I or Part V cases). No express provision is made for the application of the amount received as capital or as income or as a casual profit. It will be remembered that the interest, in Part I or Part V cases, represents interest from 1st July to the date of payment or 30th June 1955 (whichever is the earlier); see ss. 14 (1) and 46 (1), *ante*. Compensation in Part III cases will be made up, as to one-eighth of its amount, of the lump

sum added by s. 17 (2), *ante*, which is said to represent interest, less tax, for the period from 1st July 1948 to 30th June 1955.

Claim holding. See s. 2, *ante*. The only positive provision made by the Regulations (S.I. 1955 No. 38), *post*, is in reg. 5, which requires a mortgagee of a claim holding who receives a Part I payment by virtue of s. 9, *ante*, or who receives Part V compensation by virtue of s. 43 (2), *ante*, to account therefor as for the proceeds of sale of the mortgaged land. Ss. 9 and 43, *ante*, relate to applications and claims by mortgagees of holdings only where the mortgage was by way of assignment of the holding; see s. 2 (8), *ante*. As to assignments, see the notes to s. 60, *ante*. The Regulations also exclude a mortgagee who is the claim holder from the right to apply, in Part I and Part V cases, under the Regulations (see regs. 3 (1) (*c*) and 4 (1) (*b*)).

Mortgage. See s. 69 (2), *post*, and s. 119 (1) of the Act of 1949 (Hill, p. 260; 48 Statutes Supp. 204). Save where the context otherwise requires, " mortgage " includes any charge or lien on any property for securing money or money's worth.

Interest in land. See s. 69 (1), *post*, defining " interest in land " and " tenancy ".

Is (or was) subject to a mortgage. The rights of mortgagees of land to apply under the Regulations, or receive payment thereunder, are limited by reference to the time when the mortgage was created. In general, it may be said that the Regulations apply only where it may be assumed, from the date of the mortgage, that the parties justifiably regarded development value as an element in the value of land as security for the money advanced.

Reg. 3 of the Regulations (S.I. 1955 No. 38), *post*, applies to payments under Part I (but not under ss. 3, 8 and 11) where, at 1st January 1955, the right to make application is exercisable by reference to an interest in land which is subject to a mortgage created before 1st July 1948 (when the principal Act came generally into operation), or which was subject, on or after 6th August 1947 (when the provisions of the principal Act relating to compulsory acquisitions at existing use value came into operation), to a mortgage made before 1st July 1948. Reg. 4 applies to Part V cases, where the right to claim compensation has become exercisable by reference to an interest in land which either is subject to a mortgage created before 1st July 1948 or was so subject at a time between that date and 31st December 1954 (both dates inclusive). Reg. 4 applies also to Part II cases where the right to claim compensation is exercisable by reference to an interest in land which is subject to a mortgage created either before 1st July 1948 or (subject to contrary provision in the mortgage itself) after 31st December 1954. In all cases, the moneys secured must not have already been paid in full or charged exclusively on other land. In Part I and Part V cases, the mortgagee must not himself be the claim holder as defined in s. 2 (8), *ante*; *i.e.*, he must not have taken a mortgage by assignment of the claim holding. In Part I and Part V cases, the expression " mortgagee " includes a " former " mortgagee, *i.e.*, a person who was a mortgagee of an interest which has ceased to be subject to the mortgage, before 1st January 1955.

Rentcharge. This includes any annual sum charged on land not being rent incident to a reversion; see s. 69 (1), *post*. The Regulations (S.I. 1955 No. 38), *post*, make provision for rentcharge payments, in Part II and Part V cases; see regs. 6 to 9 thereof, and the Schedule thereto.

Trusts of a settlement. See reg. 10 of the Regulations (S.I. 1955 No. 38), *post*.

S. 25 of the War Damage Act, 1943. See 7 Statutes Supp. 179; and reg. 8 of and the Schedule to the Regulations (S.I. 1955 No. 38), *post*. Cf., also, the somewhat different application of s. 25 in the Schedule to the Planning Payments (War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., pp. B104–B106).

Disputes . . . to be referred to the Lands Tribunal. The Minister's findings on a Part II or Part V claim, where land is subject to a rentcharge and a rentcharge claim has been made, will be accompanied by a rentcharge notice. The persons to whom this notice must be sent are the original applicant and the rentcharge owner in question; see reg. 9 of the Regulations (S.I. 1955 No. 38), *post*. A dispute may be referred to the Tribunal by giving notice of appeal in Form 1A in the First Schedule to the Tribunal's Rules (inserted by the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*). Where a dispute is referred, it will be heard as an appeal against a determination; the original applicant, the owner of the rentcharge in question, and other rentcharge owners who may be affected, may on compliance with Tribunal's Rules be heard in the dispute; see reg. 9 of the Regulations (S.I. 1955 No. 38), *post*, and r. 5A of the Tribunal's Rules (inserted by the Amendment Rules of 1955 (S.I. 1955 No. 54), *post*).

As to the Lands Tribunal generally, see the notes to S.I. 1955 No. 54, *post*, and cf. the notes to s. 27, *ante*.

Sub-s. (2).

S. 73 of the Settled Land Act, 1925. 23 Halsbury's Statutes (2nd Edn.) 161; cf. s. 71 (4) of the Act of 1947 (Hill, p. 181; 48 Statutes Supp. 138).

S. 28 of the Law of Property Act, 1925. 20 Halsbury's Statutes (2nd Edn.) 475; cf. s. 71 (4) of the Act of 1947, *ubi supra*.

S. 26 of the Universities and College Estates Act, 1925. 8 Halsbury's Statutes (2nd Edn.) 104; cf. s. 71 (4) of the Act of 1947, *ubi supra*.

Raising money by mortgage. The relevant sections, of the three property Acts of 1925 mentioned in this subsection, authorise the raising of money by mortgage of settled land, of land held on trust for sale, and of land belonging to universities and colleges. The power can be used to raise moneys needed to repay registered compensation, or registered War Damage Scheme payments, as required by this Act when subsequent development is carried out. Similar provision for raising moneys to meet development charge were contained in s. 71 (4) of the Act of 1947, *ubi supra*.

S. 29. That section, *ante*, relates primarily to the recovery by the Minister of Part II compensation registered as a local land charge under s. 28, *ante*. Such compensation will have been paid in respect of an adverse planning made on or after 1st January 1955. It is generally recoverable if new development is subsequently carried out.

S. 41. That section, *ante*, applies s. 29 (1)–(8), *ante*, to provide for the recovery of compensation paid for depreciation of the value of an interest in land by a revocation or modification of permission on or after 1st January 1955.

S. 46. S. 46 (4), *ante*, applies ss. 28 and 29 (1)–(8), *ante*, to provide for the registration, and recovery on subsequent development, of compensation paid under Part V, *ante*, by reason of past decisions and orders.

S. 57. That section, *ante*, provides for the registration (with exceptions), and generally for the recovery on the subsequent carrying out of any form of new development, of " s. 59 payments " made by the Central Land Board under the Planning Payments (War Damage) Scheme.

Sub-s. (3).

1st July 1948. The day appointed for the general commencement of the Act of 1947 by the Order under s. 120 (2) thereof (Hill, pp. 266, 733; 48 Statutes Supp. 209, 294).

Ecclesiastical property. This means land belonging to any ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction; see, by virtue of s. 69 (2), *post*, s. 107 (5) of the Act of 1947 (Hill, p. 243; 48 Statutes Supp. 188). Part VI payments in respect of such property under the principal Act were to be made to the Church Commissioners; they were given power to pay any development charge which might be payable out of any money or securities held by them.

Church Commissioners. By virtue of s. 1 of the Church Commissioners Measure, 1947 (7 Halsbury's Statutes (2nd Edn.) 1171), these Commissioners succeeded the Ecclesiastical Commissioners on 1st April 1948, the day appointed by the Archbishop of Canterbury. The provision that sums under this Act shall be paid to the Commissioners is a common form; cf. s. 107 (3) of the Act of 1947 (Hill, p. 243; 48 Statutes Supp. 188) and para. 5 of the Second Schedule to the Act of 1946 (Hill, p. 670; 39 Statutes Supp. 20).

Ss. 29, 41, 46 and 57. See these sections, *ante*, and the notes to sub-s. (2), *supra*.

67. Application of miscellaneous provisions of principal Act.—(1) Subsections (3) and (4) of section three of the principal Act (which relate to the functions of the Central Land Board) shall have effect in relation to this Act as they have effect in relation to the principal Act.

(2) Subsection (1) of section one hundred and three of the principal Act, in so far as it confers powers of entry on land, shall have effect as if (in addition to the powers so conferred) it conferred power on any person, being an officer of the Valuation Office or a person duly authorised in writing by the Minister, to enter upon any land at any reasonable time for the purpose of surveying it, or estimating its value, in connection with—

(*a*) an application for a payment under Part I of this Act in respect of that land or any other land; or

(*b*) a claim for compensation under Part II or Part V of this Act in respect of that land or any other land,

and subsections (4) to (7) and subsection (9) of that section shall have effect accordingly.

(3) Section one hundred and five of the principal Act (which relates to the service of notices) shall apply for the purposes of this Act.

(4) Section ninety-two and subsection (2) of section one hundred and nineteen of the principal Act (which relate to the determination of questions as to special classes of land) shall apply, for the purposes of this Act, for the

determination of any question whether land is land of a class specified in the Sixth Schedule to this Act as they apply for the determination of questions as to classes of land for the purposes of the principal Act.

(5) Section one hundred and four of the principal Act (which authorises the Minister to hold local inquiries for the purposes of that Act) shall apply for the purposes of this Act.

NOTES

Sub-s. (1).

S. 3 (3) and (4) of the principal Act. Hill, p. 41; 48 Statutes Supp. 27. Those subsections provide that the functions of the Board shall be exercised on behalf of the Crown; and for the making of regulations requiring members of the Board who are interested in any land the subject of a claim to disclose their interest.

Sub-s. (2).

S. 103 of the principal Act. Hill, p. 236; 48 Statutes Supp. 182. Sub-ss. (4) to (7) deal with evidence of authorisation, obstruction, disclosure of information obtained, and damage caused by entry. Sub-s. (9) deals with making borings.

Sub-s. (3).

S. 105 of the principal Act. Hill, p. 240; 48 Statutes Supp. 186.

Sub-s. (4).

Ss. 92 and 119 (2) of the principal Act. Hill, pp. 219, 261; 48 Statutes Supp. 169, 205. These provisions are concerned with disputes as to whether lands are lands to which ss. 82 to 85 of the Act of 1947 apply (Hill, pp. 205–211; 48 Statutes Supp. 157–161). Under s. 92 questions arising under ss. 82, 83 and 85 will be determined by the Minister. In the case of charity lands, under s. 85, an appeal on any question of law will lie to the court. Under s. 119 (2) any question as to whether land is operational land of a statutory undertaking will be determined by the Minister who is the "appropriate Minister" in relation to the undertaking (see s. 119 (1), Hill, p. 258; 48 Statutes Supp. 202). As to the determination of disputes as to what is the prevailing use, see s. 110 (2) and (3) (Hill, p. 245; 48 Statutes Supp. 190). Such disputes are determined in the first instance by the Central Land Board, subject to a right of appeal to the Minister.

Special classes of land. See s. 34, *ante*, and the Sixth Schedule, *post*.

Sub-s. (5).

S. 104 of the principal Act. Hill, pp. 238–240; 48 Statutes Supp. 184–186. That section applies sub-ss. (2) to (5) of s. 290 of the Local Government Act, 1933 (14 Halsbury's Statutes (2nd Edn.) 503, 504; and see Hill and 48 Statutes Supp., *ubi supra*).

68. Provisions as to regulations.—(1) The Minister may make regulations under this Act for any purpose for which regulations are authorised or required to be made under this Act.

(2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.

(3) Any statutory instrument containing regulations made under this Act (except regulations which, by virtue of any provision of this Act, are to be of no effect unless approved by resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Regulations made. The following regulations have been made under this section: the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599); the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600); the T. & C.P. (Minerals) Regulations, 1954 (1954 No. 1706); the Central Land Board (Provision of Information) Regulations, 1954 (1954 No. 1720); the T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38); and the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80). See also s. 72 (2) and (3), *post*, and the T. & C.P. Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598), under that section bringing the present Act into operation on 1st January 1955. For the above-mentioned statutory instruments, and certain rules made for the purposes of the present Act, see the Appendix, *post*.

Statutory instrument. See generally the Statutory Instruments Act, 1946 (36 Statutes Supp. 95). As to annulment, see ss. 5 (1) and 7 (1) of that Act. See also the Laying of Documents before Parliament (Interpretation) Act, 1948 (56 Statutes Supp. 293).

69. Interpretation.—(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" the Act of 1953 " means the Town and Country Planning Act, 1953;
" claim holding " has the meaning assigned to it by section two of this Act;
" compensation calculated on the basis of equivalent reinstatement " means compensation calculated in accordance with Rule (5) of the Rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919;
" compensation calculated on the basis of prevailing use " means compensation with respect to the calculation of which any of the following provisions of the principal Act applies, that is to say, subsection (5) of section eighty-two, subsection (4) of section eighty-four, the said subsection (4) as applied by regulations made under section ninety, or subsection (4) of section eighty-five;
" compensation on the basis of existing use " means compensation with respect to the assessment of which the following provisions apply, that is to say, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, as modified by sections fifty-one, fifty-three and fifty-four of the principal Act, not being compensation calculated on the basis of equivalent reinstatement or on the basis of prevailing use, and excluding any compensation for disturbance or for severance or injurious affection;
" compulsory acquisition " does not include the vesting in a person by an Act of Parliament of property previously vested in some other person;
" established claim " and " claim area " have the meanings assigned to them by section one of this Act;
" in the same capacity," in relation to entitlement both to a claim holding and to an interest in land, means entitled in one only of the following capacities, that is to say, beneficially, or as trustee of one particular trust, or as personal representative of one particular person;
" interest in land " means only an interest in fee simple or a tenancy;
" the Minister " (subject to subsection (8) of this section) means the Minister of Housing and Local Government;
" new development " has the meaning assigned to it by section sixteen of this Act;
" planning decision " has the meaning assigned to it by section sixteen of this Act;
" prescribed " means prescribed by regulations under this Act;
" previous apportionment " in relation to an apportionment for any of the purposes of this Act means an apportionment made before the apportionment in question, being—

(*a*) an apportionment for any of the purposes of this Act as made, confirmed or varied by the Lands Tribunal on a reference thereto; or

(*b*) an apportionment for any of the purposes of this Act which might have been referred to the Lands Tribunal by virtue of any provision of this Act but in the case of which the time for such a reference has expired without its being so required to be so referred, or which was so referred but in the case of which the reference was withdrawn before the Tribunal gave their decision thereon; or

(*c*) an apportionment made by or with the approval of the Central Land Board in connection with the approval by the

Board of an assignment of part of the benefit of an established claim under subsection (2) of section two of the Act of 1953;

" principal Act " means the Town and Country Planning Act, 1947;

" public authority possessing compulsory purchase powers ", in relation to the compulsory acquisition of an interest in land, means the person or body of persons effecting the acquisition, and, in relation to any other transaction relating to an interest in land, means any person or body of persons who could be or have been authorised to acquire that interest compulsorily for the purposes for which the transaction is or was effected, or a parish council or parish meeting on whose behalf a county council could be or have been authorised as aforesaid;

" rentcharge " includes any annual sum charged on land, not being rent incident to a reversion;

" royalty ", " full restoring lease " and " ironstone district " have the meanings assigned to them by the Mineral Workings Act, 1951;

" tenancy " means a tenancy created either immediately or derivatively out of the freehold, whether by a lease or underlease, by an agreement for a lease or underlease, or by a tenancy agreement, or in pursuance of any enactment, but does not include a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee, and references to the granting of a tenancy shall be construed accordingly;

" unexpended balance of established development value " means an amount ascertained in accordance with sections seventeen and eighteen, and " original unexpended balance of established development value " has the meaning assigned to it by section seventeen, of this Act;

" valuable consideration " does not include marriage or a nominal consideration;

" will " includes a codicil.

(2) Subject to the preceding subsection and except where the context otherwise requires, expressions used in this Act and in the principal Act have the same meanings in this Act as in that Act.

(3) As respects references in this Act to planning decisions—

(*a*) in relation to a decision altered on appeal by the reversal or variation of the whole or any part thereof, such references shall be construed as references to the decision as so altered;

(*b*) in relation to a decision upheld on appeal, such references shall be construed as references to the decision of the local planning authority and not to the decision of the Minister on the appeal;

(*c*) in relation to a decision given on an appeal made by virtue of subsection (3) of section sixteen of the principal Act in default of a decision by the local planning authority, such references shall be construed as references to the decision so given;

(*d*) the time of a planning decision, in a case where there is or was an appeal, shall be taken to be or have been the time of the decision as made by the local planning authority, whether or not that decision is or was altered as aforesaid on that appeal, or, in the case of such a decision as is mentioned in the last preceding paragraph, the time when by virtue of subsection (3) of section sixteen of the principal Act notification of a decision by the local planning authority is deemed to have been given.

(4) References in this Act to the local planning authority, in relation—

(*a*) to a planning decision made on behalf of that authority by another authority, by virtue of the delegation of any functions of the local planning authority to that other authority; or

(*b*) to compensation payable under section twenty-two of the principal Act by another authority, by virtue of the transfer to that other authority of any liability of the local planning authority,

shall be construed as references to that other authority.

(5) For the purposes of this Act a development charge—

(*a*) shall be deemed not to have been determined if the determination thereof ceased to have effect by virtue of subsection (2) of section seventy-three of the principal Act, or if, by virtue of subsection (1) of section one of the Act of 1953, the charge is not payable, or if any sum paid in respect of the charge became repayable under subsection (5) of section one of the Act of 1953;

(*b*) shall be deemed to have become payable notwithstanding any agreement of the Central Land Board to a postponement of the payment of the charge, if the whole or part of the charge would have been payable but for that agreement;

and references in this Act to a determination of the Central Land Board that a development charge was payable, or as to the amount of a development charge, shall, in a case where the Board subsequently varied their determination, be construed as references to that determination as so varied.

(6) References in this Act to a contract are references to a contract in writing, or a contract attested by a memorandum or note thereof in writing signed by the parties thereto or by some other person or persons authorised by them in that behalf, and, in relation to an interest in land conveyed or assigned without a preliminary contract, are references to the conveyance of assignment; references to an option are references to an option in writing or attested as aforesaid; and references to the making of a contract or to the grant of an option are references to the execution thereof or (if it was not in writing) to the signature of the memorandum or note by which it was attested.

(7) References in this Act—

(*a*) to a person from whom title is derived by another person include references to any predecessor in title of that other person;

(*b*) to a person deriving title from another person include references to any successor in title of that other person;

(*c*) to deriving title are references to deriving title either directly or indirectly.

(8) References in this Act to the Minister, in relation to any time before the third day of November, nineteen hundred and fifty-one, but on or after the thirtieth day of January, nineteen hundred and fifty-one, shall be construed as references to the Minister of Local Government and Planning, and, in relation to any time before the said thirtieth day of January, shall be construed as references to the Minister of Town and Country Planning.

(9) References in this Act to any other enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Act.

NOTES

Sub-s. (1).

Except when the context otherwise requires. Cf. *London Corpn.* v. *Cusack-Smith*, [1955] 1 All E.R. 302; and the notes, *infra*, about "royalty" and "ironstone district".

Act of 1953. See Hill, 2nd Supp., pp. B693–B703; 78 Statutes Supp. 133. For amendments and repeals, see s. 71 and the Seventh and Eighth Schedules, *post*. So far as it applies to England and Wales, it may be cited with this Act and the Act of 1947 and ss. 1 and 2 of the Act of 1951; see s. 72 (1), *post*. For s. 2 of the Act of 1953, as amended, see the notes to s. 60, *ante*.

Compensation calculated on the basis of equivalent reinstatement. For the text of r. (5), see notes to s. 65 (1), *ante*. See also *Aston Charities Trust, Ltd.* v. *Stepney Borough Council*, [1952] 2 All E.R. 228; [1952] 2 Q.B. 642, C.A.; and s. 56 of the Act of 1947 (Hill, p. 153; 48 Statutes Supp. 113) as to certain war damaged land.

Compensation calculated on the basis of prevailing use. See s. 34, *ante*. Compensation on the basis of the prevailing use is payable in the case of certain interests in land in respect of which no Part VI payment would have been payable under the Act of 1947. See s. 1 (3) (*b*) and (*c*), *ante*. Such interests are also entitled to the benefit of s. 34, *ante*.

Compensation calculated on the basis of existing use. The employment of this expression, in the present definition, is wider than the accepted interpretation in practice under the Act of 1947. Furthermore, it is now limited to the value of the interest in land excluding any payment for disturbance (which, it seems, must be assessed separately although it is part of the value of the interest in land). It also excludes compensation payable for severance or other injurious affection (now dealt with under ss. 36 and 37 (3), *ante*).

The meaning of " existing use " must also be considered in opposition to the expression " new development " as defined in s. 16 (5), *ante*. The appreciation of both of these expressions require consideration of the Third Schedule to the Act of 1947, as amended by s. 71 (1) of this Act and para. 4 of the Seventh Schedule, *post*. The Third Schedule is reprinted, as amended, in the notes to para. 4 of the Seventh Schedule, *post*. The Third Schedule amendments must also be considered with s. 18 (4), *ante*, requiring deductions to be made from an unexpended balance of land on which new development is carried out. As the basis of existing use is widened, by bringing development within the amended Third Schedule, s. 18 (4), *ante*, and the Fourth Schedule, *post*, should normally operate to reduce any unexpended balance or balances correspondingly.

For ss. 51, 53 and 54 of the Act of 1947, see Hill, pp. 144, 148, 150; 48 Statutes Supp. 106, 109, 111.

Compulsory acquisition. This definition is merely an exclusive one. See, however, s. 5 (9), *ante*, and *Liss Transport Ltd.* v. *Road Haulage Executive* (Transport Arbitration Tribunal) (1950) Road Haulage Cases (H.M.S.O.): 1 P. & C.R. 404. The definition also excludes any contrary interpretation derived from s. 10 of the Act of 1919 (Hill, p. 711; 3 Halsbury's Statutes (2nd Edn.) 983) which similarly expressly excludes the provisions of that Act in relation to a statutory " purchase " of a statutory undertaking where the statute authorising the purchase prescribes the terms on which the purchase was to be effected. See also the general note to s. 30, *ante*, as to compulsory purchase generally.

In the same capacity. See notes to ss. 8 and 9, *ante*.

Interest in land. Note that " tenancy " is also defined. These definitions should be contrasted with the provisions of s. 60 (3) of the Act of 1947 (Hill, p. 161; 48 Statutes Supp. 120), which provides that claims for payments under the Part VI scheme could be made in respect of interests in fee simple and " leaseholds ". " Leasehold interest " is defined in s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203) to mean the interest of a tenant under a lease which includes an underlease and an agreement for a lease or underlease; but does not include an option to take a lease, or a mortgage.

The Minister. See notes, *infra*, to sub-s. (8).

New development. See s. 16 (5), *ante*. In connection with that definition, see the Third Schedule to the Act of 1947, set out in the notes to para. 4 of the Seventh Schedule to this Act, *post*. The use of the term " new development " to refer to non-Third Schedule development is borrowed from the long title of the Act of 1947 (Hill, p. 39; 48 Statutes Supp. 25). Cf. also the note " Development " to s. 20 (1), *ante*.

Planning decision. See s. 16 (4), *ante*. It is important to note that, generally speaking, the term is confined to refusals or conditional grants of permission, on an application for express permission, under the Act of 1947.

Prescribed. As to regulations under this Act, see s. 68, *ante*. For regulations made under this Act, and certain rules and orders made under or for the purposes of this Act, see the Appendix, *post*. Note that in s. 50, *ante*, which sets out the new s. 93 of the principal Act relating to grants to local authorities, " prescribed " means prescribed by regulations to be made under that Act.

Previous apportionment. This definition is included for the purposes of certain sections of the Act which provide that, on any subsequent occasion, an apportionment shall not be varied if and in so far as it relates to matters which are shown to have been dealt with in a previous apportionment.

As to this binding effect of previous apportionments, see the provisions of ss. 13 (4), 27 (3) and 48 (5), *ante*. Cf. also the proviso to reg. 9 (7) of S.I. 1955 No. 38, *post*, relating to the assessment of compensation payable under Part II, or Part V, and s. 66, *ante*, to a rentcharge owner. See, however, also reg. 10 (3) of S.I. 1954 No. 1600, *post*, relating to disputes as to the Minister's contribution under s. 40 in Part IV, *ante*; and reg. 6 of S.I. 1955 No. 80, *post*, relating to the division of the unexpended balance or balances for the purposes of s. 31 in Part III, *ante*.

As to what is " an apportionment ", cf. the note to s. 13 (2), *ante*. See also s. 15 (3) (*c*), *ante*, which requires certain apportionments to be carried out in determining Part I payments; and s. 28, *ante*, which requires apportionments relating to the registration of a compensation notice to be included in the Minister's findings under s. 27. See

also s. 39 in Part IV, *ante*, and ss. 45 (1) and 46 (4) in Part V, *ante*. As to the use of Central Land Board certificates as evidence, see s. 48 (6), *ante*.

Except as mentioned in para. (*c*) of the definition an apportionment will not be a " previous apportionment " in the absence of a right of appeal or reference. See, in this connection, ss. 15 (4) (*c*) and 57, *ante*. As to the apportionments which may be " referred " to the Lands Tribunal, see the notes to the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*, and the sections of the Act there mentioned. Cf. also the notes to s. 2 (3), *ante*.

For s. 2 of the Act of 1953, see the notes to s. 60 of the present Act, *ante*. Note that it is only an apportionment made by or with the approval of the Central Land Board, in connection with the approval of an assignment, that is regarded as a " previous apportionment ", by virtue of para. (*c*) of the present definition. There may have been a valid assignment of part of the benefit, or a division of the benefit, of a Part VI claim under the Act of 1947 which did not require approval, *i.e.*, when notice was sufficient. Where there has been a disposition of part of the benefit of a claim, the claim is to be treated as divided in a manner which appears just and appropriate in the light of the principles set out at (*a*) to (*d*) in s. 2 (3) of this Act, *ante*.

Public authority possessing compulsory purchase powers. Strictly, no authority possesses compulsory purchase powers until it has a " special Act ". In cases where there is a general Act under which an authority may be given such power, the " special Act " is to be found in the general empowering enactment and the compulsory purchase order (cf. para. 1 (*a*) of the Second Schedule to the Act of 1946 (Hill, p. 669; 39 Statutes Supp. 20)).

The use of the present wide definition avoids the difficulty which arose under s. 53 (3) of the Act of 1947 (Hill, p. 149; 48 Statutes Supp. 110). Under that section, the right to receive the war damage converted value payment vested in the acquiring authority where the acquisition took place compulsorily. It also vested in the acquiring authority where the acquisition was by agreement if the authority was in fact authorised to acquire the land compulsorily. To secure such vesting it was therefore necessary to promote a compulsory purchase, whether or not the owner was prepared to sell by agreement, without an order, under an alternative power to acquire by agreement only.

The definition may be of assistance in enabling purchases to go forward by agreement, without the making of a compulsory purchase order. In many cases, however, the authority may find it more prudent, even where the owner is willing to sell, to obtain a compulsory purchase order. See notes to s. 30, *ante*, and the cases cited in those notes.

Rentcharge. Note the use of the word " includes ", which suggests that other rentcharges, not strictly satisfying the definition here set out, may also be rentcharges for the purposes of this Act. Cf. also reg. 2 (1) (viii) of the Claims for Depreciation of Land Values Regulations, 1948 (S.I. 1948 No. 902); Hill, p. 740; and s. 25 (7) of the War Damage Act, 1943 (7 Statutes Supp. 180). See, further, s. 66 (1) of this Act, *ante*, and S.I. 1955 No. 38, *post*, applying provisions derived from s. 25 of the War Damage Act to rentcharges for certain purposes of the present Act.

Royalty; full restoring lease; ironstone district. A full restoring lease means a mining lease imposing on the lessee an obligation to restore to a condition suitable for the purposes of agriculture all land excavated under the lease in the course of winning and working ironstone by opencast operations and containing no provision for the payment of sums in lieu of compliance with that obligation in respect of any of the land, or by way of liquidated damages for failure to comply with it; see s. 41 (1) of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B70; 74 Statutes Supp. 76). Note that in that Act, the Act of 1947 is referred to as " the principal Act ", and that s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204) contains a definition of " mining lease " which applies also in the Mineral Workings Act by virtue of s. 41 (1) thereof.

A " mining lease " means a lease, underlease, tenancy or licence (whether personal or by way of *profit à prendre*) conferring a right to win or work minerals. " Minerals " are in turn defined as including all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working (but not peat cut otherwise than for sale).

The present definition of " **royalty** " by reference to s. 41 (1) of the Mineral Workings Act, 1951 (*ubi supra*), was apparently included for the purposes of clause 59 (3) of the Bill, now represented, in a very different form, by s. 56 (2), *ante*. That provision does not use the term " royalty " but requires a sum to be calculated in accordance with the Third Schedule to the Mineral Workings Act, 1951, where the term is used. The term " royalty " does occur in this Act, in s. 54 (1), *ante*, in a different context, in relation to development charge determinations requiring the payment of " any royalty or other sum." The present definition seems scarcely necessary for the purposes of that subsection.

The present definition of " **ironstone district** " by reference to ss. 1 and 41 (1) of, and the First Schedule to, the Mineral Working Act, 1951 (Hill, 2nd Supp., pp. B39, B71 and B73; 74 Statutes Supp. 43, 76), was also inserted in the Bill for the purposes of clause 59, now s. 56, *ante*. That clause was thoroughly amended in the House of Lords (189 H. of L. Official Report 1084, 1487–1488); in consequence, s. 56, *ante*, now

contains no reference to the " ironstone district " although, of course, it is in that district that s. 56, *ante*, and the relevant amendments to the Mineral Workings Act, will operate.

The present definitions appear to serve as a warning to lawyers who would insist on the literal interpretation of modern statutes.

Tenancy. See the note, *supra*, on the term " interest in land ".

Unexpended balance. See the notes to ss. 17 and 18, *ante*, and cf. the notes to s. 48, *ante*.

Valuable consideration. Consideration is not necessarily nominal merely because it is inadequate. See *Stepney and Bow Educational Foundation (Governors)* v. *Inland Revenue Commissioners*, [1913] 3 K.B. 570; but see also *Inland Revenue Commissioners* v. *Camden (Marquess)*, [1915] A.C. 241.

Will. For provisions relating to testamentary dispositions, see ss. 11 (4) and 60 (3), *ante*.

Sub-s. (2).

Expressions used . . . in the principal Act. See particularly s. 119 of the Act of 1947 (Hill, pp. 257–266; 48 Statutes Supp. 202–209), but note that the present subsection is not confined in effect to applying that interpretation section. Note also that the principal Act contains a number of special definitions in other sections, some of which are not referred to in s. 119; see, for example, s. 107 (5) of that Act mentioned in the notes to s. 66 (3), *ante*.

Sub-s. (3).

References . . . to planning decisions. Cf. s. 16 (4), *ante*. The present subsection is concerned to specify which decision is referred to in the circumstances mentioned in paras. (*a*) to (*c*). See also, in this connection, s. 16 (3), *ante*, and that provision applied by s. 42 (3), *ante*, to Part V cases.

No specific reference is here made to decisions made by the Minister in the first instance, when an application is " called-in " for decision in the Ministry under s. 15 of the Act of 1947 (Hill, p. 74; 48 Statutes Supp. 50). There will be no confusion, in such cases, as to which decision is meant, but it should be noted that para. (*d*) of this subsection will not operate to fix the " time " of such a decision as the time within which the local planning authority's decision should otherwise have been notified.

Para. (*d*) fixes the time of the decision, in cases where an appeal was brought, as the time at which the decision of the local planning authority (or its delegate) was made. *Quaere*, whether this refers to the " making " of the decision by a resolution to that effect by the local authority concerned, or its embodiment in a written notification, or the service of such a notification on the applicant. If any but the last meaning is accepted, the paragraph may be self-contradictory in cases where an appeal is brought as mentioned in para. (*c*). As to the time within which notification should be given, see art. 5 (8) of the G.D.O. of 1950 (Part I of S.I. 1950 No. 728); Hill, 2nd Supp., p. B174.

Where the time for notification runs out, the applicant may appeal under s. 16 (3) of the Act of 1947 (Hill, p. 76; 48 Statutes Supp. 51); the time of a decision given on such an appeal is taken to be the time of the deemed notification, on the expiry of the time allowed, which enabled the appeal to be brought.

See generally the notes to s. 16, *ante*. As to the statement of reasons by a local planning authority (or its delegate), see art. 5 (9) (*a*) of the G.D.O. of 1950 (Part I of S.I. 1950 No. 728); Hill, 2nd Supp., p. B174. *Quaere*, whether, for the purposes of para. (*a*) of the present subsection, a decision of a local authority is " reversed or varied ", in whole or in part, if the Minister dismisses an appeal but expresses different reasons from those given by the local authority, or none at all; cf. also s. 20 (3) and (4), *ante*.

As to certain applications for permission for industrial development, see s. 57, *ante*. A notice under s. 59 (1) is for certain purposes treated as a refusal of permission. *Quaere*, when this " decision " is deemed to be made, and by whom; see the notes to s. 59 (2), *ante*, on the difficulty arising in connection with s. 20 of the principal Act.

Sub-s. (4).

Delegation of functions, etc. As to delegation of functions (including powers and duties) and as to the transfer of liability, see ss. 34 and 114 (10) of the Act of 1947 (Hill, pp. 115, 251; 48 Statutes Supp. 83, 197) and the regulations thereunder. The regulations, at present, are the T. & C.P. (Authorisation of Delegation) Regulations, 1947, and the T. & C.P. Delegation (London) Regulations, 1948 (S.R. & O. 1947 No. 2499; S.I. 1948 No. 1459; Hill, pp. 729, 825). Cf. the notes to ss. 16 and 38 of this Act, *ante*. S. 114 (10) of the Act of 1947 and S.I. 1948 No. 1459, *ubi supra*, apply to the City of London only.

Note that in the T. & C.P. (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), *post*, the term " local planning authority " is reserved for the actual planning authority and is not applied to an authority making a decision or order on behalf of the planning authority.

Sub-s. (5).

Development charge. See generally Part VII of the Act of 1947 (ss. 69–74; Hill,

pp. 172–188; 48 Statutes Supp. 132–143). Cf. the notes to ss. 14, 18 (4) and 49 of this Act, *ante*. As to monopoly value of licensed premises, see the special provisions made by s. 58, *ante*.

S. 73 (2) of the principal Act. See Hill, p. 183; 48 Statutes Supp. 140.

S. 1 (1) of the Act of 1953. See Hill, 2nd Supp., p. B695; 78 Statutes Supp. 133; and note the further provisions of sub-ss. (2) to (5) of that section.

S. 1 (5) of the Act of 1953. See Hill, 2nd Supp., p. B696; 78 Statutes Supp. 134. That subsection related to repayment of charge which, by reason of that Act, should not have been paid. It was subject to the provisions of s. 3 of that Act, in special cases where an advantage had been obtained, in the assessment of compensation for compulsory purchase or the revocation or modification of planning permission, by the person to whom repayment would otherwise have been made.

Postponement. Cf. the notes to s. 49, *ante*. As to charges postponed, in consideration of a pledge of a Part VI claim, see s. 2 (2) (*a*), *ante*, and the Second Schedule, *post*. As to the special arrangements concerning houses for single-plot owners and agricultural workers, see the notes to s. 49, *ante*.

Determination. See particularly s. 70 of the Act of 1947 (Hill, p. 177; 48 Statutes Supp. 136) and the T. & C.P. Development Charge Applications Regulations, 1950 (Part II of S.I. 1950 No. 728; Hill, 2nd Supp., pp. B204 *et seq.*). As to determinations in default of an application, see s. 74 of the principal Act. As to monopoly value certificates, for the purposes of the present Act, relating to on-licensed premises, see s. 57, *ante*. As to minerals, see s. 54, *ante*.

Varied. See particularly s. 73 of the Act of 1947 (Hill, p. 183; 48 Statutes Supp. 140) and reg. 4 of the above-mentioned regulations (Part II of S.I. 1950 No. 728, *ubi supra*).

Sub-s. (8).

The Minister. The Minister of Housing and Local Government is appointed under the Minister of Town and Country Planning Act, 1943 (Hill, pp. 501–506; 19 Statutes Supp. 4). He is charged with the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales. To the Minister first so appointed were transferred the functions of the Minister of Works and Planning under the Act of 1932. The Minister of Works and Planning, appointed under the Minister of Works and Planning Act, 1942, then became the Minister of Works and the title of that Act was amended accordingly. Before 1942, central planning functions were the responsibility of the Local Government Board and its successor, the Minister of Health.

The Minister (then called the Minister of Town and Country Planning) was given further functions by the Act of 1944, and became the Minister for the purposes of the Act of 1947. Further functions have since been transferred to the Minister, and his style and title has twice been changed; see next two notes, *infra*.

30th January 1951. See the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951 (S.I. 1951 No. 142); Hill, 2nd Supp., p. B231. As well as changing the Minister's style and title, this order transferred to him the functions of the Minister of Health in connection with housing, local government, certain matters of public health and water supply, and a few miscellaneous functions which were of a planning character. The order came into operation on 30th January 1951. Certain further transfers of functions were effected by S.I. 1951 Nos. 751 and 753 (5 Halsbury's Statutory Instruments, title Constitutional Law; or Lumley's *Public Health*, 12th Edn., Vol. VII, pp. vi–xii; and cf. Hill, 2nd Supp., p. B654).

3rd November 1951. See the Minister of Local Government and Planning (Change of Style and Title) Order, 1951 (S.I. 1951 No. 1900); Hill, 2nd Supp., p. B248.

Sub-s. (9).

Enactment. See s. 119 (1) of the Act of 1947 (Hill, p. 258; 48 Statutes Supp. 202). Cf. also s. 71 (7), *post*, as to the interpretation of certain local Acts. See s. 71 generally as to the amendments and repeals effected by the present Act.

70. Amendment of s. 19 of principal Act.—(1) In section nineteen of the principal Act (which imposes on a local authority an obligation to purchase land in certain circumstances) after subsection (2) there shall be inserted the following new subsection, that is to say—

"(2A) In considering, for the purposes of the last foregoing subsection, whether or not the use of land in any particular state is or would be reasonably beneficial, the Minister shall not take account of the possibility of any development, whether of that or any other land, of any class not specified in the Third Schedule to this Act."

(2) The preceding subsection shall be deemed to have come into operation on the eighteenth day of November, nineteen hundred and fifty-two:

Provided that nothing in this section shall affect the validity of anything done in consequence of a purchase notice served before the commencement of this Act.

NOTES

Where on an application for express permission to develop land, permission is refused, or granted conditionally, a purchase notice may be served by " any owner " who claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of such use by any permission which has been granted or would be available if application were made; see s. 19 of the Act of 1947 (Hill, p. 81; 48 Statutes Supp. 56). The procedure is based on s. 11 of the Act of 1944, which related to the obligation of a local authority to purchase a war-damaged site if permission was refused or granted for a limited period.

Under s. 19 of the principal Act the Minister in effect reviews the owner's contention to see whether the purchase notice is justified and whether, if so, permission should be granted, or an undertaking given, to allow a reasonably beneficial use and prevent the notice taking effect. The present section inserts a new sub-s. (2A) in s. 19 of that Act. This excludes from consideration the possibility of carrying out development beyond the Third Schedule tolerance (whether on the land in question or on other land). The purpose of this amendment is thought to be that explained in the notes " Reasonably beneficial " and " 18th November 1952 ", *infra*; but it is not clear that the new sub-section achieves this purpose, in view of the amendments made by the present Act to the Third Schedule classes (see s. 71 and the Seventh Schedule, *post*).

Where a purchase notice is confirmed, or otherwise takes effect, a local authority (not necessarily the local planning authority) is deemed to be authorised to acquire the " owner's " interest under Part IV of the principal Act, and to have served a notice to treat which cannot be withdrawn by the authority. If the date of this deemed notice is on or after 1st January 1955 there will be a compulsory acquisition to which Part III of the present Act (ss. 30–37), *ante*, applies. In certain circumstances, where a notice fails to take effect, there will be a right to claim compensation under s. 20 of the principal Act; see, in this connection, s. 71 (1) and para. 1 of the Seventh Schedule to the present Act, *post*.

It is important to notice that the principal Act, whether from intention or by accident, failed expressly to preserve the definition of " owner " which applied for the purposes of purchase notice procedure under the Act of 1944; see s. 65 of that Act (Hill, p. 485; 28 Statutes Supp. 103). It has now been settled that a purchase notice under the principal Act must be served by an owner who satisfies the very different definition in s. 119 (1) of that Act (Hill, p. 260; 48 Statutes Supp. 204); see *London Corpn.* v. *Cusack-Smith*, [1955] 1 All E.R. 302, where a majority of the House of Lords felt unable to hold that the context required otherwise. The definition in the principal Act can apply to an " owner " who, being a trustee or agent, may have no interest which he can be deemed to be bound to sell or which an authority can be deemed to be bound to acquire. It is suggested that it would be desirable by legislation to make a further amendment to s. 19 of the principal Act and restore the definition of " owner " which applied under the Act of 1944. (However, the speeches in the *London Corporation* case, *supra*, have done much to restore the authority of the leading cases on the definition of " owner " in the Public Health Acts (on which the definition in the principal Act is based), particularly, *Truman, Hanbury, Buxton & Co.* v. *Kerslake*, [1894] 2 Q.B. 774; 30 Digest (Repl.) 507, *1473*. This is of great importance, in planning law, as enforcement notices (see s. 23 of the Act of 1947; Hill, p. 91; 48 Statutes Supp. 64) are required to be served on the " owner " and occupier of land, and doubts had arisen, in many cases, as to whether the proper " owner " had been served.)

Sub-s. (1).

S. 19 of the principal Act. See Hill, pp. 81–84; 48 Statutes Supp. 56–58; see also the Noter-Up in Hill, 2nd Supp., pp. B617, B691, and *London Corpn.* v. *Cusack-Smith*, [1955] 1 All E.R. 302.

Use of land. It is submitted that " use " here may include the use of land by the carrying out of building or other operations, despite the definition of " use " in s. 119 (1) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205).

In any particular state. This appears to mean:

(1) in its existing state (s. 19 (1) (*a*) and (2) of the principal Act, *ubi supra*); or
(2) as affected by carrying out development subject to the conditions imposed by the grant of permission (s. 19 (1) (*b*) and (2) of that Act); or
(3) as affected by carrying out any other development for which permission (i) has been granted under Part III of that Act, or (ii) is deemed to be so granted, or (iii) has been promised in an undertaking given by the local planning authority or the Minister (s. 19 (1) (*c*) and (2) of that Act); or
(4) as affected by carrying out development in accordance with permission to be granted by the Minister, or in accordance with permission already granted

subject to conditions which are to be revoked or modified by the Minister, in order to allow reasonably beneficial use (s. 19 (2) proviso (*a*) of that Act); or

(5) as affected by carrying out any other development for which permission ought to be granted (s. 19 (2) proviso (*b*) of that Act).

Reasonably beneficial. S. 19 of the principal Act, *ubi supra*, contains no definition of the expression " reasonably beneficial use ". It was formerly defined in s. 11 (5) of the Act of 1944 (Hill, p. 449; 28 Statutes Supp. 44), which involved a comparison of the benefit of the use which was enjoyed, before land suffered war damage to buildings and works thereon, with the use which was possible after the damage, or which would become possible by carrying out development. S. 19 of the principal Act is not expressed to be confined to war-damaged sites, though it has principally been invoked when the restoration of war damage, which is Third Schedule development and, normally, permitted development under the G.D.O., has been prevented by a direction under the G.D.O. and an application for express permission has been refused.

Under the principal Act, before the abolition of development charge, it was usually considered unnecessary to take account of any possibility of development beyond the Third Schedule tolerance, as such development would have involved payment of development charge (unless it added nothing to the value, in which case it was irrelevant). As a rough guide, it was often proper to say that the refusal of Third Schedule development made the land incapable of reasonably beneficial use; when this contention was accepted, s. 19 operated much as s. 11 of the Act of 1944 might have operated. But, in some cases, something less than Third Schedule development could be considered reasonably beneficial; therefore s. 20 (3) of the Act of 1947 (Hill, p. 84; 48 Statutes Supp. 58) provided for the payment of compensation where the " permitted development value " falls short of the " compulsory purchase value ", in cases where alternative development would be permitted and a purchase notice fails to take effect. See also s. 71 (1) of this Act and para. 1 of the Seventh Schedule, *post*.

Development. See ss. 12 and 119 (1) of the Act of 1947 (Hill, pp. 65, 258; 48 Statutes Supp. 44, 202); but note that the Third Schedule to that Act, which is headed " Excepted classes of development " and sets out " development included in existing use ", appears not to follow the strict definition of development. See, as to war damage, s. 1 of the Act of 1951 (Hill, 2nd Supp., p. B35; 71 Statutes Supp. 95). Cf., also, the note " Development " to s. 20 (1), *ante*; it is not clear whether the retention of buildings or works, or the continuance of a use, which does not involve development as defined in s. 12 of the Act of 1947, *ubi supra*, should be regarded as coming within an extended meaning of the term in view of s. 18 of that Act (Hill, p. 80; 48 Statutes Supp. 55).

Or of any other land. Contrast with s. 23 (5), *ante*, whereby the Minister, in reviewing a planning decision, is directed to have regard to the use which prevails generally in the case of contiguous or adjacent land.

In " reviewing " a purchase notice, however, under s. 19 of the Act of 1947, as amended by the present section, the Minister must not, it seems, have regard to any comparison with the good fortune of adjoining owners. It is, however, doubtful whether the new sub-s. (2A) of s. 19 effectively excludes such regard; see the amendments made to the classes of Third Schedule development by s. 71 of the present Act and the Seventh Schedule, *post*. Once development has been carried out on any land it will have Third Schedule rights, subject, however, to paras. 9 and 10 of the Schedule relating to contravening and " temporary " development.

Third Schedule to the Act of 1947. See the notes to paras. 3 and 4 of the Seventh Schedule to the present Act, *post*, and s. 71, *post*. Note that s. 71 (4) contains no saving excluding the effect of the amendments to the Third Schedule for the purposes of s. 19 of the principal Act. The amendments would seem likely often to abrogate the intended effect of the new s. 19 (2A).

Sub-s. (2).

18th November 1952. Date of publication of the White Paper, and of the introduction of the Bill for the Act of 1953. That Act abolished development charge, generally speaking, retrospectively from that date.

Since the abolition of charge it has been possible to argue that a use is not, or would not be, reasonably beneficial having regard to development, beyond the Third Schedule, which could be carried out without payment of development charge; cf. the note " Reasonably beneficial ", *supra*, to sub-s. (1). This argument is now intended to be excluded by the new s. 19 (2A) of the principal Act, as from 18th November 1952.

Before the commencement of this Act. *I.e.*, before 1st January 1955; see s. 72 (2) and the appointed day order (S.I. 1954 No. 1598), *post*. Note that the present proviso merely operates to prevent a dispute as to the validity of anything done before that date; it does not require a notice, served before that date but not yet considered, to be considered on a basis different from that now required by s. 19 (2A) of the principal Act.

71. Minor and consequential amendments and repeals.—(1) Subject to the provisions of this section, the enactments specified in the Seventh Schedule to this Act shall have effect subject to the amendments

specified in that Schedule, being minor amendments or amendments consequential on the provisions of this Act.

(2) Subject to the provisions of this section, the enactments specified in the Eighth Schedule to this Act are hereby repealed to the extent specified in relation thereto in the third column of that Schedule.

(3) The amendment by virtue of this section of the Third Schedule to the Mineral Workings Act, 1951, shall not affect any right or liability which by virtue of section six of that Act and the said Third Schedule was subsisting immediately before the commencement of this Act.

(4) The amendment by virtue of this section of the Third Schedule to the principal Act shall not have effect for the purposes of the following provisions of that Act, that is to say section fifty-four (which relates to the assessment of compensation for the compulsory acquisition of requisitioned land), section sixty-one (which relates to the ascertainment of development values), section sixty-nine (which relates to development charges) and subsection (1) of section eighty-nine (which relates to the calculation of the development value of requisitioned land).

(5) As respects amendments and repeals relating to sections ninety-four and ninety-five of the principal Act, the provisions of this section shall have effect subject to section fifty-one of this Act.

(6) The repeal by virtue of this section of the proviso to subsection (1) of section twenty-two of the principal Act shall not affect compensation in respect of any order made under section twenty-one of that Act before the commencement of this Act.

(7) References in any local Act to Part II of the Town and Country Planning Act, 1944, or to Part V of the principal Act shall be construed in relation to compensation payable on a compulsory acquisition of land thereunder in pursuance of a notice to treat served after the commencement of this Act as including a reference to Part III of this Act:

Provided that nothing in any such Act shall, by virtue of this subsection, be construed as excluding the application of the said Part III in relation to compensation payable in respect of any compulsory acquisition of land.

NOTES

The amendments and repeals effected by the present section may be grouped under seven heads:

(1) Amendment of the Third Schedule to the Act of 1947; this is a major change and is discussed *infra*.

(2) Consequential amendments arising from Part III of this Act; see sub-s. (7), *supra*, importing references to that Part into local Acts; and para. 1 of the Seventh Schedule, preserving the effect of s. 20 (3) and (4) of the principal Act, so that compensation thereunder will not overlap or override Part II of this Act.

(3) Consequential amendments arising from the new basis of compensation for revocation or modification of permission on or after 1st January 1955; see the notes to s. 38, *ante*, and note sub-s. (6), *supra*.

(4) Amendments consequential on the abolition of mineral development charges; see ss. 54 and 55, *ante*, and the repeal of s. 30 of the Mineral Workings Act, 1951, by the Eighth Schedule, *post*.

(5) Amendments relating to the revocation of the Mineral Set-Off arrangements; see s. 54 (5), *ante*, and the repeal of s. 29 of the Mineral Workings Act, 1951, by the Eighth Schedule, *post*.

(6) Amendments relating to the new general method of making contributions to the Ironstone Restoration Fund; see s. 56, *ante*, and note sub-s. (3), *supra*. (These are partly consequential on (4) and (5), *supra*).

(7) Amendments relating to grants to local authorities; see ss. 50 and 51, *ante*, and note sub-s. (5), *supra*.

The amendments made to the classes of Third Schedule development alter the basis of "existing use", except for the purposes mentioned in sub-s. (4), *supra*. Thus, if compensation for the compulsory purchase of land by an authority having the benefit of the Act of 1919 is calculated on the basis of existing use, by rererence to the Third Schedule classes, the altered wording will refer to a "current" existing use. Development may have been carried out on the land, without any "buying back" of development value by payment of development charge. The resulting buildings, works or use will have Third Schedule rights, and there is no need to rely on s. 51 (4) of the Act of

1947 (Hill, p. 145; 48 Statutes Supp. 106). The unexpended balance or balances which might be added to compensation on the basis of existing use, under s. 31, *ante*, may well fall to be extinguished as a result of the development, and if not will probably be reduced (but see s. 18 (4) proviso, *ante*, in certain special cases). Often there will be no supplemental compensation under s. 31, as the balance or balances will probably be small compared with the value of the development assessed, on current prices, as required by s. 18 (4), *ante*, and the Fourth Schedule, *post*. In such cases, the compensation, assessed on " current " existing use, will often be greatly in excess of an existing use value as it would formerly have been calculated under the Schedule, before it was amended, even if that value were to be increased by the amount or share of the unexpended balance or balances of the land. Compensation may thus go far beyond the old existing use value plus the value of the Part VI claim under the principal Act.

Paras. 9 and 10 of the amended Third Schedule (see para. 4 of the Seventh Schedule to this Act and the notes thereto, *post*) set some limit on the amendments in case of contravening development or development to which conditions as to the time of retention or continuance effectively apply. These paragraphs were added to the Bill, and the other amendments re-drafted accordingly, in the House of Lords (see 189 H. of L. Official Report 1106) to meet criticism of the sweeping nature of the amendments originally proposed (see H. of C. Official Report, S.C.C., 22nd June 1954, cols. 732–736, and 530 H. of C. Official Report 413–415).

It will be observed that s. 16 (5), *ante*, defines " new development " as any development other than development of a class specified in the Third Schedule to the principal Act. The reference is, presumably, to the Third Schedule as amended; see s. 69 (9), *ante*. Paras. 9 and 10 of the Schedule may lead to some confusion as to what development is Third Schedule development and what is " new ". Cf. the note to s. 16 (5) and the note " Development " to s. 20 (1), *ante*; see also the notes to para. 4 of the Seventh Schedule, *post*.

Sub-s. (7), *supra*, avoids a difficulty which might arise from express references in local Acts to the former general measure of compensation as provided by the principal Act. A local Act, still in force, might even refer to the Act of 1944, though such a reference would be construed as a reference to Part V of the principal Act. It is necessary to make it clear that Part III of the present Act (ss. 30–37), *ante*, is also to apply. The common law rule was that when one Act of Parliament was applied by a second Act, and the first Act was then repealed or modified by a third Act, the third Act did not affect the first as applied by the second. See, however, s. 38 of the Interpretation Act, 1889 (Hill, p. 1305; 24 Halsbury's Statutes (2nd Edn.) 229), which would have gone some way to meet this difficulty.

Sub-s. (4).

S. 54 of the principal Act. See Hill, p. 150; 48 Statutes Supp. 111; and cf. s. 53 of this Act, *ante*. See also s. 1 (6), *ante*, and the First Schedule, *post*; and s. 10 (2) (*d*), *ante*. Under the First Schedule, *post*, certain Part VI claims will be re-determined. By s. 53, *ante*, amendments are made to the basis of compensation payable on de-requisition.

The Third Schedule to the Act of 1947 generally has effect, for the purposes of assessing compensation for the compulsory acquisition of an interest in requisitioned land, as if the beginning of the requisition were the appointed day under that Act as referred to in the Schedule. This eliminates changes in value due to damage or war works. Where the owner of the interest has in effect paid or will pay for war works, their value is to be included, however, and accordingly any buildings or works are treated as having been erected or constructed before the beginning of the period of requisition; to that extent they come within the Third Schedule without any need to rely on the amendments made by the present Act.

S. 61 of the principal Act. See Hill, p. 162; 48 Statutes Supp. 121. That section is in Part VI of that Act, relating to the ascertainment of development values for the purposes of Part VI claims; the Third Schedule is relevant in finding the restricted value.

There is no need, in the present Act, to re-assess restricted values generally. The original Third Schedule wording is therefore retained for the purposes of s. 61 of the principal Act. When a " current " restricted value is relevant, as in determining Case B payments (see s. 6 in Part I, *ante*), specific provision is made for treating the time in question as the appointed day referred to in the Schedule; see the notes " Restricted Value " to s. 5 (1) and to s. 6, *ante*.

For the purposes of s. 61, as originally enacted, specific provision is also made in the principal Act itself for substituting a different date for the appointed day in special cases, or otherwise modifying the effect of the Schedule; see, for example, s. 89 (1) of that Act (Hill, p. 215; 48 Statutes Supp. 165) and cf. ss. 75 (6), 76 (4), 77 (2), 78 (3), 80 and 81 thereof.

S. 69 of the principal Act. Development charge under Part VII of the Act of 1947 was payable on Third Schedule development only in special circumstances when compensation for restriction of such development had already been paid; see s. 69 (2) and (3) of the Act of 1947 (Hill, p. 175; 48 Statutes Supp. 134). In other words, the levy of development charge was the instrument used for recovering compensation paid under

that Act if subsequently development was carried out; cf. s. 29 of the present Act, *ante*, as to the recovery of compensation paid under or by virtue of this Act. Development charge, as such, has, however, been abolished by the Act of 1953, and Part VII of the principal Act does not, generally speaking, apply to development begun after 17th November 1952. There is no saving for s. 69 (3) of the principal Act. S. 29 of the present Act does not provide for the recovery of compensation where only Third Schedule development is carried out.

S. 89 (1) of the principal Act. See the note as to s. 61 of that Act, *supra*.

Sub-s. (7).

Local Act. The distinction between public general statutes on the one hand and local or private Acts on the other rests on the standing orders of the two houses of Parliament. Local Acts may have expressly applied Part II of the Act of 1944 or Part V of the principal Act (relating to the measure of compensation for compulsory purchase).

It is unlikely that there will be any local Act, which is expressed to apply only the Act of 1944 and which is still in force to the extent of allowing service of a notice to treat on or after 1st January 1955. But it is possible that there is such an Act, containing a provision allowing more than the three-year period normally allowed for the exercise of compulsory powers, under s. 123 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 950). If there is such an Act, the reference to Part II of the Act of 1944 will be construed as a reference to Part V of the principal Act and Part III of the present Act; see the next two notes, *infra*.

Part II of the Town and Country Planning Act, 1944. See ss. 57–62 of the Act of 1944 (Hill, pp. 480–484; 28 Statutes Supp. 95–102); these sections were repealed by the principal Act on 6th August 1947, and were also to some extent retrospectively amended by s. 50 (2) of, and the Seventh Schedule to, the principal Act (Hill, pp. 143, 279–283; 48 Statutes Supp. 105, 221–224). Part II of the Act of 1944 required compensation for compulsory purchase to be assessed on 1939 prices. Cf., also, ss. 55 and 91 of the Act of 1947 (Hill, pp. 151, 217; 48 Statutes Supp. 112, 167) and s. 5 (2) (*a*) of this Act, *ante*.

The hardship resulting from the " two-tier " price levels under Part II of the Act of 1944 could in some cases be mitigated by a disposal of land under s. 19 of that Act, to the former owner, on terms settled with due regard to the price at which his land had been acquired; see now the amended s. 19 (6) of the Act of 1944 as applied by s. 44 (1) of the Act of 1947 (Hill, pp. 131, 311; 48 Statutes Supp. 96, 250). This might apply to land acquired under a local Act if appropriated to planning purposes.

The present subsection is modelled on s. 118 (2) of the Act of 1947 (Hill, p. 256; 48 Statutes Supp. 201) which provided that references to Part II of the Act of 1944, in a local Act, should be construed as references to Part V of the principal Act, in cases where notice to treat was served after 5th August 1947. (If notice had been served before 6th August 1947, the reference was to be to Part II of the Act of 1944, as retrospectively amended, *ubi supra*.)

Part V of the principal Act. See ss. 50–57 of the Act of 1947 (Hill, pp. 143–155; 48 Statutes Supp. 105–115). Cf. the note " Compensation on the basis of existing use " to s. 69 (1) of this Act, *ante*.

72. Short title, citation, commencement and extent.—(1) This Act may be cited as the Town and Country Planning Act, 1954, and the Town and Country Planning Acts, 1947 and 1951, the Town and Country Planning Act, 1953, in its application to England and Wales, and this Act, may be cited together as the Town and Country Planning Acts, 1947 to 1954.

(2) This Act shall come into operation on such day as the Minister may by order appoint, and different days may be appointed for different purposes of this Act; and if different days are so appointed, references in any provision of this Act to the commencement of this Act shall be construed as references to the time at which that provision comes into operation.

(3) Any order made under the last preceding subsection shall be made by statutory instrument and may, at any time before the day appointed thereby, be revoked or varied by a subsequent order under that subsection.

(4) This Act, except section sixty-three thereof, shall not extend to Scotland.

(5) This Act shall not extend to Northern Ireland.

NOTES

Sub-s. (1).

Town and Country Planning Acts, 1947 and 1951. *I.e.*, the Town and Country Planning Act, 1947, and ss. 1 and 2 of the Town and Country Planning (Amendment) Act, 1951 (see s. 4 (2) of the latter Act; s. 3 thereof relates to Scotland). In the

annotations, these are referred to as the Act of 1947 (or the principal Act) and the Act of 1951; see the Table of References and Abbreviations at the beginning of this book.

Town and Country Planning Act, 1953. That Act is referred to in the present Act, as in the annotations in this book, as the Act of 1953; see s. 69 (1), *ante*. The Act of 1953 applied both to England and Wales and to Scotland. In its application to England and Wales, it is amended by s. 71, *ante*, and the Seventh and Eighth Schedules, *post*. In its application to Scotland, different but corresponding amendments are made by s. 70 of, and the Eighth and Ninth Schedules to, the T. & C.P. (Scotland) Act, 1954 (2 & 3 Eliz. 2 c. 73). There are thus at present two versions of the Act of 1953. Cf. also the notes to s. 60, *ante*.

Sub-s. (2).

Such day as the Minister may appoint. See the T. & C.P. Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598), *post*, by which 1st January 1955 was appointed for all purposes of this Act. Note that this day is not, in earlier sections, referred to as "the appointed day" but as "the commencement of this Act". This avoids confusion with the definition of appointed day in s. 119 (1) of the Act of 1947 (Hill, p. 258; 48 Statutes Supp. 202); cf. s. 69 (2), *ante*, whereby expressions used in that Act are generally to bear the same meaning in the present Act. For further clarity that appointed day is referred to as 1st July 1948. Cf. however, s. 6, *ante*, where the term appointed day has to be retained for technical reasons (as references to the appointed day in Part VI of the principal Act are not necessarily to 1st July 1948; cf. s. 89 of that Act). Note also that the references to 1st July 1948 are inappropriate as respects the Isles of Scilly; see notes to s. 62, *ante*.

The commencement of this Act on 1st January 1955, marks the transition from the concept of the Part VI claim or claim holding, relevant in Part I (ss. 1–15), *ante*, and Part V (ss. 42–46, *ante*), *ante*, to the notion of land having an unexpended balance of established development value.

Sub-s. (4).

S. 63. That section, *ante*, applies to Scotland because it provides for the eventual dissolution of the Central Land Board; see also s. 63 of the Scots Act of 1954 (2 & 3 Eliz. 2 c. 73).

SCHEDULES

FIRST SCHEDULE

Sections 1, 6

MODIFICATION OF PROVISIONS OF PRINCIPAL ACT AS TO DEVELOPMENT VALUE

Modification in certain cases where land acquired by public authority

1.—(1) The three next following paragraphs shall have effect where an interest in land was compulsorily acquired by a public authority possessing compulsory purchase powers in pursuance of a notice to treat served on or after the date of the passing of the principal Act and before the first day of July, nineteen hundred and forty-eight, and the compensation paid did not exceed the amount provided for by section fifty-five of the principal Act (which provided for compensation on the basis of the existing use value of the land).

(2) The said paragraphs shall also have effect where an interest in land was purchased by such an authority in pursuance of a contract made on or after the date of the passing of the principal Act and before the said first day of July, at a price which did not exceed the amount of the compensation which would have been payable in accordance with the said section fifty-five if the transaction had been a compulsory acquisition.

(3) In those paragraphs the expression "the relevant land" means the land an interest in which was acquired or purchased as mentioned in either of the preceding sub-paragraphs, and the expression "the relevant interest" means the interest which was so acquired or purchased.

2. Where any works for the erection or alteration of a building had been begun but not completed on the relevant land before the day on which the notice to treat was served or the contract made, as the case may be, subsection (3) of section seventy-eight of the principal Act (which provides that the development value of land containing unfinished buildings shall be calculated as if the buildings were completed) shall not apply for the purpose of determining the development value of the relevant interest.

3. Where after the notice to treat was served or the contract made, as the case may be, the Minister issued in respect of the relevant land or any part thereof a certificate under section eighty of the principal Act (which, as respects land certified as ripe for development before the said first day of July, provides that the prospective value of the development for which the land was ripe shall be disregarded), the development value of the relevant interest shall be determined as if the certificate had not been issued.

4. Where the acquisition or purchase was not completed until after the said first day of July, but before that day the acquiring authority had carried out on the relevant land works for the erection or alteration of a building, or had on the relevant land constructed roads or provided sewers or other services, the provisions of subsection (2) of section ninety-one of the principal Act (which makes special provision as to compulsory acquisitions initiated and completed between the passing of that Act and the first day of July, nineteen hundred and forty-eight), and those provisions as applied by subsection (4) of that section (which relates to acquisitions by agreement by public authorities), shall apply as if they extended to acquisitions completed after the said first day of July in pursuance of a notice to treat served, or a contract made, after the passing of the principal Act but before that day:

Provided that where the acquiring authority had carried out on the relevant land any such operations as aforesaid before the service of the notice to treat, or the making of the contract, as the case may be, those provisions shall so apply as if, in paragraph (*a*) of the said subsection (2), the reference to the state of the land as it was immediately before the date of the notice to treat were a reference to the state of the land immediately before those operations were begun.

5. Subsection (3) of section ninety-one of the principal Act (which requires development values to be adjusted where an interest in land is compulsorily acquired), and that subsection as applied by subsection (4) of that section, shall not apply to any acquisition of an interest in land in pursuance of a notice to treat served, or a contract made, after the commencement of this Act.

Requisitioned land

6. Where land was requisitioned land on the first day of July, nineteen hundred and forty-eight, and during the period of requisition a value payment under the War Damage Act, 1943, became payable in respect of that land, section eighty-nine of the principal Act (which provides for calculating the development value of an interest in requisitioned land by reference to the state of the land immediately before the beginning of the period of requisition) shall apply for determining the development value of any interest in that land, with the modification that regard shall be had, not to the actual state of the land immediately before the beginning of the period of requisition, but to what that state would have been at the beginning of that period if the war damage had occurred immediately before the beginning thereof.

7. Where in the case of any requisitioned land the period of requisition ended before the said first day of July but on or after the date of the coming into operation of section ten of the Requisitioned Land and War Works Act, 1948 (which provides for restricting compensation for damage to the land to an amount calculated by reference to the existing use value of the land at the time when it was requisitioned), the development value of any interest in that land shall be determined as if the land had continued to be requisitioned land on the said first day of July and section eighty-nine of the principal Act had applied to it accordingly.

Compensation for abortive expenditure

8. Where the development value of an interest in land, determined apart from this paragraph, would be wholly or partly attributable to the carrying out of work which was subsequently rendered abortive—

(*a*) by an order made before the commencement of this Act whereby permission to develop land was revoked or modified; or

(*b*) by a planning decision made before the commencement of this Act whereby permission to complete buildings or works was refused, or was granted subject to conditions,

and compensation has become payable under subsection (1) of section twenty-two of the principal Act, or, as the case may be, under subsection (1) of section seventy-nine of that Act, in respect of expenditure incurred before the first day

of July, nineteen hundred and forty-eight, being expenditure so incurred wholly or partly in the carrying out of that work, then, in determining that development value, there shall be deducted an amount equal to so much of the compensation as was attributable to that work.

Other modifications

9. In determining the development value of an interest in land—

(*a*) no account shall be taken of any enforcement notice taking effect after the commencement of this Act by virtue of section seventy-five of the principal Act (which relates to development contravening planning control under previous enactments);

(*b*) account shall be taken of any enforcement notice taking effect by virtue of that section before the commencement of this Act, notwithstanding that the notice took effect after that development value would apart from this paragraph have been deemed to be finally determined.

10. Where, in determining the development value of an interest in land before the commencement of this Act, Rule (3) of the Rules set out in section two of the Acquisition of Land (Assessment of Compensation) Act, 1919, was disregarded, notwithstanding the provisions of subsection (1) of section sixty-two of the principal Act (which required that Rule, together with other rules, to be applied in determining development values), the said subsection (1) shall apply, and be deemed always to have applied, in relation to the determination of the development value of that interest, as if the reference in that subsection to the said Rule (3) had been omitted.

11. Where a determination made before the commencement of this Act under Part VI of the principal Act related—

(*a*) to the fee simple of a parcel of land and to a leasehold interest in the same or a different parcel of land; or

(*b*) to two or more leasehold interests, whether in the same or in different parcels of land,

the development values of those interests shall be re-determined separately as if that determination had not been made.

12. Where a claim was made for a payment under the scheme referred to in subsection (2) of section one of this Act, but payment in respect of the interest to which the claim related would have been excluded by section eighty-five of the principal Act by virtue of a direction given under subsection (5) of the said section eighty-five, the Minister, on application made to him at any time within six months after the commencement of this Act, may direct that the provisions of the principal Act and of this Act shall have effect in relation to that claim as if the direction under subsection (5) of the said section eighty-five had not been given.

NOTES

This Schedule contains a number of particular modifications of the provisions of Part VI of the principal Act relating to the determinations of claims under s. 58 thereof; in some cases a determination made before 1st January 1955 will be invalidated and a fresh determination will have to be made. The modifications are of a varied nature and some will relate to very few cases. They include the correction of a few drafting errors in the principal Act which, apart from the present Act, would probably have been met by the Treasury Scheme under s. 58 or by amending legislation. Other provisions impose or alter time limits upon powers to adjust an established claim. Para. 11, *supra*, is of general importance wherever the unit of land chosen for the s. 58 claim included " mixed " interests, even where this arose from the action of the Central Land Board itself in aggregating claims based on separate parcels.

The Schedule, though it cures some anomalies, leaves and creates others. For example, para. 10 is narrowly drawn, and does not go so far as may have been expected. Para. 11, which splits " mixed " interests, may leave claims some or all of which would seem now to be excluded from the category of " established " claims by s. 1 (3) (*a*), *ante*, a result which is in itself unfortunate, and which might have been avoided by choosing a different unit of claim in some cases. No opportunity for altering the basis of claim is provided, in this Schedule, and it is doubtful whether an alteration is in fact possible even with the consent of the Board.

Para. 1: Three next following paragraphs. Note that paras. 2 and 3, *supra*, discussed in this note, apply in the cases mentioned, whether or not title passed before 1st July 1948. Para. 4 applies where title did not pass before 1st July 1948; see the note, *infra*, to para. 4.

In the case of compulsory acquisitions in pursuance of notices to treat served on or after the 6th August 1947 and before the 1st July 1948, the compensation payable

on the acquisition was assessed under s. 55 of the Act of 1947 (Hill, p. 151; 48 Statutes Supp. 112) on the assumption that land was subject to a permanent restriction prohibiting development of any class other than those specified in the Third Schedule (Hill, p. 271; 48 Statutes Supp. 214). Sub-s. (3) of s. 55 (*supra*) excluded the provisions of sub-ss. (2)–(6) of s. 51 (Hill, pp. 144, 145; 48 Statutes Supp. 106, 107). Under s. 91 of the 1947 Act (Hill, p. 217; 48 Statutes Supp. 167) notwithstanding the notice to treat the interest was assumed for the purposes of Part VI to be subsisting at 1st July 1948, as it was immediately before the date of the notice to treat.

This fiction under s. 91 enabled the vendor to make his development value claim even if the purchase had been completed before 1st July 1948.

Where the land acquired consisted of an unfinished building, to which s. 78 of the 1947 Act (Hill, p. 196; 48 Statutes Supp. 150) applied, the exclusion of s. 51 (4) (*b*) (Hill, p. 145; 48 Statutes Supp. 107) prevented the compensation on the compulsory purchase from reflecting the planning permission granted free of development charge by s. 78 (*supra*). At the same time sub-s. (3) of that section excluded a development value claim in respect of the development which was exempt from charge.

A not dissimilar situation affected the acquisition of lands in cases where a " dead ripe " certificate was available under s. 80 of the 1947 Act (Hill, p. 199; 48 Statutes Supp. 152). The development certified could not be regarded in calculating the development value (see s. 80 (2) (*a*)) and because of the exclusion of s. 51 (4) (*b*), *supra*, the compulsory purchase price could not take account of the planning permission which was free from development charge under s. 80.

The Schedule does not give the vendor the benefit of the planning permission and freedom from development charge to which he would have been entitled if the notice to treat had been served on or after 1st July 1948. It provides instead for the determination of the development value claim as if s. 78 (3) did not apply; or as if the s. 80 certificate had not been issued. This relief is dependent on a development value claim having been made.

The Schedule also makes provision for the same relief where a sale by agreement took place in the same period in similar circumstances.

Para. 4. Where a vendor was still the owner at the appointed day there was no need to apply the fictional provisions of s. 91 (2), *ubi supra*. The acquiring authority were acquiring the land but not its development value. Works on land, however, were not regarded by the Central Land Board as part of the restricted value of the land (see note " Abortive expenditure ", *infra*); therefore if the acquiring authority had entered and carried out works between the notice to treat and the appointed day such works would have affected the development value of the land. The present paragraph in applying s. 91 (2) relates the condition of the land for the assessment of development value back to the service of the notice to treat to exclude such works. And in case there should be any works which were done before the notice to treat the proviso enacts a further relating back in case the application of s. 91 (2) will bring such works back in again to the development value. The proviso would only appear to apply where s. 91 (2) is applied by this paragraph. If there is any case where works were carried out before notice to treat and where completion took place before 1st July 1948, it would not appear that the proviso is an amendment of s. 91 (2) in its original application.

S. 91 (3) of the principal Act. Hill, p. 217; 48 Statutes Supp. 167. Under ss. 61 and 62 of the Act of 1947 (Hill, pp. 162–166; 48 Statutes Supp. 121–126) the restricted and unrestricted values and the development values were calculated according to the conventions enacted in those provisions. Those conventions, however, assumed that the owner would be left in possession of his interest. Where the land was acquired from him, however, there might be a difference between the restricted value, for example, and the compulsory purchase price in the case of a war damaged building which was acquired under the " notional restoration " provisions of s. 53 of the Act of 1947 (Hill, p. 148; 48 Statutes Supp. 109). The conventions on which the development value was calculated might also have been upset where a compulsory purchase took place of land subject to the notional lease under s. 52 (Hill, p. 146; 48 Statutes Supp. 108) or requisitioned land subject to s. 54 (Hill, p. 150; 48 Statutes Supp. 111). The compensation on a compulsory purchase might also have been assessed on an equivalent reinstatement basis. S. 91 (3) provided for the adjustment of the calculation of the development value claim in such circumstances. No term was put to the time up to which such adjustments could be made. Presumably provision would have been made in the Treasury Scheme. No adjustment is to be made where a notice to treat is served or a contract is made after 31st December 1954.

Requisitioned land. In the case of war damaged value payment land in requisition the effect of s. 89 of the Act of 1947 (Hill, p. 215; 48 Statutes Supp. 165) is to relate back the condition on the appointed day, for the purpose of calculating development value, to its undamaged state, if damage occurred during requisition. This is reflected in the restricted value and, in effect, deducted the value payment from the development value claim. If the land were not requisitioned the restricted value would have been calculated in relation to the war damaged state of the land with Third Schedule tolerance but without the buildings. Para. 6 provides that under s. 89 in such cases it is to be assumed that war damage had occurred at the commencement of requisitioning.

S. 10 of the Requisitioned Land and War Works Act, 1948. 53 Statutes Supp. 21. That provision anticipated the provisions of the Act of 1947 by limiting the compensation payable on derequisitioning to the damage caused to the existing use. At the date when the Act came into operation the 1947 Act had already been passed, and it could have been expected that damage to the development value would have been payable under Part VI of the 1947 Act. Owing to delay in bringing the 1947 Act into operation, however, there was a hiatus between the passing of the 1948 Act and the coming into operation of the 1947 Act. The Central Land Board have acted throughout, however, on the assumption that such lands were to be treated as if they had continued in requisition until 1st July 1948.

Abortive expenditure. Para. 8 removes an anomaly which might have resulted in a double payment, under the practice of the Central Land Board, unless it had been provided for in the Treasury Scheme. The Board refused to regard road-works and services as completed development where they had been carried out before the appointed day and treated them as part of the development value of the land notwithstanding the fact that compensation in cash was required to be paid for them where permission was refused under s. 79 (1) (Hill, p. 197; 48 Statutes Supp. 151) or revoked under ss. 21 and 22 (Hill, pp. 87–91; 48 Statutes Supp. 60–64). This question is discussed in Hill at p. 784.

S. 75 of the principal Act. Development value under Part VI of the Act of 1947 was calculated by reference to a restricted value which took account of the land as it was on 1st July 1948. The use at that date might or might not have been in conformity with planning control. Under s. 75 of the Act of 1947 (Hill, p. 188; 48 Statutes Supp. 144) enforcement proceedings might be instituted, however, in respect of contraventions of previous planning control. Where such a notice took effect sub-s. (6) (*b*) provided for the development value being calculated having regard to the requirements of the notice. Reg. 8 of the Claims for Depreciation of Land Values Regulations, 1948 (S.I. 1948 No. 902; Hill, p. 744) required the service of any such notice to be notified to the Central Land Board where it was received before 1st January 1953. The present provision permits account to be taken of any notice taking effect up to 1st January 1955. Generally such notices were required to be served before 1st July 1951. Such notices may still be served in certain cases where planning control has remained unenforceable because of an interest in or right to possession of the land held by or on behalf of the Crown. See s. 7 (6) of the Building Restrictions (War-Time Contraventions) Act, 1946 (Hill, p. 586; 36 Statutes Supp. 112). It may also be necessary to consider the case where such a notice was served in time but did not take effect because of the grant of a period permission under s. 75 (4).

S. 2 (3) of the Act of 1919. For the text of this rule see notes to s. 65, *ante*.

Para. 11. To operate the machinery of the present Act it is necessary that development values of freehold and leasehold interests should be separately assessed. The present paragraph therefore provides for the redetermination of any claims which consist of mixed parcels. In many cases it was not necessary to separate them for the purposes of the 1947 Act. See General Note, *supra*.

S. 85 (5) of the principal Act. Hill, p. 210; 48 Statutes Supp. 161. Under that provision the Minister might direct the inclusion of certain charity lands within the provisions of s. 85 of the Act of 1947 on application being made. Such lands will now have the benefit of s. 34, *ante*. See also para. 8 of the Sixth Schedule, *post*. There might be circumstances, however, where the chances of obtaining planning permission are small and it might be advisable to reopen a former development value claim and obtain the advantage of a claim for compensation instead.

SECOND SCHEDULE

Sections 2, 49, 52

Claims pledged to Central Land Board as security for development charges

1.—(1) In this Schedule, and in the other provisions of this Act, references to the pledging of a claim holding to the Central Land Board are references to any transaction whereby—

(*a*) the holder of the claim holding mortgaged it to the Board as security, or part of the security, for one or more development charges determined, or thereafter to be determined, by the Board; or

(*b*) the holder and the Board agreed that a development charge determined by the Board should be set off against any payment which might thereafter become payable to the holder by reference to that holding; or

(*c*) the Board refrained from determining a development charge, which would otherwise have fallen to be determined by them, in consideration of a mortgage of the holding (with or without other claim holdings).

(2) All pledges of claim holdings to the Central Land Board made by the same person, whether or not made at the same time, other than any pledge to which sub-paragraph (1) of paragraph 2 of this Schedule applies, shall for the purposes of this Schedule be treated collectively as a single pledge made at the time when the last of those pledges was made.

(3) Where a development charge covered by a pledge to the Central Land Board was determined in respect of land which constitutes the whole or part of the area of a claim holding not comprised in the pledge, being a holding of which the holder is the person who would, apart from the pledge, be liable to pay the unpaid balance of the development charge, then, for the purposes of this Schedule, that claim holding shall be deemed to be comprised in the pledge.

(4) In this Schedule references to the determination of a development charge in respect of any land are references to a determination of the Central Land Board that the charge was payable in respect of the carrying out of operations in, on, over or under that land, or in respect of the use of that land.

(5) For the purposes of this Schedule the amount of a development charge—

(*a*) in a case where the Central Land Board determined that amount as a single capital payment, shall be taken to have been the amount of that payment;

(*b*) in a case where the Board determined that amount otherwise than as a single capital payment, shall be taken to have been the amount of the single capital payment which would have been payable if the Board had determined the amount as such a payment;

and references in this Schedule to the unpaid balance of a development charge are references to the amount of the charge, if no sum was actually paid to the Board on account of the charge, or, if any sum was so paid, are references to the amount of the charge reduced by the amount or aggregate amount of the sum or sums so paid, other than any sum paid by way of interest.

(6) In relation to the pledging of a claim holding to the Central Land Board, references in this Schedule to a development charge covered by the pledge are references to a development charge the payment of which was secured, or partly secured, by the pledge, or, as the case may be, which was agreed to be set off against any payment which might become payable by reference to the holding.

(7) References in this Schedule to a mortgage of a claim holding do not include a mortgage which has been discharged.

2.—(1) Where a claim holding was pledged to the Central Land Board in accordance with the special arrangements relating to owners of single house plots, the claim holding shall, subject to the next following sub-paragraph, be deemed to have been extinguished as from the time when it was pledged to the Board.

(2) Where a claim holding (in this sub-paragraph referred to as " the original holding ") was pledged as mentioned in the preceding sub-paragraph, but was so pledged by reference to a plot of land which did not extend to the whole of the area of the original holding, the preceding sub-paragraph shall not apply, but there shall be deemed to have been substituted for the original holding, as from the time of the pledge, a claim holding with an area consisting of so much of the area of the original holding as was not comprised in that plot of land, and with a value equal to that fraction of the value of the original holding which then attached to so much of the area of the original holding as was not comprised in that plot.

3. Without prejudice to the last preceding paragraph, where a pledge to the Central Land Board comprised one or more claim holdings, and the unpaid balance of the development charge covered by the pledge, or (if more than one) the aggregate of the unpaid balances of the development charges so covered, was equal to or greater than the value of the claim holding, or the aggregate value of the claim holdings, as the case may be, the holding or holdings shall be deemed to have been extinguished as from the time of the pledge.

4. Where a pledge to the Central Land Board comprised only a single claim holding with an area of which every part either consisted of, or formed part of, the land in respect of which some development charge covered by the pledge was determined, and the last preceding paragraph does not apply, the unpaid balance of the development charge covered by the pledge, or, if more than one, the aggregate of the unpaid balances of all the development charges covered by the pledge, shall be deducted from the value of the holding, and the value of

that holding shall be deemed to have been reduced accordingly as from the time of the pledge.

5.—(1) The provisions of this paragraph shall have effect in the case of a pledge of one or more claim holdings to the Central Land Board to which neither of the two last preceding paragraphs applies.

(2) Any claim holding comprised in the pledge with an area of which every part either consisted of, or formed part of, the land in respect of which some development charge covered by the pledge was determined shall be allocated to the development charge in question or, if more than one, to those development charges collectively.

(3) Any claim holding comprised in the pledge with an area part of which did, and part of which did not, consist of, or form part of, such land as aforesaid shall be treated as if, at the time of the pledge, the claim holding (in this sub-paragraph referred to as "the parent holding") had been divided into two separate claim holdings, that is to say—

(*a*) a claim holding with an area consisting of so much of the area of the parent holding as consisted of, or formed part of, such land as aforesaid and with a value equal to that fraction of the value of the parent holding which then attached to that part of the area of the parent holding; and

(*b*) a claim holding with an area consisting of the residue of the area of the parent holding and with a value equal to that fraction of the value of the parent holding which then attached to the residue of the area of the parent holding,

and the claim holding referred to in head (*a*) of this sub-paragraph shall be allocated to the development charge in question, or, if more than one, to those development charges collectively.

(4) Paragraph 3 or 4 of this Schedule shall then apply in relation to each claim holding, if any, allocated in accordance with the two last preceding sub-paragraphs to any development charge, or to any development charges collectively, as if the pledge had comprised only that claim holding and had covered only that development charge or those development charges.

(5) If after the application of the preceding provisions of this paragraph there remains outstanding any claim holding not allocated in accordance with those provisions, or any claim holding so allocated which has been reduced in value but not extinguished, an amount equal to the aggregate of—

(*a*) the unpaid balance of any development charge covered by the pledge to which no claim holding was allocated as aforesaid; and

(*b*) the amount, if any, by which the value of any claim holding allocated as aforesaid which is deemed to have been extinguished falls short of the unpaid balance of the development charge, or the aggregate of the unpaid balances of the development charges, to which it was so allocated,

shall be deducted from the value of the claim holding so remaining outstanding, or, if more than one, shall be deducted rateably from the respective values of those claim holdings, and the value of any such holding shall be deemed to have been reduced accordingly as from the time of the pledge.

NOTES

Ss. 2 (2) and 49, *ante*, and the present Schedule are concerned with the circumstances arising where Parts VI and VII of the 1947 Act had in practice an off-setting effect. In practice development charges (though not necessarily the amounts of such charges) were determined to be payable; but the entitlement of claimants under Part VI was treated as being sufficient security for the payment of (or of an unpaid balance of) such charges.

In effect, the charge or part of it is still unpaid, and therefore the circumstances which would have made a payment appropriate under the present Act are not regarded as having arisen or as not having arisen to the extent which would have been justified if there had been no offsetting. Cf. also s. 69 (5), *post*.

The means adopted to take account of these circumstances is to provide for the adjustment, reduction, or extinction of the claim holdings to meet the unpaid charge. It is on the claim holding that all payments under this Act ultimately depend.

It is also necessary to provide for reduction or cancellation of outstanding charges. See in that regard s. 49, *ante*, and cf. also s. 14 (2) and (3), *ante*. See, further, the notes to ss. 14, 18 (4) and 52 (4), *ante*, and the General Note to s. 49, *ante*.

Pledging of a claim holding. This process began with the " near ripe " ration granted to registered builders in the period immediately after the coming into operation of the Act of 1947. Prior to the abolition of development charges the Central Land Board were prepared to accept pledges of Part VI claims, fairly generally, as security for development charges. Where the claim holding consists of the benefit of a claim which has been used for this purpose the claim holding will be extinguished or reduced in value, or treated as divided into two or more holdings and any or all of the divided holdings may be reduced or extinguished to take account of the circumstances of the pledge. The charge secured may or may not relate to the area or part of the area of the holding.

At the time when the last . . . pledge was made. The adjustments of claim holdings or values of claim holdings are deemed to have occurred at the time of the pledge. See also s. 2 (2), (3) and (5) and s. 15 (3), *ante*. Ordinarily, apart from adjustments made under s. 2, *ante*, the adjustments of claim holdings take place under Part I of the Act immediately before the commencement of the Act. Note also, however, Reg. 13 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *post*, which provides that in case of a severance of freehold minerals from the remainder of the land after the 1st July 1948, the date of severance will be the date of adjustment.

Charge . . . determined in respect of land . . . not comprised in the pledge. A pledge may have been given in respect of a holding relating to land other than the land in respect of which the charge has been determined. Under para. 1 (3) if the person who would be liable, apart from the pledge, to pay the charge is also the claim holder of the holding, the area of which consists of or comprises the charged land, then that holding will also be deemed to be comprised in the pledge.

Single house plots. See s. 49 and notes thereto, *ante*.

Para. 3. Unpaid balance . . . equal to or greater. In circumstances where the total value of the holding or holdings comprised in the pledge will be required to meet the charge, the holding or holdings will be extinguished. As to the effect in the cancellation or reduction of the charge, see s. 49 and notes thereto, *ante*.

Para. 4. Pledge comprises single claim holding. Where the pledge consists of a single claim holding and every part of the area of the holding either consists of or forms part of land the subject of a charge or charges and the unpaid balance is less than the value of the holding the value of the holding will be deemed to have been reduced by amount of the unpaid balances at the date of the pledge.

Para. 5. Pledge of one or more holdings. Where any holding has an area of which every part consists of or forms part of land subject to a charge covered by the pledge the holding will be allocated to the charge or charges.

Where any holding has an area part of which did and part did not consist of or form part of land subject to a charge the holding is to be divided, and the value of the holding apportioned, between the charged area and the uncharged area. The holding relating to the charged area will be first applied to the charge.

In the pledge, however, there may be a number of holdings and the pledge may cover a number of charges. The charges may be related to the areas of some of the holdings or to parts of the areas of holdings. Some charges may be completely unrelated to the areas of any of the holdings.

When the holdings or divided holdings relating to particular charged areas have been applied to the related charge they will be either reduced or extinguished.

If there remains in respect of those charges or any of them an unpaid balance or if there is any charge in respect of which there is no related holding the unpaid aggregate of charge will be deducted rateably from all holdings comprised in the pledge including any reduced holdings which have been applied to particular charges but which have not been extinguished; but note also para. 1 (3), *supra*.

Section 2

THIRD SCHEDULE

PAYMENTS UNDER SECTION FIFTY-NINE OF PRINCIPAL ACT

1.—(1) This Schedule applies to payments which have become payable, or become payable after the commencement of this Act, by virtue of the scheme made under section fifty-nine of the principal Act.

(2) In relation to such a payment, the expression " the payment area " in this Schedule means the land in respect of which the payment became or becomes payable, and references to the amount of the payment shall be construed as references to the principal amount thereof, excluding any interest payable thereon under subsection (3) of section sixty-five of the principal Act.

(3) In this Schedule the expression " the date of the scheme " means the date of the coming into operation of the scheme made under the said section fifty-nine.

2. The provisions of this Schedule shall have effect where a payment to which this Schedule applies has become, or becomes, payable in respect of an

interest in land and a claim holding related, or would apart from this Schedule have related, to the like interest in the whole or part of that land with or without any other land.

3. If the payment area is identical with the area of the claim holding, then—

(*a*) if the amount of the payment is equal to the value of the claim holding, the claim holding shall be deemed to have been extinguished as from the date of the scheme;

(*b*) if the amount of the payment is less than the value of the claim holding, the value of the claim holding shall be deemed to have been reduced, as from the date of the scheme, by the amount of the payment.

4.—(1) If the payment area forms part of the area of the claim holding, the holding (in this paragraph referred to as " the parent holding ") shall be treated, as from the date of the scheme, as having been divided into two claim holdings, that is to say—

(*a*) a claim holding with an area consisting of that part of the area of the parent holding which constituted the payment area, and with a value equal to that fraction of the value of the parent holding which attached to that part of the area of the parent holding; and

(*b*) a claim holding with an area consisting of the residue of the area of the parent holding, and with a value equal to that fraction of the value of the parent holding which attached to the residue of the area of the parent holding.

(2) Where the preceding sub-paragraph applies, the last preceding paragraph shall have effect in relation to the claim holding referred to in head (*a*) of the preceding sub-paragraph as if it were the parent holding.

5. If the payment area includes the area of the claim holding together with other land, paragraph 3 of this Schedule shall apply as if—

(*a*) the payment area had been identical with the area of the claim holding; but

(*b*) the amount of the payment had been so much of the actual amount thereof as might reasonably be expected to have been attributed to the area of the claim holding if, under the scheme made under section fifty-nine of the principal Act, the authority determining the amount of the payment had been required (in accordance with the same principles as applied to the determination of that amount) to apportion it as between the area of the claim holding and the rest of the payment area.

6. If the payment area includes part of the area of the claim holding together with other land not comprised in the area of the claim holding—

(*a*) paragraph 4 of this Schedule shall apply as if the part of the payment area comprised in the area of the claim holding had been the whole of the payment area; and

(*b*) the last preceding paragraph shall apply as if the part of the area of the claim holding comprised in the payment area had been the whole of the area of the claim holding.

NOTES

In addition to the scheme to be made under s. 58, Part VI of the Act of 1947 also provided for the making of a scheme under s. 59 (Hill, p. 159; 48 Statutes Supp. 118) in relation to certain war damaged lands where a value payment is appropriate or would be appropriate except that the after damage value exceeds the before damage value. The scheme, the Planning Payments (War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., p. B94), has been made and provides for two kinds of payments. The first kind equals the excess, over the value payment, of the difference between restricted value and what would have been the restricted value of the interest in its pre-damage state. This payment is made where the development value exceeds the difference between the two restricted values. This difference in restricted values is described as the war damage depreciation in the restricted value. The second kind of payment is where the war damage depreciation in the restricted value is equal to or exceeds the development value. In such case the payment is the amount of the development value.

This scheme came into operation on 12th December 1949. Claims are required to be made before 1st February 1951, or within six months of the determination of the value payment whichever is the later (see reg. 4 of the Planning Payments (War Damage) Regulations, 1949 (S.I. 1949 No. 2255; Hill, 2nd Supp., p. B109)).

The present Act does not interfere with the operation of this scheme. In effect, however, the payments made or to be made under that scheme are considered to be made from the established development value claim, from which the claim holdings of this Act are derived.

The Schedule coins the expression " the payment area " to describe the land in respect of which a payment has been made, or becomes payable. It then proceeds to relate the payment area of an interest to claim holdings related to the like interest where their areas overlap, coincide or are included in the payment area.

If the payment area and the area of the holding coincide, the value of the holding will be reduced or extinguished according to whether the payment is less than or equal to the development value.

If the payment area is part of the area of the claim holding, the claim holding will be divided as from 12th December 1949, into two claim holdings one consisting of the payment area and the other the residue of the area of the holding, each having a value equal to the fraction which attached to that part of the area of the parent holding which is now the area of the divided holding. In relation to the holding which now coincides with the payment area, the value will be reduced or extinguished as before.

If the payment area is greater than the area of the claim holding the procedure will be the same as if they had coincided except that the amount of the payment will be apportioned between the area of the claim holding and the remainder of the payment area. If the payment area includes part of the area of the claim holding together with other land the claim holding will be divided to apportion the value of the claim and there will also be an apportionment of the payment. These provisions ensure that there will be no double payment under the provisions of the present Act. There may in fact, however, be circumstances which would warrant no payment at all, as for example, if the land were to be subsequently developed. See s. 57, *ante*, in this regard. Under that provision payments are registered in the local land charges register and may be recovered, on the carrying out of new development, under s. 29, *ante*, as applied by s. 57 (3), *ante*.

Commencement of this Act. 1st January 1955, see s. 72, *ante*. The use of this expression indicates that payments under this scheme will continue to be made.

Scheme under s. 59. Planning Payments (War Damage) Scheme, 1949 (S.I. 1949 No. 2243; Hill, 2nd Supp., p. B94).

Excluding . . . interest. The interest is properly excluded because the claim holding does not include interest. If payment is made by reference to the claim holding interest is added under s. 14, *ante*, on payment. If a reduced holding becomes, or is aggregated to give rise to, an original unexpended balance the interest is added at that stage. Note, however, the provisions of s. 57 (5) in relation to the registration of payments.

Date of the Scheme. 12th December 1949.

Fraction of the value . . . which attached. See s. 2 (4), *ante*.

Reasonably . . . attributed. The language here is substantially the same as in s. 2 (4), *ante*. See also s. 57 (4), *ante*.

Sections 18, 65 FOURTH SCHEDULE

CALCULATION OF VALUE OF PREVIOUS DEVELOPMENT OF LAND

1. Where under any provision of this Act the value of any development of land initiated before a time referred to in that provision has to be ascertained with reference to that time, the value of the development shall be calculated in accordance with the provisions of this Schedule.

2. The said value shall be calculated by reference to prices current at the time in question—

(*a*) as if the development had not been initiated but the land had remained in the state in which it was immediately before the development was initiated; and

(*b*) on the assumption that (apart from the principal Act) the development could at that time lawfully be carried out,

and shall be taken to be the difference between the value which in those circumstances the land would have had at that time if permission for that development had been granted unconditionally immediately before that time and the value which in those circumstances the land would have had at that time if permission for that development had been applied for and refused immediately before that time, and it could be assumed that permission for that development, and any other new development of that land, would be refused on any subsequent application:

Provided that, if the development involved the clearing of any land, the reference in sub-paragraph (*a*) of this paragraph to the state of the land immediately before the development shall be construed as a reference to the state of the land immediately after the clearing thereof but before the carrying out of any other operations.

3. If the development was initiated in pursuance of planning permission granted subject to conditions, the last preceding paragraph shall apply as if the reference to the granting of permission unconditionally were a reference to the granting of permission subject to the like conditions.

4. If the permission referred to in the last preceding paragraph was granted subject to conditions which consisted of, or included, a requirement expressed by reference to a specified period, the reference in that paragraph to the like conditions shall be construed, in relation to the condition imposing that requirement, as a reference to a condition imposing the like requirement in respect of a period of like duration beginning at the time in question.

5. In the application of the preceding provisions of this Schedule to development initiated, but not completed, before the time in question, references to permission for that development shall be construed as references to permission for so much of that development as had been carried out before that time.

NOTES

This Schedule should be read with ss. 18 (4) and 65, *ante*. It provides for the calculation of the development value which has been realised by carrying out new development of any land, *i.e.*, the amount falling to be deducted, at any subsequent time, from the original unexpended balance of that land. As to what are the largest basic units which can be considered as having such a balance, see the notes to ss. 17 and 18, *ante*; and cf. the notes to s. 48, *ante*.

The value is to be based on the difference between a consent value and a refusal value, at the subsequent time, of the land in question for the purposes of carrying out the development. It must be assumed that the development has not been carried out (though regard will be had to preparatory clearing of the site); the amount to be assessed is primarily to be taken to be the value which would be added, by an unconditional grant of permission, to the value of the land limited to the Third Schedule tolerance of the undeveloped site.

Paras. 3 and 4, *supra*, make special provision for development carried out in accordance with permission subject to conditions, including provision for the assessment of value already realised or enjoyed under a permission containing a requirement " expressed by reference to a specified period ". Para. 5, *supra*, makes provision for uncompleted development; the assessment is to be based only on so much of the development as has been carried out.

Strictly construed, the Schedule appears to require the assessment of the value of contravening development (carried out without permission) on the same basis as development permitted unconditionally. This interpretation would lead to anomalies where this value is only precariously reflected in the existing use value, by reference to the amended Third Schedule of the principal Act; see the notes, *infra*, to para. 3. This might in effect impose a heavy penalty on contravention of planning control, in a case where permission would have been refused or granted for a limited period, if an enforcement notice is subsequently served. Contrast the views of the then Attorney General (H. of C. Official Report, S.C.C., 22nd June 1954, cols. 733–736) discussing the original proposals for amending the Third Schedule to the principal Act.

In cases where development has not been completed, as mentioned in para. 5, *supra*, attention is drawn to s. 32, *ante*, which is drafted on the assumption that buildings or works carried out on land may not come automatically within existing use value.

Para. 1

Land. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 202). Note that the present Schedule is concerned with the land itself, and not with the values of interests in land.

A time. As to the relevant time, for the calculations required by this Schedule, see s. 18 (4), *ante* (referring to questions as to the unexpended balance or balances of land at " any subsequent time "), and see ss. 25 (1) (*b*), 31 (1), 40 (1) proviso (*b*), and 48 (2), *ante*.

Calculated. See s. 65, *ante*, applying rr. (2) and (4), but not r. (3) of the Act of 1919. Cf. paras. 36 to 45 of the Central Land Board's practice notes on development charge (Hill, pp. 1253–1256) as to the meaning of " value " for the purposes of s. 70 of the Act of 1947 (Hill, p. 177; 48 Statutes Supp. 136) and the T. & C.P. (Development Charge) Regulations, 1948 (S.I. 1948 No. 1189; Hill, p. 783).

Para. 2

Initiated. See s. 16 (5), *ante*.

Principal Act. *I.e.*, the Act of 1947; see ss. 1 (1) and 69 (1), *ante*

Permission. See ss. 12 and 119 (1) of the Act of 1947 (Hill, pp. 65, 260; 48 Statutes Supp. 44, 202). Note also s. 18 thereof, mentioned in the notes to ss. 16 (5) and 20 of the present Act, *ante*; and paras. 3, 4 and 5 of the present Schedule.

Unconditionally. Note para. 3, *supra*. Where no permission has been granted, this word may create a difficulty which, it seems, cannot be avoided by reliance on *Higham* v. *Havant & Waterloo Urban District Council*, [1951] 1 All E.R. 173; [1951] 1 K.B. 509; affirmed, [1951] 2 All E.R. 178n; [1951] 2 K.B. 527, C.A.; 2nd Digest Supp.

New development. See s. 16 (5), *ante*; and, in connection therewith, see the Third Schedule to the principal Act, set out as amended in the notes to para. 4 of the Seventh Schedule to the present Act, *post*.

Clearing. See s. 69 (2), *ante*, and s. 119 (1) of the Act of 1947 (Hill, p. 258; 48 Statutes Supp. 202). Cf. the note to the new s. 93 of that Act, as inserted by s. 50 of the present Act, *ante*.

Para. 3

Granted subject to conditions. Cf. the notes to s. 16, *ante*, and note para. 4, *supra*, of the present Schedule. Where permission has in fact been granted, with a condition as to time, the present paragraph, in conjunction with para. 4, *supra*, appears to provide a strict counterpart to the new para. 10 of the Third Schedule to the principal Act.

It should be noted that this Schedule applies, however, whether or not provision has in fact been granted. No provision is made in the present Schedule for discounting the precarious value of development in respect of which an enforcement notice may be served; contrast the proviso to para. 9 of the Third Schedule, set out in the notes to para. 4 of the Seventh Schedule to this Act, *post*. It would seem that such value should be discounted if the present Act is to operate reasonably. It is perhaps unfortunate that when the new para. 9 of the Third Schedule to the principal Act was inserted, by an amendment to the Bill for the present Act, no corresponding amendment was made to the present Schedule.

Para. 4

Conditions . . . by reference to a specified period. Cf. s. 14 (2) (*b*) of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48), mentioned in the note " Granted subject to conditions " to s. 16 (1), *ante*, and the notes to s. 16 (4), *ante*. The effect of the present paragraph is to require an assumption that the period is about to begin on the subsequent occasion when the value of the development becomes relevant. Thus, if development has been initiated in accordance with a permission, granted, say, five years earlier and allowing the development to be retained or continued for, say, seven years, it must now be assumed that the permission has seven (not two) years still to run. The value which has been realised or enjoyed during the previous five years must, therefore, be taken into account, on current prices, as well as the two years which in fact are still to come.

Section 31

FIFTH SCHEDULE

APPORTIONMENT OF UNEXPENDED BALANCE OF ESTABLISHED DEVELOPMENT VALUE

Determination of relevant area

1.—(1) Where, in the case of a compulsory acquisition to which Part III of this Act applies, any area of the relevant land which, immediately before the service of the notice to treat, has an unexpended balance of established development value does not satisfy the conditions set out in the next following sub-paragraph, that area shall be treated as divided into as many separate areas as may be requisite to ensure that each of those separate areas satisfies those conditions.

(2) The conditions referred to in the preceding sub-paragraph are—

(*a*) that all the interests (other than excepted interests) subsisting in the area in question subsist in the whole thereof; and

(*b*) that any rentcharge charged on the area in question is charged on the whole thereof.

(3) Any area of the relevant land which has an unexpended balance of established development value and which complies with the conditions set out in the last preceding sub-paragraph is in this Schedule referred to in relation to the interests subsisting therein as " the relevant area ", and the subsequent provisions of this Schedule shall have effect separately in relation to each relevant area.

Preliminary calculations

2. There shall be calculated the amount referable to the relevant area of the rent which might reasonably be expected to be reserved if the relevant land were to be let on terms prohibiting the carrying out of any new development but permitting the carrying out of any other development; and the amount so calculated is in this Schedule referred to as " the existing use rent ".

3.—(1) If—

(*a*) in the case of an interest in fee simple which is subject to a rentcharge; or

(*b*) in the case of a tenancy,

so much of the rent reserved under the rentcharge or tenancy as is referable to the relevant area exceeds the existing use rent, there shall be calculated the capital value of the right to receive for the period of the remainder of the term of the rentcharge or tenancy an annual payment equal to the excess; and any amount so calculated in the case of any interest is in this Schedule referred to as " the rental liability " of that interest.

(2) Where the interest in fee simple is subject to more than one rentcharge, then, for the purposes of the preceding sub-paragraph, as respects any period included in the term of two or more of those rentcharges, those two or more rentcharges shall be treated as a single rentcharge charged on the relevant area for the duration of that period with a rent reserved thereunder of an amount equal to the aggregate of so much of their respective rents as is referable to the relevant area.

4. In the case of any interest in reversion—

(*a*) there shall be calculated the capital value as at the time immediately before the service of the notice to treat of the right to receive a sum equal to the unexpended balance of established development value of the relevant area at that time, but payable at the expiration of the tenancy upon the termination of which the interest in question is immediately expectant; and the amount so calculated in the case of any interest is in this Schedule referred to as " the reversionary development value " of that interest;

(*b*) if so much of the rent reserved under the tenancy aforesaid as is referable to the relevant area exceeds the existing use rent, there shall also be calculated the capital value as at the time aforesaid of the right to receive for the period of the remainder of the term of that tenancy an annual payment equal to the excess; and any amount so determined in the case of any interest is in this Schedule referred to as " the rental increment " of that interest.

Apportionment of unexpended balance between interests

5. Where two or more interests other than excepted interests subsist in the relevant area, the portion of the unexpended balance of established development value of the relevant area attributable to each respectively of those interests shall be taken to be the following, that is to say—

(*a*) in the case of the interest in fee simple, an amount equal to the reversionary development value of that interest less the amount, if any, by which any rental liability of that interest exceeds any rental increment thereof;

(*b*) in the case of a tenancy in reversion, an amount equal to the reversionary development value of that tenancy less the aggregate of—

(i) the reversionary development value of the interest in reversion immediately expectant upon the termination of that tenancy; and

(ii) the amount, if any, by which any rental liability of that tenancy exceeds any rental increment thereof;

(*c*) in the case of a tenancy other than a tenancy in reversion, the remainder, if any, of the said balance after the deduction of the aggregate of—

(i) the reversionary development value of the interest in reversion immediately expectant upon the termination of that tenancy; and

(ii) any rental liability of that tenancy.

Interpretation

6. In this Schedule—

(*a*) the expression " tenancy " does not include an excepted interest;

(*b*) any reference to an interest or tenancy in reversion does not include an interest or tenancy in reversion immediately expectant upon the termination of an excepted interest.

NOTES

This Schedule deals with the division of any unexpended balance between interests in land for the purposes of s. 31, *ante*. It may well be that the land, in which the interest or interests comprised in the compulsory purchase subsist, has a number of separate balances on some or all of its parts, and that some part or parts have no balance.

The Schedule applies separately to each balance. Each area of the relevant land which has an unexpended balance is also, if need be, to be divided so that all the interests in each divided area subsist in the whole of that area, and that any rentcharge charged on the area is charged on the whole.

These areas are the " relevant areas " to which the Schedule is to be applied. This sub-division could involve further apportionment of the " current " unexpended balances already determined under s. 48 (2), *ante*; see also the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), *post*, and the notes thereto. S. 48, however, provides in sub-s. (2) that the acquiring authority will be entitled to a certificate showing the " current " unexpended balance, if any, of *any* land, an interest in which is subject to a notice to treat. If asked for, the certificate would show the balances in the " relevant areas ". In fact, since the district valuer will usually be advising the acquiring authority, and since he is also primarily responsible for the issue of the certificate under s. 48 (2), it may be expected that the certificate would show the balances of the relevant areas separately.

It is also necessary to make a number of other preliminary calculations before proceeding to the application of the machinery of division.

The existing use rent. This is that part of a rent of the relevant land which is apportionable to the relevant area. The rent which is to be apportioned is the rent which would be obtained if the relevant land were let subject to a prohibition of " new development " (defined in s. 16 (5), *ante*).

Rental liability. In the case of an interest in fee simple subject to a rentcharge, the charged rent will be apportioned to the relevant area. Any excess of this rent over the " existing use " rent will be calculated as a capital sum representing the value of the annual excess payable for the remainder of the period of the charge. This capital sum is the rental liability.

In the case of a tenancy, the apportioned part of the rent reserved under the lease will be compared with the existing use rent.

Reversionary development value. In case of any interest in reversion, this is the capital value, immediately before the service of the notice to treat, of any current unexpended balance in the relevant area assuming that balance to be payable at the expiration of the tenancy on which the reversion is immediately expectant.

Rental increment. If the rent reserved under any tenancy, as related to the relevant area, exceeds the existing use rent, the right to receive the annual excess for the remainder of the term will be calculated as a capital sum. This sum is the rental increment of the interest entitled to receive the increment.

Once the preliminary calculations have been made, an unexpended balance in the relevant area can be divided between the interests subsisting in the relevant area. Where there are two or more interests, the division will be as follows:

(*a*) the fee simple interest will receive the reversionary development value of that interest less any amount by which any rental liability of the interest exceeds any rental increment thereof;

(*b*) a tenancy in reversion will receive the reversionary development value of that tenancy, less the aggregate of the reversionary development value of the interest in reversion immediately expectant upon that tenancy and the amount of any excess of any rental liability of that tenancy over any rental increment thereof;

(*c*) a tenancy, other than a tenancy in reversion, will receive the remainder of any unexpended balance in the relevant area, after deduction of the aggregate of the reversionary development value of the interest in reversion immediately expectant thereon and any rental liability of the tenancy.

The word tenancy used in the Schedule is wide enough to include such interests as would fall within s. 121 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 949). Such interests are excepted from consideration under s. 21, *ante*. The Schedule provides for the exclusion from the expression " tenancy " such interests, defined in s. 30, *ante*, as excepted interests.

As to the procedure where compensation is payable in accordance with this Schedule, see notes to s. 31, *ante*, and the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), *post*, and the notes thereon. See also the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), *post*.

Definitions. Subject to this Schedule itself, see s. 30 (2), *ante*; and see also s. 69 (1) and (2), *ante*.

SIXTH SCHEDULE Sections 34, 67

SPECIAL CLASSES OF LAND FOR WHICH PLANNING PERMISSION IS TO BE TAKEN INTO ACCOUNT ON COMPULSORY ACQUISITION

1. Land which, on the date of service of the notice to treat, is land to which section eighty-two of the principal Act applies.

2. Land acquired by a local authority under Part I of the Town and Country Planning Act, 1944, or under Part IV of the principal Act, for the purposes of the development or re-development of any area as a whole, and land appropriated by a local authority for those purposes, where the relevant interest is the interest of that authority in that land.

3. Land acquired by a development corporation under the New Towns Act, 1946, where the relevant interest is the interest of that corporation in that land.

4. Land which, on the date of service of the notice to treat, is operational land of statutory undertakers, where the relevant interest is the interest of those undertakers in that land.

5. Land which, on the date of service of the notice to treat, is land of the National Coal Board of a class specified in regulations made under section ninety of the principal Act, where the relevant interest is the interest of the National Coal Board in that land.

6. Land to which section eighty-five of the principal Act applies on the date of service of the notice to treat and applied on the first day of July, nineteen hundred and forty-eight.

7. Land which would have been such land as is referred to in any of the preceding paragraphs if the notice to treat had been served on the date of the granting of the planning permission in question.

8. Land to which, by virtue of a direction of the Minister under subsection (5) of section eighty-five of the principal Act, any of the provisions of that section applied on the date of the granting of the planning permission in question.

NOTES

This Schedule should be read with s. 34, *ante*, and the notes thereto. As to the determination of any question whether land is within one of the claims specified in this Schedule, see s. 67 (4), *ante*, applying ss. 92 and 119 (2) of the Act of 1947 (Hill, pp. 219, 261; 48 Statutes Supp. 169, 205).

Land. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203).

The notice to treat. See s. 30 (2), *ante*, and notes thereto. This means the notice, or deemed notice, in pursuance of which the relevant interest is acquired.

S. 82 of the principal Act. See Hill, p. 205; 48 Statutes Supp. 157. See also the T. & C.P. (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948 (S.I. 1948 No. 1461; Hill, p. 827); and the notes to s. 34, *ante*.

Local authority. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 203).

Part I of the Town and Country Planning Act, 1944. This Part (ss. 1–56) of the Act of 1944, so far as it relates to powers of acquisition, has been superseded by Part IV of the Act of 1947, and consequential provisions are made by the Tenth Schedule to the latter Act. For Part I of the Act of 1944 as originally enacted, see Hill, pp. 437 *et seq.*; 28 Statutes Supp. 22 *et seq.* Cf., also the notes to ss. 51 and 52, *ante*.

Part IV of the principal Act. For ss. 37–49 of the Act of 1947, see Hill, pp. 119–143; 48 Statutes Supp. 86–105. That part confers powers of purchase for planning and other purposes. (Ss. 47–49 relate to highways.) Para. 2 of the present Schedule is limited to land acquired or appropriated for the purposes mentioned.

Development or redevelopment of any area as a whole. Cf. the notes to ss. 34 and 52, *ante*; see generally s. 83 of the Act of 1947 (Hill, p. 206; 48 Statutes Supp. 158), and s. 71 (2) of the present Act, *ante*, repealing s. 83 (3) and (4).

Appropriated. Cf. the General Note to s. 19, *ante*; see also the notes to s. 93 of the principal Act as substituted by s. 50, *ante*, and the notes to s. 51, *ante*.

Relevant interest. See s. 30 (2), *ante*. This means the interest which is acquired, *i.e.*, that for which the compensation is being assessed on the basis provided by s. 34, *ante*, and the present Schedule.

New Towns Act, 1946. See Hill, pp. 595–637; 25 Halsbury's Statutes (2nd Edn.) 427. Cf. the notes to ss. 34 and 52, *ante*. As to the establishment of development corporations, see s. 2 of that Act. See generally, s. 83 of the Act of 1947 (*ubi supra*).

Operational land; statutory undertakers. Cf. the notes to s. 19 (4), *ante*; and the notes to s. 34, *ante*.

National Coal Board; specified; s. 90 of the principal Act. See the notes to s. 34, *ante*, and cf. the notes to s. 19 (4), *ante*.

S. 85 of the principal Act. See Hill, p. 209; 48 Statutes Supp. 160. That section relates to certain charity land. See also *Re Town and Country Planning Act*, 1947. *Crystal Palace Trustees* v. *Minister of Town & Country Planning*, [1950] 2 All E.R. 857, n.; [1951] Ch. 132; 2nd Digest Supp.; *Re Girls' Public Day School Trust, Ltd., Girls' Public Day School Trust, Ltd.* v. *Minister of Town & Country Planning*, [1951] Ch. 400; 2nd Digest Supp.; *The Abbey Malvern Wells, Ltd.* v. *Minister of Town & Country Planning*, [1951] 2 All E.R. 154; [1951] Ch. 728; 2nd Digest Supp.

1st July, 1948. *I.e.*, the appointed day under the principal Act, mentioned in s. 85 thereof; see s. 120 (2) thereof and S.I. 1948 No. 213 (Hill, pp. 209, 266, 733; 48 Statutes Supp. 160, 209, 294).

Planning permission. See the note to s. 34 (1), *ante*.

S. 85 (5) of the principal Act. See Hill, p. 210; 48 Statutes Supp. 161. See also s. 1 (6), and para. 12 of the First Schedule, *ante*.

Section 71

SEVENTH SCHEDULE

ENACTMENTS AMENDED

The Town and Country Planning Act, 1947
(10 & 11 *Geo.* 6. *c.* 51)

1. In section twenty, in subsection (4), at the end there shall be added the words " if Part III of the Town and Country Planning Act, 1954, had not been passed ".

2. In section ninety-five, in subsection (3), for the words " either of the two last foregoing sections " there shall be substituted the words " section ninety-three of this Act ".

3. The following subsection shall be substituted for subsection (2) of section one hundred and twelve:—

" (2) For the purposes of paragraph 3 of the said Third Schedule—

(*a*) the erection on land within the curtilage of any such building as is mentioned in that paragraph of an additional building to be used in connection with the original building shall be treated as the enlargement of the original building; and

(*b*) where any two or more buildings comprised in the same curtilage are used as one unit for the purposes of any institution or undertaking, the reference in the said paragraph 3 to the cubic content of the original building shall be construed as a reference to the aggregate cubic content of those buildings."

4. In the Third Schedule—

(*a*) in paragraph 1, after the words " such building) " there shall be inserted the words " and of any other building in existence at a material date, being a building erected after the appointed day ";

(*b*) in paragraphs 2, 4 and 8, for the words " on the appointed day " there shall in each case be substituted the words " at a material date ";

(*c*) in paragraph 6, for the words " on the appointed day " there shall be substituted, in the first place where those words occur, the words " at a material date " and, in the second place where those words occur, the words " on and at all times since the appointed day ";

(*d*) in paragraph 7, for the words " on the appointed day " in the first place where they occur there shall be substituted the words " at a material date ", and after the said words in the second place where they occur there shall be inserted the words " or on the day thereafter when the buildings began to be so used ";

(*e*) after paragraph 8 there shall be added the following—

" 9. In this Schedule, the expression " at a material date " means at either of the following dates, that is to say—

(*a*) the appointed day; or

(*b*) the date by reference to which this Schedule falls to be applied in the particular case in question:

Provided that sub-paragraph (*b*) of this paragraph shall not apply in relation to any building, works or use of land in respect of which, whether before or after the date mentioned in that sub-paragraph, an enforcement notice served before that date has become or becomes effective.

10. Where, after the appointed day, any buildings or works have been erected or constructed, or any use of land has been instituted, and any condition imposed under Part III of this Act limiting the period for which those buildings or works may be retained or that use may be continued is of effect in relation thereto, this Schedule shall not operate except as respects the period specified in that condition."

The National Parks and Access to the Countryside Act, 1949
(12, 13 & 14 *Geo.* 6. *c.* 97)

5. In section ninety-seven, in subsection (5), for the words " section ninety-four," there shall be substituted the words " section ninety-three."

The Mineral Workings Act, 1951
(14 & 15 *Geo.* 6. *c.* 60)

6. In section three, in subsection (2) for the words " one penny and one-eighth " there shall be substituted the words " twopence farthing " and at the end of the subsection there shall be added the following:—

" Provided that as respects—

(*a*) ironstone which immediately before the fifteenth day of February, nineteen hundred and fifty-one, was subject to a full restoring lease; and

(*b*) ironstone in respect of which an order under section seven of this Act was in force immediately before the commencement of section fifty-six of the Town and Country Planning Act, 1954; and

(*c*) ironstone specified in an order in force under subsection (1) of the said section fifty-six,

the rate of the contributions so payable shall be one penny and one-eighth for each ton so weighed.

(2A) Where, under subsection (2) of this section, contributions at the rate of twopence farthing per ton are payable by a lessee under a mining lease or by the person granted a right to work minerals by an order under Part I of the Mines (Working Facilities and Support) Act, 1923, a sum, computed in accordance with the provisions of the Third Schedule to this Act, may, notwithstanding anything in the lease or order, be deducted in accordance with the provisions of that Schedule from payments by the lessee under the lease or by that person under the order, or may be otherwise recovered in accordance with those provisions by the lessee or by that person:

Provided that this subsection shall not apply to any mining lease made after the fifteenth day of February and before the first day of August, nineteen hundred and fifty-one, which contained a provision expressly excluding the operation of paragraph (*b*) of subsection (2) of section six of this Act."

7. In the Third Schedule—

(*a*) in paragraph 1, for the words " the rate required under section six of this Act " there shall be substituted the words " the rate of twopence farthing per ton ";

(*b*) in paragraphs 3 and 4, for the words " the first day of July, nineteen hundred and fifty-one " there shall be substituted the words " the date of the commencement of section fifty-six of the Town and Country Planning Act, 1954 ";

(*c*) in paragraph 7 for the words " paragraph (*b*) of subsection (2) of section six " there shall be substituted the words " subsection (2A) of section

three ", and for the words " the said paragraph (*b*) " there shall be substituted the words " the said subsection (2A) "; and

(*d*) after paragraph 7 there shall be added the following—

" 8. This Schedule shall apply with any necessary adaptations in relation to an order under Part I of the Mines (Working Facilities and Support) Act, 1923, as if that order were a lease and the person granted thereby a right to work minerals were the lessee under that lease ".

The Town and Country Planning Act, 1953
(1 & 2 *Eliz.* 2. *c.* 16)

8. In section two, in paragraph (*b*) of the proviso to subsection (1), for the words " pending the coming into operation of such an Act " there shall be substituted the words " subject to the provisions of the Town and Country Planning Act, 1954."

NOTES

This Schedule should be read with s. 71 (1), *ante*, which refers to these provisions as " minor " or " consequential " amendments. S. 69 (9), *ante*, provides that references in the present Act to any other enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment (including this Act). Further provisions as to the effect of particular amendments and repeals are contained in s. 71 (3)–(6), *ante*.

Para. 1. The insertion of these words at the end of sub-s. (4) of s. 20 of the Act of 1947 (Hill, p. 85; 48 Statutes Supp. 59) is apparently intended to preserve the effect of that section (189 H. of L. Official Report 1106). Part III of the present Act, ss. 30–37, *ante*, provides for the inclusion, in compensation for the compulsory acquisition of land in pursuance of a notice to treat served after 1st January 1955, of a supplement derived from the unexpended balance or balances of established development value (s. 31, *ante*); and provides also a new measure of compensation, in such cases, for severance or other injurious affection (s. 36, and see s. 37 (3), *ante*). The repeal of the former provisions as to disturbance and severance and other injurious affection (s. 119 (4) of the Act of 1947; Hill, p. 261; 48 Statutes Supp. 205) is not, however, formally contained in Part III of this Act but is effected by s. 71 (2), *ante*, and the Eighth Schedule, *post*.

Para. 2. This amendment is consequential on the repeal of s. 94 of the Act of 1947; (Hill, p. 223; 48 Statutes Supp. 171); and by s. 71 (5), *ante*, it is made subject to the special provisions of s. 51, *ante*. S. 50, *ante*, which again is subject to s. 51, substitutes a new s. 93 in the Act of 1947. Another consequential amendment to s. 95 of the Act of 1947 is effected by s. 71 (2) and the Eighth Schedule (which repeal s. 94 and the reference to that section in s. 95 (2) of the 1947 Act, subject to the effect of s. 51 of this Act). Cf. para. 5 of this Schedule, *supra*, which makes a similar consequential amendment to the National Parks Act.

Para. 3. This divides sub-s. (2) of s. 112 of the Act of 1947 (Hill, pp. 247–248; 48 Statutes Supp. 194) into two paragraphs, and omits the words " on the appointed day " which occurred before the words " any two or more buildings " in what is now para. (*b*). The subsection was divided into two, in the original draft of the Bill [Bill 72], for the purposes of a proviso to the effect that a building should be disregarded for the purposes of para. (*b*) if, under para. (*a*), it fell to be treated as an enlargement. This proviso was omitted, without explanation, in committee of the House of Lords (189 H. of L. Official Report 1106, referring to Cl. 41 *et seq.*, of Bill (150)). The only verbal change effected by the present provision is, therefore, the repeal of four words in the latter part of the original s. 112 (2) (Hill, p. 248, l. 3; 48 Statutes Supp. 194). The omission of these words, referring to 1st July 1948, makes it possible to read the amended section with the amended Third Schedule.

Para. 4. The amendments to the Third Schedule to the Act of 1947 (Hill, pp. 271–273; 48 Statutes Supp. 214), by s. 71 of this Act and the present paragraph, do not have effect for the purposes of ss. 54, 61, 69 and 89 (1) of the Act of 1947, see s. 71 (4) of this Act, *ante*. The effect of these amendments is to bring into the Schedule later development (carried out since 1st July 1948) for certain purposes, *e.g.*, ss. 20, 51, 53 and 81 of the Act of 1947; and see s. 16 (5) of this Act, *ante*, defining " new development " as development other than that specified in the Third Schedule.

The position of " temporary " and contravening development is stated in the new paragraphs, paras. 10 and 9, which require careful consideration. It is arguable that para. 10 may sometimes operate to exclude development, after temporary permission, which was formerly included in the Schedule as unamended.

The Third Schedule to the Act of 1947 is set out on p. 243, *post*, with the words repealed printed in italics, and words inserted printed within square brackets.

THIRD SCHEDULE

EXCEPTED CLASSES OF DEVELOPMENT

PART I

DEVELOPMENT INCLUDED IN EXISTING USE FOR PURPOSES OTHER THAN COMPENSATION UNDER S. 20

1. The rebuilding, as often as occasion may require, of any building which was in existence on the appointed day and of any building which was in existence before that day but has been destroyed or demolished since the seventh day of January, nineteen hundred and thirty-seven (including the making good of war damage which has been sustained by any such building) [and of any other building in existence at a material date, being a building erected after the appointed day], so long as the cubic content of the original building is not exceeded in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

2. The use as two or more separate dwelling-houses of any building which *on the appointed day* [at a material date] was used as a single dwelling-house.

PART II

DEVELOPMENT INCLUDED IN EXISTING USE FOR ALL PURPOSES

3. The enlargement, improvement or other alteration, as often as occasion may require, of any such building as is mentioned in paragraph 1 of this Schedule, or any building substituted therefor by the carrying out of any such operations as are mentioned in that paragraph, so long as the cubic content of the original building is not increased or exceeded, in the case of a dwelling-house, by more than one-tenth or seventeen hundred and fifty cubic feet, whichever is the greater, and in any other case by more than one-tenth.

4. The carrying out, on land which was used for the purposes of agriculture or forestry *on the appointed day* [at a material date], of any building or other operations required for the purposes of that use, other than operations for the erection, enlargement, improvement or alteration of dwelling-houses or of buildings used for the purposes of market gardens, nursery grounds or timber yards or for other purposes not connected with general farming operations or with the cultivation or felling of trees.

5. The winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works thereon which are occupied or used for the purposes aforesaid.

6. In the case of a building or other land which, *on the appointed day* [at a material date], was used for a purpose falling within any general class specified in an order made by the Minister for the purposes of this paragraph, or which, being unoccupied *on the appointed day* [on and at all times since the appointed day], was last used (otherwise than before the seventh day of January, nineteen hundred and thirty-seven) for any such purpose, the use of that building or land for any other purpose falling within the same general class.

7. In the case of any building or other land which, *on the appointed day* [at a material date], was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose on the appointed day [or on the day thereafter where the buildings began to be so used] or, as the case may be, one tenth of the area of the land so used on that day.

8. The deposit of waste materials or refuse in connection with the working of minerals, on any land comprised in a site which, *on the appointed day* [at a material date], was being used for that purpose, so far as may be reasonably required in connection with the working of those minerals.

[9. In this Schedule, the expression " at a material date " means at either of the following dates, that is to say—

(*a*) the appointed day; or

(*b*) the date by reference to which this Schedule falls to be applied in the particular case in question:

Provided that sub-paragraph (*b*) of this paragraph shall not apply in relation to any building works or use of land in respect of which, whether before or after the date mentioned in that sub-paragraph, an enforcement notice served before that date has become or becomes effective.

10. Where, after the appointed day, any buildings or works have been erected or constructed, or any use of land has been instituted, and any condition imposed under Part III of this Act limiting the period for which those buildings or works

may be retained or that use may be continued is of effect in relation thereto, this Schedule shall not operate except as respects the period specified in that condition.]

[**Notes on the amended Third Schedule.**—The division into two parts is made for the purposes of s. 20 of the Act of 1947 (Hill, pp. 84–86; 48 Statutes Supp. 58), which provides for compensation for the refusal or conditional grant of permission for development if specified in Part II of this Schedule. In ascertaining "compensation on the basis of existing use" (see ss. 69 (1) and 31 (1) of the 1954 Act), both Parts of the Schedule are relevant, and apply, in the amended form, for the purposes of s. 51 of the 1947 Act (Hill, p. 144). They apply in the original form for the purposes of the assessment of compensation on the acquisition of requisitioned land (s. 54 of the Act of 1947, Hill, p. 150; 48 Statutes Supp. 111; and s. 71 (4) of the 1954 Act, *ante*).

The Schedule applies in its original form for the purposes of Parts VI and VII of the 1947 Act (see ss. 61 and 69; Hill, pp. 162, 175; 48 Statutes Supp. 121, 134). It applies in its amended form for the purpose of excluding the "agricultural" working of minerals (see para. 5) from the Minerals Regulations (see s. 81 (6) of the Act of 1947, Hill, p. 203; 48 Statutes Supp. 155; and cf. reg. 1 (3) of the Minerals Regulations (S.I. 1954 No. 1706), *post*).

The Schedule must be read with s. 112 of the Act of 1947 (Hill, p. 247; 48 Statutes Supp. 194), sub-s. (2) of which is replaced by the subsection set out in para. 3 of the Seventh Schedule to the 1954 Act, *supra*. S. 112 provides that cubic content is to be determined by external measurements; that certain buildings may have their content aggregated; and that the erection of a building may in some cases be regarded as the enlargement of another building; and also requires the assumption to be made that Third Schedule development must comply with other enactments, such as bye-laws and local Acts.

Semble, the new paras. 9 and 10 are not to be regarded as forming part of Part II of the Schedule, but are additional provisions for the interpretation of the Schedule as a whole.

Rebuilding.—Compare para. (1) with para. (3) ("enlargement, improvement or other alteration"). As to "building operations", "buildings or works" and "building", see s. 119 (1) of the Act of 1947, Hill, p. 258; 48 Statutes Supp. 202.

Appointed day.—1st July 1948 (S.I. 1948 No. 213) or 1st August 1949, in the Isles of Scilly (S.I. 1949 No. 1321).

7th January 1937.—Ten years before the Bill for the Act of 1947 was introduced.

War damage.—See s. 119 (1), referring to the War Damage Act, 1943. The general definition of war damage is in s. 2 (1) of that Act (see Hill, pp. 265, 266; 48 Statutes Supp. 209). See also s. 1 of the T. & C.P. (Amendment) Act, 1951 (Hill, 2nd Supp., p. B35; 71 Statutes Supp. 95).

At a material date.—See note "Material date", *infra*.

Cubic content.—See s. 112 of the Act of 1947, as amended, *ubi supra*.

Use.—Does not include use of land by carrying out operations; see s. 119 (1) (Hill, p. 261; 48 Statutes Supp. 205).

Improvement or other alteration.—Will not involve development at all so long as the external appearance is not materially affected; see s. 12 (2) (*a*) of the Act of 1947 (Hill, p. 65; 48 Statutes Supp. 44), except in the case of restoring war damage as provided in s. 1 of the T. & C.P. (Amendment) Act, 1951 (Hill, 2nd Supp., p. B35; 71 Statutes Supp. 95).

Agriculture.—See s. 119 (1) of the Act of 1947; and as to agricultural use, see s. 12 (2) (*d*) of that Act (use for agriculture or forestry does not involve development).

Use . . . within any . . . class.—See the T. & C.P. (Use Classes for Third Schedule Purposes) Order, 1948 (S.I. 1948 No. 955) (Hill, pp. 753–757); and cf. notes to the revoked s. 12 Use Classes Order of 1948 (S.I. 1948 No. 954) (Hill, pp. 748–753) or the Use Classes Order of 1950 (S.I. 1950 No. 1131) (Hill, 2nd Supp., pp. B214–221).

Material date.—This expression is used to bring in references to a date later than the appointed day. A similar provision, for a different purpose, in connection with Case B payments, allows "restricted value" to be calculated appropriately as at the date of a sale, although the amendments to this Schedule do not generally apply to the calculation of restricted values under s. 61 of the 1947 Act; see s. 6 (2) of the 1954 Act, *ante*.

Enforcement notice has become or becomes effective.—Such a notice, under s. 23 of the Act of 1947 (Hill, p. 91; 48 Statutes Supp. 64) or that section applied by s. 75 of that Act (Hill, p. 188; 48 Statutes Supp. 144), becomes effective (in the absence of an appeal, or an application for permission to retain buildings or works or continue a use) at the expiration of a period prescribed for the purpose in the notice; see s. 23 (3) and *Burgess* v. *Jarvis and Sevenoaks Rural District Council*, [1952] 2 Q.B. 41 (C.A.); [1952] 1 All E.R. 592; 3rd Digest Supp.; *Mead* v. *Plumtree*, [1952] 2 All E.R. 723, *sub nom. Mead* v. *Chelmsford Rural District Council*, [1953] 1 Q.B. 32; 3rd Digest Supp; *Swallow and Pearson* v. *Middlesex County Council*, [1953] 1 All E.R. 580; 3rd Digest Supp. (action for declaration that notice was ineffective); *Godstone Rural District Council* v. *Brazil*, [1953] 2 All E.R. 763; 3rd Digest Supp. A further period must be allowed for compliance with the notice, see ss. 23 (2) and 24 (1) of the Act of 1947.

Buildings or works.—Includes waste materials, refuse or other matters deposited on land, and references to the erection or construction of buildings or works are construed accordingly, see s. 119 (1) of the Act of 1947 (Hill, p. 258; 48 Statutes Supp. 203). Generally, it will refer to the result produced by carrying out operations.

Limiting the period.—See s. 14 (2) (*b*) of the Act of 1947 (Hill, p. 71; 48 Statutes Supp. 48) which authorises the imposition of such conditions, and defines this form of conditional permission as "permission granted for a limited period only", *i.e.*, a "temporary" permission. A permission can effectively be limited in time only by the imposition of such a condition; *e.g.*, it is not enough to allow a use "for those years" without imposing a condition requiring discontinuance thereafter.

Except as respects the period.—Note that the Third Schedule is excluded except "as respects" the period allowed. This does not appear to mean that, at any time within the period, the Schedule is to be taken to apply, and thereafter it shall cease to apply. It seems to mean that the Schedule applies as if the buildings works or use had a temporary "life", but this is by no means clear. *Quaere* whether, when permission expires, the retention of buildings or works or the continuance of a use is "new development" for the purposes of s. 16 (5), *ante*, of the 1954 Act (which contains the general definition of new development), and whether new development could in such circumstances be said to be "initiated" for the purposes of s. 18 (4), *ante*. See also the method of assessing the value of new development, for the purposes of s. 18 (4), in the Fourth Schedule, *ante*.]

Para. 5. Cf. the notes, *supra*, to para. 2 of this Schedule. For s. 97 of the National Parks and Access to the Countryside Act, 1949, see 65 Statutes Supp. 200; and cf. Hill, 2nd Supp., p. B645. For the grants regulations thereunder, see the National Parks and Access to the Countryside (Grants) Regulations, 1954 (S.I. 1954 No. 415). Where a grant is payable under s. 97 of the National Parks Act, a grant under the Act of 1947 is excluded. The relevant section of the Act of 1947 was formerly s. 94, and will in future be the new s. 93 of that Act; see ss. 50 and 51 of this Act, *ante*.

Paras. 6 and 7. Cf. the notes to s. 56, *ante*. The present para. 6 amends s. 3 of the Mineral Workings Act, 1951 (Hill, 2nd Supp., p. B40; 74 Statutes Supp. 45) to accord with the new provisions for payments into the Ironstone Restoration Fund. The matters mentioned in s. 3 (2) proviso (*a*), inserted by the present para. 6, were formerly mentioned in the repealed ss. 5 (3) and 6 (1) of that Act; paras. (*b*) and (*c*) of the proviso preserve exemption from owners' contributions in respect of ironstone in charity lands where an order has been made under s. 7 (repealed) of that Act or s. 56 (1) of the present Act, *ante*. The new sub-s. (2A), adapts provisions formerly contained in s. 6 (repealed) of that Act; the proviso thereto derives from the former s. 6 (2) (*b*). The Third Schedule to that Act, amended by the present para. 7, related to the deductions authorised to be made from the payments under a mining lease, when an operator paid a higher rate of contribution to the Ironstone Restoration Fund in respect of the working of "near-ripe" ironstone. All operators' contributions, save in the cases mentioned in the new s. 3 (2) proviso, inserted by the present para. 6, are now at the higher rate, and the Third Schedule to that Act is accordingly applied, as amended, for the purposes of the amended s. 3.

EIGHTH SCHEDULE

ENACTMENTS REPEALED Section 71

Session and Chapter	Short title	Extent of repeal
10 & 11 Geo. 6 c. 15	The Town and Country Planning Act, 1947	In section twenty-two, the proviso to subsection (1), subsection (5), and in subsection (6) the words from "or a" to "section twenty of this Act" and the words from "or as" to "said section twenty"; subsections (3) and (4) of section eighty-three; section ninety-four; in section ninety-five, subsection (1), and the words "or section ninety-four" in subsection (2); and subsection (4) of section one hundred and nineteen.
14 & 15 Geo. 6 c. 60	The Mineral Workings Act, 1951	Sections five to seven; sections twenty-nine and thirty; subsection (1) of section thirty-one; in section thirty-nine, the words "section seven" in subsection (1), and in subsection (2) the words from "an order" to "or containing"; and the Second Schedule.
1 & 2 Eliz. 2 c. 16	The Town and Country Planning Act, 1953	In section two, in the proviso to subsection (1), paragraph (*a*), and in paragraph (*b*) the word "but" and sub-paragraph (ii); and in section three, paragraph (*a*) of subsection (1) and subsections (5) and (7)

NOTES

Town and Country Planning Act, 1947. For ss. 22, 83, 94, 95 and 119 (4), which are here repealed to the extent mentioned, see Hill, pp. 88, 206, 223, 224, and 261; 48 Statutes Supp. 61, 158, 171, 173, 205.

As to s. 22 (1) proviso, (5) and (6), see the notes to s. 38 of this Act, *ante*; and s. 71 (6), *ante*.

As to s. 83 (3) and (4), see the notes to s. 52 of this Act, *ante*.

As to ss. 94 and 95 (1), and the reference to s. 94 in s. 95 (2), see the notes to ss. 50 and 51 of this Act, *ante*; and s. 71 (5), *ante*. See also the consequential amendments in paras. 2 and 5 of the Seventh Schedule, *ante*.

As to s. 119 (4), see the notes to ss. 6, 10 and 36, *ante*.

Mineral Workings Act, 1951. For ss. 5–7, 29, 30, 31 (1), 39 (1) and (2), and the Second Schedule, which are repealed to the extent mentioned, see Hill, 2nd Supp., pp. B41 *et seq.*, B60, B62, B64, B69 and B72; 74 Statutes Supp. 46–49, 65, 67, 69, 79.

As to ss. 5–7, the references to s. 7 in s. 39 (1) and (2), and the Second Schedule, see the amendments to s. 3 of that Act by paras. 6 and 7 of the Seventh Schedule to this Act; and see s. 56 of this Act, *ante*.

As to ss. 29, 30 and 31 (1), see ss. 54 and 55 of this Act, *ante*.

Town and Country Planning Act, 1953. For ss. 2 (1) and 3 (5) and (7), which are repealed to the extent mentioned, see Hill, 2nd Supp., pp. B697–B698, B701, B702; 78 Statutes Supp. 135, 138.

As to s. 2 (1), see the notes to s. 60 of this Act, *ante*.

As to s. 3 (5), see s. 54 (5) of this Act, *ante*.

As to s. 3 (7), see s. 55 of this Act, *ante*.

APPENDIX

SUBORDINATE LEGISLATION

THE TOWN AND COUNTRY PLANNING ACT, 1954 (APPOINTED DAY) ORDER, 1954

DATED 30TH NOVEMBER 1954, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTION 72 (2) OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[**S.I. 1954 No. 1598**]

1.—The first day of January, 1955, is hereby appointed as the day on which the Town and Country Planning Act, 1954, shall come into operation for all purposes.

2.—This order may be cited as the Town and Country Planning Act, 1954 (Appointed Day) Order, 1954, and shall come into operation on the sixth day of December, 1954.

* * * * *

THE CENTRAL LAND BOARD PAYMENTS REGULATIONS, 1954

DATED 1ST DECEMBER 1954, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTIONS 13 AND 68 OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[**S.I. 1954 No. 1599**]

EXPLANATORY NOTE

These regulations govern the making and determination of applications for the payments which are to be made by the Central Land Board under Part I of the Act of 1954, *ante*, by reference to the acts or events mentioned in ss. 3–11 thereof. Applications are normally to be made by 30th April 1955, the date prescribed, by reg. 3, *infra*, for the purposes of s. 13 (1) of the Act.

The Central Land Board will determine the application. The Board's findings, and any apportionments involved, are subject to rights of appeal to the Lands Tribunal. (Appeal from that Tribunal lies by way of case stated to the Court of Appeal at the instance of a person aggrieved by the Tribunal's decision as being erroneous in point of law.)

Pamphlets. The Board have issued a form (U.1/A) to accompany and explain the form of application under these regulations (U.1). Applicants are asked to indicate the grounds of their application by reference to eleven types of cases there set out;

see notes to reg. 3, *infra*. A booklet, " T. & C.P. Act, 1954—How to claim payments —A guide to owners of land ", dealing with applications under Part I and claims under Parts II and V of the Act, is published by H.M. Stationery Office, price 6*d*.

Professional fees. An addendum to Form U.1/A, states that the Board may, in certain circumstances, make a contribution towards the fees incurred by the applicant in the employment of a person professionally experienced in the valuation of land. This is, apparently, considered to be authorised as a payment for work done, in effect, on the Board's behalf; cf. s. 64 (8) (*c*) of the Act, *ante*. No contribution will be made when the Part I payment is equal to the amount of a development charge incurred, or is equal to the amount fo the Part VI claim (plus interest). No contribution will be made to applicants under s. 11 (residual payments). Contribution may be payable if a " new valuation " is involved in other cases.

1. Citation and commencement.—These regulations may be cited as the Central Land Board Payments Regulations, 1954, and shall come into operation on the first day of January, 1955.

2. Interpretation.—(1) The Interpretation Act, 1889, 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 Act, 1954; and
" the Board " means the Central Land Board.

NOTE

Interpretation Act, 1889. 24 Halsbury's Statutes (2nd Edn.) 205; see also Hill, pp. 1304–1306, where ss. 31–38 thereof are printed.

3. Applications and particulars.—An application for a payment under Part I of the Act shall be made on a form to be issued by and obtainable from the Board, and shall be sent to the Board on or before the thirtieth day of April, 1955:

Provided that the Board may in any particular case (either before on or after the date on which the time for applying would otherwise have expired), allow an extended, or further extended, period for the making of an application.

NOTES

Application. See, generally, s. 13 of the Act of 1954, *ante*. As to who is entitled to apply as the holder of a claim holding, see s. 2 (8), *ante*. As to applications by trustees, see s. 66, *ante*, and reg. 10 of S.I. 1955 No. 38, *post*. As to applications by certain mortgagees of holdings, see particularly s. 9, *ante*. As to applications by certain mortgagees and " former " mortgagees of land, see regs. 2 (3) and 3 of S.I. 1955 No. 38, *post*.

Part I of the Act. *I.e.*, ss. 1 to 15 of the Act of 1954, *ante*. The Central Land Board have devised their own classification of the cases in which an application may be made under Part I of the Act. Applicants are asked to state the grounds of their application by reference to the relevant paragraph in the list set out in Form U.1/A, and printed also in para. 7 of the Explanatory pamphlet, " T. & C.P. Act, 1954—How to claim payments—A guide for owners of land " (H.M.S.O., 6*d*.).

The relation between the Board's classification and the Cases and sections of the Act appears to be as follows:

Central Land Board type number	*Central Land Board's description*	*Description in the Act*	*Sections*
1.	Development charge paid by a claim holder or by his predecessor in title.	Case A	3, 4 & 9
2.	Land compulsorily acquired by or sold by agreement to public authorities (on or after 6th August 1947 and before 1st January 1955).	Case B	5, 6 & 9
3.	Private sale of land (on or after 6th August 1947 and before 18th November 1952) at a price which did not include all the development value of the land as established by the claim.	Case B	5, 6 & 9
4.	Lease of land on terms analogous to those set out for type 3, *supra*.	Analogous to Case B	10

Central Land Board type number	*Central Land Board's description*	*Description in the Act*	*Sections*
5.	Sale in consideration of a rentcharge on terms analogous to those set out for type 3, *supra*.	Analogous to Case B	10
6.	Gift of land by a person who retained the claim (on or after 1st July 1948 and before 18th November 1952).	Case C	7 & 9
7.	Purchase of a claim (or part of a claim) for cash or other valuable consideration (on or after 1st July 1948 and before 1st January 1955).	Case D	8 (& 15 (1))
8.	Compensation paid for severance or injurious affection of land on the acquisition of other land by a public authority, where that compensation failed adequately to reflect the development value (on or after 6th August 1947 and before 1st January 1955).	Analogous to Case B	10
9.	Compensation paid on de-requisitioning of land for damage to the land, where that compensation failed adequately to reflect the development value (on of after 19th February 1948 and before 1st January 1955).	Analogous to Case B	10
10.	(Applicants who hold no part of the claim.) Purchase or taking of a lease of land (on or after 1st July 1948 and before 18th November 1952) from a person holding the claim at a price or rent in excess of its existing use value, followed by a payment of development charge in respect of that land.	Residual	11
11.	(Applicants who hold no part of the claim.) Purchase of land (on or after 1st July 1948 and before 18th November 1952) from a person holding the claim at a price in excess of its existing use value, followed by compulsory acquisition or sale to a public authority (before 1st January 1955).	Residual	11

It will be appreciated that the Board's descriptions of these types of application are in general terms, and that the Act itself should be consulted in every case. Residual payments may also be made in a further type of case; see s. 11 (4) of the Act, *ante*.

On a form. Form U.1; a specimen of this form is printed in the explanatory pamphlet, "T. & C.P. Act, 1954—How to claim payments—A guide for owners of land" (H.M.S.O., 6*d*.). The form is expressed to require the following details:

1. Name(s) and address(es) of Applicant(s), and the capacity in which the claim is made, *e.g.*, by trustees or a mortgagee, or by a person (other than the original Part VI claimant under the Act of 1947) who has succeeded to the benefit of the claim.

2. Particulars of any professional Agent; see also the Explanatory Note to the Regulations, *ante*.

3. Particulars of the claim holding (the Board's reference number). Applicants for residual payments are asked to give the name and address of the claim holder.

4. Particulars of the land in question; and the applicant's interest therein (if any) and when it was acquired. Applicants should be careful at this stage to make clear to the Board, to which part of the land their interest extends; it is a condition, in certain types of case, that the applicant should not be or have been entitled (in the same capacity) both to the claim holding and to the interest in land to which the holding related. See ss. 8 (1) (*a*) and 9 (*c*), *ante*, and the notes thereto.

5. Particulars of mortgages. Details of mortgages of land are required for the purposes of reg. 3 of S.I. 1955 No. 38, *post*; see also reg. 2 (3) thereof.

6. Particulars of development charge (if any), with the Board's reference number and the name and address of the developer; see, in this connection, ss. 2 (2) (*a*) and 4 (2) of the Act, *ante*.

7. Particulars of public acquisitions.

8. Grounds of the application; the form contemplates a single application covering several acts or events affecting the same claim holding. The applicant is asked to identify these acts or events by reference to the Board's classification into eleven types, set out in the previous note, *supra*.

9. Applications made or intended to be made under Part V; the form adds a warning that any enquiry should be addressed to the local planning authority.

10. A formal declaration of the truth of statements made; the application for the amount to be determined to be payable; and signature.

It has been noted (see the notes to s. 13 of the Act, *ante*) that applicants will be well advised to answer all the Board's questions, so far as possible, rather than to engage in argument as to the validity of the present regulations. It is not easy to justify the requirement that an application should be made *on* a form supplied by the Board; nor to see why the Board should be concerned to know whether an application has been, or is to be, made under Part V of the Act. In practice, the Board are sending forms to possible applicants, even before they are asked to do so.

Obtainable from the Board. The address of the Board is 6, Carlton House Terrace, London, W.1. The addresses of the Regional Offices in England and Wales are as follows:

Region Number		
1.	NORTHERN	Government Buildings, Kenton Bar, Newcastle-on-Tyne, 1.
2.	NORTH EASTERN	Government Buildings, Lawnswood, Leeds, 6.
3.	NORTH MIDLAND	Block 2, Government Buildings, Chalfont Drive, Nottingham.
4.	EASTERN	Block D, Government Offices, Brooklands Avenue, Cambridge.
5A.	LONDON (NORTH-WEST)	Government Building, Bromyard Avenue, Acton, W.3.
5B.	LONDON (NORTH-EAST)	City Gate House, Finsbury Square, London, E.C.2.
5C.	LONDON (SOUTH-EAST)	Clifton House, Euston Road, London, N.W.1.
5D.	LONDON (SOUTH-WEST)	246, Stockwell Road, Brixton, S.W.9.
5E.	SOUTH EASTERN	"Dunorlan", Pembury Road, Tunbridge Wells, Kent.
6.	SOUTHERN	Government Buildings, Whiteknights Road, Earley, Reading, Berks.
7.	SOUTH WESTERN	19 and 21, Woodlands Road, Bristol, 8.
8.	WALES	Magnet House, Kingsway, Cardiff.
9.	MIDLAND	Government Building South, Ashley Street, Birmingham, 5.
10.	NORTH WESTERN	Government Building, Burton Road, West Didsbury, Manchester, 20.

The Isles of Scilly are included in Region Number 7 (South Western). For the areas covered by the Regions, see the explanatory publications issued by the Board, or Hill, pp. lxxvi–lxxvii.

Extended . . . period. See s. 13 (1) proviso, of the Act, *ante*. See also reg. 3 of S.I. 1955 No. 38, *post*.

4.—(1) The Board may require (in the said form or otherwise) particulars to be given in relation to all or any of the following matters:—

(i) the identity of the applicant and the capacity in which he is acting;

(ii) the established claim by reference to which the application is made; and any dispositions (including mortgages) of such claim or part thereof;

(iii) any interest of the applicant in the claim area, or part of the claim area of the established claim and the land in which such interest subsists, or subsisted;

(iv) any interests (including mortgages and rentcharges) of persons other than the applicant in any land in the claim area, so far as information is available to the applicant;

(v) any disposition of land in the claim area and the consideration therefor, or any payment of compensation in respect of any such land, where such disposition or payment is material to the application;

(vi) the grounds on which the application is made;

(vii) any other matter which in the opinion of the Board is relevant to their determination of the application;

and such particulars may include plans for the identification of any land.

(2) Where the Board by a direction in writing require the applicant to provide further particulars in connection with his application, the applicant shall furnish to the Board such particulars within such period (not being less than 30 days) as the Board may specify in the direction.

(3) The Board may by a direction in writing require any particulars supplied by the applicant pursuant to this regulation to be verified by such evidence (including a statutory declaration) as may be specified by the Board in any particular case and the applicant where so required shall furnish such evidence to the Board within such period (not being less than 30 days) as the Board may specify in the direction.

NOTES

Established claim. See s. 1 (4) of the Act, *ante*. As to who is the holder of a claim holding representing the benefit or part of the benefit of an established claim, see s. 2 (8). For the relevance of the claim in the case of applications for residual payments, see s. 11, *ante*.

Dispositions. As to dispositions of part only of the benefit, see particularly s. 2 (3), *ante*. As to assignments, see s. 60, *ante*. As to mortgages of a claim by way of assignment, see s. 2 (8), *ante*. As to applications by such mortgagees, see s. 9, *ante*, and reg. 5 (*a*) of S.I. 1955 No. 38, *post*.

Claim area. This means the area of the claim established under Part VI of the Act of 1947; see s. 1 (4) of the Act of 1954, *ante*. It is not necessarily the same as the area of any claim holding subsisting immediately before 1st January 1955, see s. 2, *ante*.

Mortgages and rentcharges. See the definition of " interest in land " in s. 69 (1), *ante*, which is here varied. Rentcharge owners cannot apply for payment under these regulations, or receive any part of a payment hereunder, see reg. 6 of S.I. 1955 No. 38, *post*. Mortgagees of land cannot apply, except in certain cases on default of the " original applicant "; their right, if any, is normally to receive the payment hereunder, in certain cases, and account therefor; see regs. 2 (3) and 3 of S.I. 1955 No. 38, *post*.

Statutory declaration. For the Statutory Declarations Act, 1835, see 9 Halsbury's Statutes (2nd Edn.) 546, as amended.

5. Determination of payment.—(1) The Board shall consider any particulars supplied pursuant to the last preceding regulation and cause such investigations to be made and such steps to be taken as they may deem requisite for a proper determination of the application, and shall thereafter determine the amount of the payment to be made under Part I of the Act:

Provided that where the applicant has failed to furnish any particulars or evidence required by the Board under the last preceding regulation the Board may defer the determination of the application until after such particulars and evidence have been duly furnished, or if they at any time think fit may determine the application notwithstanding such failure, and in so doing may disregard any particulars already supplied by the applicant to which such requirement had reference.

(2) The Board shall, on determining the application, give notice to the applicant of their findings as to the amount of the payment to be made under Part I of the Act, and such findings shall show the material amounts (including apportionments and deductions) to which the Board have had regard in determining the application, and the provisions of the Act under which such amounts fall to be ascertained or taken into account.

(3) The Board shall also, on issuing their findings in a case where those findings include an apportionment, give a notice containing particulars of such apportionment to any person entitled to an interest in land which it appears to the Board will be substantially affected by the apportionment.

NOTES

Investigations to be made, etc. Cf. s. 67 of the Act of 1954, *ante*.

And shall thereafter determine. Note that the procedure differs from that adopted in determining s. 58 or s. 59 claims under the Act of 1947. Under reg. 12 of

S.I. 1948 No. 902 (Hill, p. 745) or reg. 10 of S.I. 1949 No. 2252 (Hill, 2nd Supp., pp. B111, B112), the Board were required, before determining a claim, to serve notice of the proposed determination and to consider any objection thereto.

6. Disputes.—(1) Subject to the provisions of paragraph (2) of this regulation, if the applicant wishes to dispute the Board's findings, or if any other person, to whom particulars of an apportionment have been given or who claims that he is entitled to an interest in land which is substantially affected by an apportionment, wishes to dispute that apportionment, he may within 30 days of the issue of the Board's findings, give notice in writing to the Lands Tribunal that he disputes the findings, or as the case may be, the apportionment, and thereupon the dispute shall be referred to that Tribunal, and the Board shall notify accordingly all other persons to whom notices were given under the last preceding regulation.

(2) Where after receipt of a notice under the last preceding regulation any person signifies in writing to the Board his agreement to the findings, or, as the case may be, to an apportionment, he shall not thereafter be entitled to give the notice referred to in the preceding paragraph.

(3) The applicant and, so far as the dispute relates to an apportionment, any other person to whom particulars of that apportionment have been given or who establishes that he is entitled to an interest in land which is substantially affected by that apportionment 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.

(4) The Lands Tribunal shall by their decision either confirm or vary the Board's findings, or, as the case may be, the apportionment, and shall notify the parties of their decision.

NOTES

Notice . . . to the Lands Tribunal. See Form 1A in the Schedule to the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. See, generally, the Lands Tribunal Rules, 1949 (S.I. 1949 No. 2263; Hill, 2nd Supp., pp. B116–B139), as amended. The new r. 3 (2A) requires notice of a dispute to be substantially in accordance with Form 1A. A person who claims to be entitled to an interest in land substantially affected by an apportionment can give notice of appeal; as may the applicant and persons who have received particulars of the apportionment under reg. 5, *ante*.

On compliance with the rules. Para. (3), *supra*, provides for appearance (on any dispute of which notice is given under para. (1), *supra*) by interested persons other than the appellant. The new r. 5A of the Lands Tribunal Rules prescribes the time in which such a person must give notice of intention to appear, and the matters to be stated in his notice; see S.I. 1955 No. 54, *post*. Attention is also drawn to r. 23 of the Rules of 1949 (printed as amended at p. 294, *post*) relating to consolidation of appeals.

The appellant, in any such dispute, will be the interested person who has given notice thereof under para. (1) of this regulation. The Central Land Board will be the respondent to the appeal. Any party, if dissatisfied with the decision as erroneous in point of law, will be a person "aggrieved" and so be able to appeal, by case stated, to the Court of Appeal. As to such appeals, see the Lands Tribunal Act, 1949 s. 3 (4); the Lands Tribunal Rules, 1949, r. 38; and R.S.C., O. 58B (Hill, 2nd Supp., pp. B11, B128 and B162).

7.—(1) If at any time after notice of a dispute has been given under the last preceding regulation the Board and the applicant and, so far as the reference relates to an apportionment, all other persons to whom particulars of that apportionment have been given or who are parties to the reference, shall in writing agree the amount and distribution of the payment to be made under Part I of the Act, or, as the case may be, particulars of the apportionment, then on withdrawal of the reference the Board may revise their findings in accordance with such agreement, and shall give notice of such revised findings in the manner prescribed by paragraphs (2) and (3) of regulation 5 of these regulations.

(2) Where no notice of a dispute in respect of any findings of the Board is given under the last preceding regulation within the time limited in that behalf, or where all references relating to such findings are withdrawn, then the findings or, in a case falling within paragraph (1) of this regulation, the revised findings of the Board shall be treated as conclusive for the purposes of section 14 of the Act.

* * * * *

THE TOWN AND COUNTRY PLANNING (COMPENSATION) REGULATIONS, 1954

DATED 1ST DECEMBER 1954, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTIONS 22, 27, 40, 45 AND 68 OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[S.I. 1954 No. 1600]

EXPLANATORY NOTE

These regulations govern the making and determination of claims for compensation under Part II (see ss. 22 and 27) and Part V (see s. 45) of the Act of 1954, *ante*.

Regs. 7 and 8 are also automatically applicable to the determination of disputes as to the apportionment of compensation for depreciation, as defined in s. 38 (3), which is to be registered as a local land charge under s. 28 (4) as applied by s. 39 in Part IV of the Act; see s. 39 (3). The authority carrying out such an apportionment is the local planning authority, or a delegate authority, which pays such compensation, as part of the compensation under s. 22 of the Act of 1947 (as amended), when planning permission is revoked or modified on or after 1st January 1955.

Regs. 9–11 are made for the purposes of s. 40 of the Act of 1954, *ante*, which deals with the Exchequer contribution which may be made by the Minister towards compensation for depreciation payable by a local planning authority (or delegate authority) or the revocation or modification of permission on or after 1st January 1955.

The Schedule contains the form required, by reg. 3, to be followed in making a claim for compensation under Part II or V, *ante*, of the Act of 1954. Claims for compensation to which Part IV, *ante*, applies are not required to be in a prescribed form; see reg. 4 of the T. & C.P. (General) Regulations, 1948 (S.I. 1948 No. 1380), Hill, p. 816.

Claims by mortgagees, rentcharge owners and trustees. See s. 66 of the Act of 1954, *ante*, and S.I. 1955 No. 38, *post*.

Explanatory leaflets. Leaflet COMP. 1A, relating to claims under Part V of the Act of 1954, and leaflet COMP. 1B, relating to claims under Part II, may be obtained, together with printed forms which may be used in making claims, from the offices of local authorities concerned.

Professional fees. The Minister may make a contribution towards fees incurred in the employment of a professional valuer, where a new valuation is undertaken which is of material assistance to the Minister in determining the claim; cf. Leaflets COMP. 1A and COMP. 1B, and cf. the notes to S.I. 1954 No. 1599, *ante*.

PART I

GENERAL

1. Citation and commencement.—These regulations may be cited as the Town and Country Planning (Compensation) Regulations, 1954, and shall come into operation on the first day of January, 1955.

2. Interpretation.—(1) The Interpretation Act, 1889, 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 following expressions have the meanings respectively assigned to them, namely:—

"the Act" means the Town and Country Planning Act, 1954;

"the Act of 1947" means the Town and Country Planning Act, 1947;

"the Minister" means the Minister of Housing and Local Government;

"the claimant" means the person by or on whose behalf a claim for compensation is made under Part II or Part V of that Act; and

"local planning authority" does not include an authority to whom functions under Part III of the Act of 1947 have been delegated in accordance with regulations made under section 34 or section 114 of the said Act.

NOTES

Interpretation Act, 1889. 24 Halsbury's Statutes (2nd Edn.) 205; see certain sections also in Hill, pp. 1304–1306.

Local planning authority. Note that, in these regulations, the term refers to the actual local planning authority as defined in s. 4 of, and the First Schedule to, the Act of 1947 (Hill, pp. 42, 268; 48 Statutes Supp. 28, 211). This may be confusing, as references in the Act of 1954, *ante*, to the local planning authority are construed as references to the delegate authority where powers or duties have been exercised or undertaken on behalf of the actual planning authority; see s. 69 (4) of the 1954 Act, *ante*. In these regulations a distinction is drawn between the local planning authority,

as such, and the local authority making the decision or order in respect of which the claim is made (see regs. 3 and 4, *infra*).

Regulations under s. 34 or s. 114. For ss. 34 and 114 of the Act of 1947, see Hill, pp. 115, 249; 48 Statutes Supp. 83, 196. For the regulations thereunder, see the T. & C.P. (Authorisation of Delegation) Regulations, 1947 (S.R. & O. 1947 No. 2499; Hill, p. 729); and the T. & C.P. Delegation (London) Regulations, 1948 (S.I. 1948 No. 1459; Hill, p. 825).

PART II

Compensation under Part II or Part V of the Act

3. Form and delivery of claim.—A claim for compensation under Part II or Part V of the Act shall be made in the form, or substantially in the form, prescribed by the schedule to these regulations and shall be sent to the local authority making the decision or order in respect of which the claim is made.

NOTE

Local authority making the decision or order. This authority is, in the Act of 1954, referred to as the local planning authority; but see reg. 2 of these regulations. " Making " seems to mean " who made or might have made " the planning decision, or " who submitted for confirmation " the order in question. In the case of some planning decisions, the local authority will have merely let time run out without making a decision; in other cases, an application may have been " called in " for decision in the Ministry; cf. s. 69 (3) of the Act of 1954, and the notes to s. 16 (4) thereof, *ante*.

Owners of land in county districts should remember that:

(*a*) planning applications are " lodged " with the council of the non-county borough, urban district or rural district;

(*b*) the application may fall to be decided by the planning authority (normally the county council) or by a local authority exercising delegated powers;

(*c*) claims for compensation, where it is payable under the Act of 1947, are to be made to the local planning authority (but where land is incapable of reasonably beneficial use, any purchase notice is to be served on the local county district council);

(*d*) claims for compensation, where it is payable under Part II or V of the Act of 1954, are to be made as mentioned in this regulation. Where the terms of any delegation of functions are not known to the intending claimant, the written notification of refusal or conditional grant of permission will itself normally indicate by which authority an application was decided.

Printed forms of claim will be available, together with explanatory pamphlets (" COMP. 1A" in Part V cases and " COMP. 1B " in Part II cases), at the offices of local authorities. Local authorities may obtain further stocks of forms from the Ministry's Despatch Section, Caxton House, Tothill Street, London, S.W.1; see Circular No. 78/54 (H.M.S.O., 2d.). If the printed form is not used, care should be taken to follow the form in the Schedule to these regulations, *post*.

4. Action by local authorities.—(1) The authority shall in transmitting the claim to the Minister furnish to the Minister:—

(*a*) any evidence and other information provided by the claimant in relation to the claim;

(*b*) where the claim relates to a planning decision of the authority, particulars of the application for planning permission and a copy of the planning decision;

(*c*) where the planning decision to which the claim relates was determined by the Minister on a reference under section 15 of the Act of 1947, or on an appeal under section 16 of the Act of 1947, or where the claim is made under Part V of the Act as a result of an order revoking or modifying planning permission brief particulars of such decision or order and the Minister's reference number, if known;

and where the authority is one to whom functions under Part III of the Act of 1947 have been delegated, they shall give notice of the claim to the local planning authority.

(2) The local planning authority shall as soon as may be after the receipt of the claim or notice thereof furnish to the Minister a statement as to the provisions of the development plan so far as material thereto and as to any more favourable decision or permission for alternative development which could in their opinion be given pursuant to section 23 or section 45 of the Act, as the case may be, and shall also furnish from time to time such other information as the Minister may require for the exercise of his powers under either of those sections.

NOTE

See generally the notes to ss. 16, 22 and 23 of the Act of 1954, *ante*, and Ministry of Housing and Local Government Circular No. 78/54 (H.M.S.O., 2*d*.).

5. Supporting material.—If required by the Minister by a direction in writing:

(*a*) to provide evidence (which may include a statutory declaration) in connection with any particulars required to be supplied by the form prescribed by regulation 3 of these regulations;

(*b*) to provide further information as to his interest in the land to which the claim relates; or

(*c*) to provide further information as to the interests of any other persons,

the claimant shall furnish to the Minister such evidence or information as is available to him within such period (not being less than 30 days) as the Minister may specify in the direction.

6. Determination of compensation.—(1) Unless the claim is withdrawn, and subject to any modification made or having effect under section 24 of the Act, the Minister shall cause such investigations to be made and such steps to be taken as he may deem requisite for a proper determination of the claim.

(2) The Minister shall as soon as practicable thereafter cause to be prepared findings as to the amount (if any) which he determines as the amount of the compensation to be paid under Part II or Part V, as the case may be, of the Act in respect of the said claim, and (except in a case where he determines that no compensation shall be paid in respect of the said claim, in which case the findings shall state such determination and the reason therefor) such findings shall state the depreciation in value of the claimant's interest and the amounts of the unexpended balances of established development value, or, as the case may be, the amounts of the claim holdings, by reference to which the Minister determines the amount of the compensation to be paid in respect of the said claim.

(3) Where the claimant has failed to furnish any particulars or evidence required by the Minister under regulation 5 of these regulations, the Minister may defer the determination of the claim until after such particulars and evidence have been duly furnished, or if he at any time thinks fit may determine the claim notwithstanding such failure, and in so doing may disregard any particulars already supplied by the claimant to which such requirement had reference.

(4) The Minister shall give notice of his findings to the claimant, and in the case of a claim under Part II of the Act, to every other person (if any) who has made and not withdrawn a claim for compensation in respect of the same planning decision, and, in a case where the findings include an apportionment, the Minister shall give particulars of such apportionment to any other person entitled to an interest in land which it appears to the Minister is substantially affected by the apportionment.

NOTE

A claim in respect of the same planning decision. In Part V cases, although a decision may give rise to claims by more than one person, the claimants will not be "competing" because they will have claimed in respect of different claim holdings and interests in the land, or parts of the land, affected. In Part II cases, compensation is payable by reference to an unexpended balance or balances, and there may be competing interests in the same land to which a balance attaches; see s. 25 of the Act, *ante*. The Minister is required to give notice to possible competing claimants (whose interests appear to be substantially affected) at an early stage, see s. 19 (5) (*b*) of the Act, *ante*. The Act contemplates notice of the Minister's findings being given to every person who has made a claim for compensation in respect of the same decision; see s. 27 (1) (*c*) thereof, *ante*. Para. (4) of this regulation purports to exclude persons who have withdrawn a claim. Such persons would appear, on this basis, to be confined to disputing apportionments, but not the remainder of the findings, under reg. 7, *infra*.

7. Disputes.—(1) Subject to the provisions of paragraph (2) of this regulation, if the claimant or any other person to whom notice of the Minister's findings has been given, wishes to dispute the findings, or any other person, to whom particulars of an apportionment included in those findings have been given or who claims that he is entitled to an interest in land which is substantially affected by such apportionment, wishes to dispute the apportionment, he may, within 30 days of the issue of the Minister's findings, give notice in writing to the Lands

Tribunal that he disputes the findings, or as the case may be the apportionment, and thereupon the dispute shall be referred to the Tribunal, and the Minister shall notify accordingly all other persons to whom notices were given under the last preceding regulation.

(2) Where after receipt of a notice under the last preceding regulation any person signifies in writing to the Minister his agreement to the findings or as the case may be, to the apportionment, he shall not thereafter be entitled to give the notice referred to in the preceding paragraph.

(3) The claimant and any other person to whom notice of the findings has been given and, so far as the dispute relates to an apportionment, any other person to whom particulars of that apportionment have been given or who establishes that he is entitled to an interest in land which is substantially affected by that apportionment 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.

(4) The Lands Tribunal shall by their decision either confirm or vary the Minister's findings, or, as the case may be, the apportionment, and shall notify the parties of their decision.

NOTES

The Minister's findings. See the notes to s. 27 (2) of the Act, *ante*. For the purposes of s. 39 of the Act, the present regulation will apply with the necessary modifications. The " findings " is such a case will be an apportionment, of compensation for depreciation under s. 22 of the principal Act, made by the planning authority or delegate authority paying the compensation for the revocation or modification of permission in question; see s. 39 (3), *ante*.

Give notice . . . to the Lands Tribunal. See r. 3 (2A) of, and Form 1A in the Schedule to, the Lands Tribunal Rules, inserted by the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

On compliance with the rules. This provides for interested persons wishing to appear on an appeal by another person; see r. 5A of the Lands Tribunal Rules, inserted by r. 5 of S.I. 1955 No. 54, *post*.

8.—(1) If at any time after notice of a dispute has been given under the last preceding regulation the Minister, the claimant and every other person to whom notice of the findings has been given and, so far as the reference relates to an apportionment, all other persons to whom particulars of that apportionment have been given or who are parties to the reference shall in writing agree the amount and distribution of the compensation to be paid under Part II or Part V of the Act, or, as the case may be particulars of the apportionment, then on withdrawal of the reference the Minister may revise the findings in accordance with such agreement and shall give notice of such revised findings in the manner prescribed by paragraph (4) of regulation 6 of these regulations.

(2) Where no notice of a dispute in respect of any findings of the Minister is given under the last preceding regulation within the time limited in that behalf or where all references relating to such findings are withdrawn, then the findings or, in a case falling within paragraph (1) of this regulation, the revised findings shall be treated as conclusive for the purposes of section 27 or section 46 of the Act, as the case may be.

PART III

CONTRIBUTIONS UNDER PART IV OF THE ACT TOWARDS COMPENSATION PAYABLE BY AUTHORITIES UNDER SECTION 22 OF THE ACT OF 1947

9. Proposal for contribution.—(1) Where the Minister proposes to pay a contribution under section 40 of the Act, he shall prepare a statement of the amount of the contribution showing the manner in which such amount has been ascertained.

(2) The Minister shall send a copy of the said statement to any person appearing to him to have an interest in land to which the proposal relates or an interest which is substantially affected by an apportionment involved in the proposal.

(3) The Minister shall also send a copy of the said statement to every other person who appears to him to be substantially affected by the reduction or extinguishment, as the case may be of the unexpended balance of established development value of that land.

(4) Any person to whom a copy of the said statement has been sent may within 30 days thereafter give notice in writing to the Minister that he objects to the proposal and shall specify whether his objection is made on the grounds:—

(*a*) that compensation would not have been payable under Part II or Part V of the Act, as the case may be; or

(*b*) that the amount of the compensation would have been less than the amount of the proposed contribution;

and the Minister shall consider such objection.

(5) As soon as may be after giving effect to the preceding provisions of this regulation, the Minister shall determine the amount of the contribution (if any) to be made, and shall serve notice in writing upon every person to whom a copy of the said statement was sent.

NOTE

Specify whether his objection is made on the grounds (a) or (b). The two grounds mentioned in para. (4) of this regulation are those mentioned in s. 40 (2) (*b*). Para. (2), however, requires notice to be given of an apportionment involved, and this might, it seems, include an apportionment of a current unexpended balance as well as apportionments involved in finding what compensation would have been payable under Part II or V of the Act of 1954.

The Minister will, it seems, consider objections on grounds wider than those mentioned at (*a*) or (*b*) in para. (4); and under reg. 10 it seems an appeal can be based on such other grounds. Cf. the notes to s. 40 of the Act, *ante*. Authority for the wide drafting of this regulation and reg. 10, *post*, can perhaps be found in s. 40 (2) (*d*), *i.e.*, it is necessary if the provisions of Part II, *ante*, as to the adjustment of unexpended balances, are to be applied.

10. Disputes.—(1) If any person who objected to the Minister's proposal and did not withdraw his objection wishes to dispute the determination of the Minister under the last preceding regulation, he may within 30 days of the Minister's determination give notice in writing to the Lands Tribunal that he disputes the findings and shall specify whether he objects on the grounds:—

(*a*) that compensation would not have been payable under Part II or Part V of the Act, as the case may be; or

(*b*) that the amount of the compensation would have been less than the amount of the proposed contribution;

and thereupon the dispute shall be referred to the Lands Tribunal for determination and the Minister shall notify accordingly all other persons to whom notices were given under the last preceding regulation.

(2) All persons to whom notices of any findings have been given shall be entitled to be heard in any dispute before the Lands Tribunal under paragraph (1) of this regulation.

(3) The Lands Tribunal shall by their decision either confirm or vary the Minister's findings, or, as the case may be, the apportionment, and shall notify the parties of their decision.

NOTES

Notice in writing to the Lands Tribunal. See r. 3 (2A) and Form 1A of the Tribunal's rules, inserted by S.I. 1955 No. 54, *post*.

Findings. This word seems to have been borrowed from reg. 7 (3), *ante*, as a convenient term to describe the Minister's determination, under reg. 9 (5), *ante*, as a whole.

Entitled to be heard. Para. (2) of this regulation (unlike reg. 7 (3), *ante*) contains no requirement that a person wishing to be heard must comply with the Tribunal's rules. Such a person should, however, it is thought, give notice to the Tribunal of his intention to appear; cf. r. 5A of the Tribunal's rules, inserted by r. 5 of S.I. 1955 No. 54, *post*. This may not be necessary, but will be convenient for all concerned.

11. Application of provisions of Part II of the Act.—(1) The provisions of subsection (3) of section 18 of the Act as to the reduction or extinguishment of the unexpended balance of established development value shall apply in a case where a contribution is paid under section 40 of the Act as they apply where compensation under Part II of the Act becomes payable in respect of the depreciation of the value of an interest in land by a planning decision.

(2) Where an amount becomes recoverable under subsection (8) of section 29 as applied by section 41 of the Act, subsection (9) of section 29 shall apply as if:

(*a*) the reference to compensation specified in a compensation notice were a reference to compensation for depreciation specified in the notice under section 39,
(*b*) the reference to subsection (4) of section 29 were a reference to subsection (4) of that section as applied by section 41, and
(*c*) the reference to the compensation attributable to the land were a reference to the Minister's contribution attributable to the land.

NOTE

Ss. 18 (3) and 29 (9). Cf. the note " Unexpended balance " to s. 29 (9) of the Act, *ante*, and the note " The provisions of Part II " to s. 40 (2), *ante*.

SCHEDULE

MINISTRY OF HOUSING AND LOCAL GOVERNMENT

Claim for the Payment of Compensation under Part II or Part V of the Town and Country Planning Act, 1954

Name and address of claimant (in BLOCK LETTERS)
Surname (State whether Mr., Mrs. or Miss).....
Other names.....
Postal address .....
Business and any other address.....
Occupation or description .....

If you have a professional adviser or agent to whom you wish communications regarding your claim to be sent, give his name and address here.

1. (i) Address and description of the land with reference to which your claim is made. (You should enclose a map sufficient to identify the boundaries of the land.) (ii) What is your interest in this land and when did you acquire it? (State whether freehold or leasehold, and if the latter give short particulars of the lease, including the rent payable.) (iii) In what capacity do you claim, e.g., as beneficial owner, trustee, mortgagee or rentcharge owner?	
2. (i) Do you know of any other person who is interested in or has rights over the land, e.g., as lessee, mortgagee, owner of an easement? If so, give name and address of such person and nature and date of creation of his interest or rights. (ii) Give details of any outgoings affecting the land, other than ordinary rates and taxes.	
3. Has any interest in the land been held by a public authority at any time since 1st July, 1948?	
4. Give such particulars as you can (including reference number and date) of the planning decision, or order modifying or revoking planning permission, which gives rise to your claim for compensation.	
5. Give particulars of any development of the land which has taken place since 1st July, 1948, and the date of its commencement.	

6. (i) Do you know whether a claim for a payment out of the £300 million fund under Part VI of the Town and Country Planning Act, 1947, was established with the Central Land Board in respect of the land to which the present application relates, or part of it? If so, give brief particulars, including the Board's reference number. (ii) If you are claiming under Part V of the Act state whether you are a claim holder in respect of the above established claim and if so give particulars of your interest in that claim and how you acquired it. (iii) Do you know of any application under Part I of the Town and Country Planning Act, 1954, made, or pending, in respect of land included in your present claim or in respect of other land comprised in the claim referred to at (i) above? If so, give brief particulars.	
7. State what amount you claim as the depreciation in value caused by the planning decision or order. (*Note*.—Only land in respect of which a claim was established under Part VI of the Town and Country Planning Act, 1947, is eligible for compensation.)	

I declare that all the statements made on this form are true to the best of my knowledge and belief and I hereby claim the payment of such compensation as may be determined to be due to me.

Signature..... Date.....

* * * * *

NOTE

The Ministry have stated that, in making a Part V claim, the claimant is " invited " to answer question 7 in this form, without being bound to do so, and without being bound by the estimate in any subsequent proceedings.

THE LOCAL LAND CHARGES (AMENDMENT) RULES, 1954

DATED 15TH DECEMBER 1954, MADE BY THE LORD CHANCELLOR UNDER SECTIONS 28 (5) AND 57 (2) OF THE TOWN AND COUNTRY PLANNING ACT, 1954, AND SECTION 15 OF THE LAND CHARGES ACT, 1925

[S.I. 1954 No. 1677]

EXPLANATORY NOTE

These rules provide for the manner of registration, in the register of local land charges, of notices deposited under the Act of 1954, *ante*.

Notices deposited for the purposes of ss. 28, 39 and 46 are required to be registered under s. 28 (5). These relate respectively to compensation (exceeding £20) payable:

(1) in respect of planning decisions made on or after 1st January 1955, under s. 27 in Part II of the Act of 1954;

(2) for depreciation of the value of an interest in land by the revocation or modification of permission on or after 1st January 1955, under s. 22 (as amended) of the Act of 1947, see ss. 38 (3) and 39 of the Act of 1954; or

(3) in respect of earlier planning decisions or orders revoking or modifying permission, under s. 27 of the Act of 1954 as applied by s. 45 (1) in Part V of that Act. Such decisions and orders are those made after 30th June 1948, and before 1st January 1955.

Such compensation is recoverable under s. 29 of the Act of 1954, or that section as applied, on the subsequent carrying out of certain forms of new development; see the notes to s. 29, *ante*.

Notices deposited under s. 57 of the Act of 1954 relate to payments (exceeding £20) under the War Damage Scheme made under s. 59 of the Act of 1947. Such payments are registrable (with exceptions) under s. 57 (2) of the Act of 1954; and are recoverable (with exceptions) on the subsequent carrying out of any form of new development, under s. 29 as applied, with modifications, by s. 57 (3), *ante*.

The notices so registrable are not, strictly speaking, local land charges, but are made registrable in the same manner as such charges. Consequential amendments are made to certain of the Local Land Charges Rules, 1934 (S.R. & O. 1934 No. 285); see, for the general framework of these rules, as previously amended, 18 Halsbury's Statutory Instruments, title Real Property, Part 2, or Garner's *Local Land Charges*.

For amendments to the official certificate of search, Form L.L.C.1 (A2), see Ministry of Housing and Local Government Circular 22/55, dated 14th March 1955 (H.M.S.O. 2*d*.).

1.—(1) These Rules may be cited as the Local Land Charges (Amendment) Rules, 1954, and shall come into operation on the 1st day of January, 1955.

(2) The Interpretation Act, 1889, applies to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

2.—The Local Land Charges Rules, 1934, as amended, shall apply to notices required to be registered in the register of local land charges pursuant to subsection (5) of section 28 and subsection (2) of section 57 of the Town and Country Planning Act, 1954, in the same manner and to the same extent as they apply to local land charges registrable pursuant to section 15 of the Land Charges Act, 1925, and accordingly the Local Land Charges Rules, 1934, as amended, shall be further amended as follows:—

(*a*) Paragraph (1) of Rule 2 shall be amended as follows:—

(i) After the definition of " The Act of 1947 " there shall be inserted the following definition:—

" ' The Act of 1954 ' means the Town and Country Planning Act, 1954; "

(ii) The following definition shall be substituted for the definition of " Planning Charges ":—

" ' Planning Charges ' means—

(*a*) local land charges, other than charges securing the payment of money, which are prohibitions of or restrictions on the user or mode of user of land or buildings which take effect by virtue of the Act of 1947 or the Acts relating to previous planning control, or

(*b*) charges secured by notices required to be registered under the Act of 1954; "

(*b*) The following addition shall be made to paragraph (*c*) of Rule 5:—

" and to notices required to be registered under the Act of 1954; "

(*c*) The following new Rule shall be inserted after Rule 9B and shall stand as Rule 9C:—

" 9C.—Where a notice is registered under subsection (5) of section 28 or subsection (2) of section 57 of the Act of 1954, the entry in Part III shall contain:—

(*a*) a reference to the section under which the notice is registrable;

(*b*) a sufficient description, by reference to a plan or otherwise, of the land which is affected by the charge;

(*c*) the date of registration;

(*d*) the amount of the compensation or payment specified in the notice;

(*e*) where the notice is registered under subsection (5) of section 28,

(i) particulars of any apportionment of the charge contained in the notice, and

(ii) a sufficient description of the planning decision or order in respect of which the payment of compensation giving rise to the charge was made."

(*d*) The following new paragraph shall be added to Rule 13 and shall stand as paragraph (6):—

" (6) Where an entry has been made in Part III of the register in respect of a notice registered under the Act of 1954, any subsequent notice registered thereunder and relating to the same land shall be entered against that entry."

(*e*) In paragraphs 1 and 2 of the Second Schedule the words " local land " shall be omitted and the words " or by the Central Land Board " shall be inserted after the words " by a Minister ".

* * * * *

NOTES

S. 15 of the Land Charges Act, 1925. See 20 Halsbury's Statutes (2nd Edn.) 1089.

Planning charges. Para. (*a*) of this definition derives from the definition inserted in the rules by S.I. 1948 No. 2471 (Hill, p. 901).

Addition to r. 5 (c). R. 5 of the rules relates to the index to the register, and the division of the register into parts. Notices required to be registered under the Act of 1954 will be entered in Part III, described in r. 5 (*c*), as here amended, as " a part relating to prohibitions of or restrictions on the user or mode of user of land or buildings which are planning charges [and to notices required to be registered under the Act of 1954] ".

After r. 9B. R. 9B relates to the mode of entry, in Part III of the register, of particulars of enforcement notices (and similar notices) under ss. 23, 30 (8) or 33 of the Act of 1947; of orders under ss. 21, 26, 28 or 29 of that Act; and of " any other planning charge " created by virtue of that Act. The new r. 9C, here inserted, specifies the particulars to be entered when a notice under the Act of 1954 is registered. It will be observed that a notice under s. 57, relating to a War Damage Scheme payment made by the Central Land Board, will not contain an apportionment; cf. the notes to that section, *ante*. Where a notice is registered under s. 28 as applied by s. 39, in connection with compensation for a revocation or modification of permission by an order under s. 21 of the Act of 1947, there will be an entry of particulars of the order under r. 9B and of the notice as to compensation under r. 9C. It has also been the accepted practice to register, in Part III, particulars of conditional planning permissions, if these satisfy the definition of a planning charge, or at least to enter (under r. 14) a cross-reference to the register of planning applications required to be kept under s. 14 (5) of the Act of 1947 (Hill, p. 72; 48 Statutes Supp. 49) and art. 12 of the G.D.O. (Part I of S.I. 1950 No. 728; Hill, 2nd Supp., p. B182). Attention is drawn to the importance of searching both registers. Development in accordance with a conditional permission, or in accordance with an original permission as affected by a modification, will not entail repaying the registered compensation; cf. the notes to s. 29 of the Act of 1954, *ante*.

R. 13 (6). R. 13 relates to the alteration or cancellation of entries where a charge is reduced or cancelled. The new para. (6), here inserted, provides for the mode of making an additional entry where a subsequent notice relates to the same land as is affected by a former entry. Cf. also s. 29 (4) of the Act of 1954, whereunder a compensation notice may be amended, so as to refer only to the amount left outstanding, if the Minister remits part of the recoverable amount having regard to the probable value of development to be carried out.

Paras. 1 and 2 of the Second Schedule. Para. 1 was substituted by r. 6 of S.I. 1948 No. 2471 (Hill, p. 902) and para. 2 of the original rules was amended by r. 7 thereof (which substituted the words " a Minister " for a reference to the Commissioners of Works). So far as relevant, these paragraphs relate to the fees payable under r. 17, on the registration of a charge on the application to the Registrar by the Minister or the Central Land Board, or on the modification or cancellation of an entry on such application, under Part III of the rules.

THE TOWN AND COUNTRY PLANNING (MINERALS) REGULATIONS, 1954

DATED 8TH DECEMBER 1954, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTIONS 81 (1) AND 111 OF THE TOWN AND COUNTRY PLANNING ACT, 1947, AND SECTIONS 54 (3) AND 68 OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[S.I. 1954 No. 1706]

EXPLANATORY NOTE

These regulations are made under s. 81 of the Act of 1947 (Hill, p. 201; 48 Statutes Supp. 154) and under s. 54 of the Act of 1954, *ante*. They were approved by resolution of the House of Lords, on 16th December 1954, and of the House of Commons on 21st December 1954, as required by s. 81 (5) of the Act of 1947 and s. 54 (4) of the Act of 1954.

Attention is drawn to definition of " mining operations " in reg. 1 (3), *infra*. Part II of the regulations (regs. 3–10) contains modifications of the provisions of the Act of 1947 in relation to mining operations, as so defined and does not apply to " excepted minerals ", *i.e.*, those which are specified land of the National Coal Board, or " agricultural " minerals mentioned in the Third Schedule. The notes to these regulations draw attention to the former regulations, revoked by reg. 2, *infra*, so far as they are replaced.

Part III of the regulations (regs. 11–24) modify the Act of 1954 in its application to interests in land consisting of or comprising minerals and to claims established wholly or partly in respect of such land.

PART I

PRELIMINARY

1. Citation, commencement and interpretation.—(1) These regulations may be cited as the Town and Country Planning (Minerals) Regulations, 1954, and shall come into operation on the 1st day of January, 1955.

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

(3) In these regulations unless the context otherwise requires:—

" the Act of 1947 " means the Town and Country Planning Act, 1947;
" the Act of 1953 " means the Town and Country Planning Act, 1953;
" the Act of 1954 " means the Town and Country Planning Act, 1954;

" excepted minerals " means such minerals as are mentioned in paragraph 5 of the Third Schedule to the Act of 1947 or minerals vested in the National Coal Board which are specified land to which the provisions of the Act of 1947 relating to operational land of statutory undertakers apply by virtue of regulations made under section 90 of that Act;

" mining operations " means the winning and working of minerals other than excepted minerals in, on, or under land, whether by surface or underground working;

" mineral undertaker " means any person engaged in mining operations;

" mineral undertaker's land " means land in which at the 1st day of July, 1948, a mineral undertaker had an interest which entitled him (whether subject to the consent of another person or not) to win and work the minerals therein, or had a right to acquire such an interest;

" mining lease " means a mining lease, as defined by the Act of 1947 of minerals other than excepted minerals; " lessor " and " lessee " in relation to such a lease mean respectively the person entitled to receive the rent and royalties reserved and the person entitled to win or work minerals under the lease; and where a person is entitled to an interest in minerals both as lessee and also as lessor to a sub-lessee, these regulations shall be applied first to the superior lease;

" the Board " means the Central Land Board; and " the Minister " means the Minister of Housing and Local Government.

(4) In relation to the Isles of Scilly, references in these regulations to the 1st day of July, 1948 or the 1st day of July, 1951, shall be construed respectively as references to the 1st day of August, 1949, and the 1st day of August, 1952, and the reference in regulation 8 to the 31st day of December, 1949 shall be construed as a reference to the 28th day of February, 1950.

NOTES

Excepted minerals. For para. 5 of the Third Schedule to the Act of 1947, see the notes to para. 4 of the Seventh Schedule to the Act of 1954, *ante*; or Hill, p. 271; 48 Statutes Supp. 214.

Specified land. Cf. the notes to ss. 19 (4) and 34 of the Act of 1954, *ante*. For the T. & C.P. (National Coal Board) Regulations, 1951 (S.I. 1951 No. 716), see Hill, 2nd Supp., pp. B237–B245. For the meaning of " minerals " generally, see s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204). Cf. the note on " full restoring lease ", etc., to s. 69 (1), *ante*; and the note " Minerals " to S.I. 1953 No. 820 in Hill, 2nd Supp., p. B717.

Mining lease. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204); and see the notes to s. 55 (2), *ante*.

Isles of Scilly. Cf. the notes to s. 62 of the Act of 1954, *ante*.

2. Revocation of existing regulations.—The Town and Country Planning (Minerals) Regulations, 1948, the Town and Country Planning (Minerals) Regulations, 1949, and the Town and Country Planning (Minerals) Regulations, 1953, are hereby revoked without prejudice to any right, privilege, obligation or liability acquired, accrued or incurred or to anything duly done or suffered thereunder.

NOTES

It will be noticed that S.I. 1948 No. 1522 and S.I. 1949 No. 1176 are not revoked.

Town and Country Planning (Minerals) Regulations, 1948. See S.I. 1948 No. 1521 (Hill, pp. 831–839).

Town and Country Planning (Minerals) Regulations, 1949. See S.I. 1949 No. 1996 (Hill, pp. B92–B94 and B676).

Town and Country Planning (Minerals) Regulations, 1953. See S.I. 1953 No. 820 (Hill, 2nd Supp., pp. B716–B721).

PART II

Adaptations and Modifications of the Act of 1947

3.—In relation to development consisting of mining operations the provisions of the Act of 1947 shall have effect subject to the adaptations and modifications prescribed by this part of these regulations.

4.—For the purposes of the Act of 1947, " use " in relation to the development of land does not include the use of land by the carrying out of mining operations:

Provided that:—

(*a*) subsection (3) of section 12 (as to the circumstances in which the deposit of refuse or waste materials on land involves a material change in the use thereof) shall operate in relation to the deposit of refuse or waste materials in the course of mining operations, and

(*b*) in the following provisions of the Act of 1947, namely, subsection (2) (*b*) of section 14 (as to conditions requiring the discontinuance of a use after a specified period), subsections (1) and (2) of section 18 (as to permission for the continuance of a use of land already instituted), subsections (2) and (3) of section 23 (as to enforcement notices), subsection (3) of section 24 (as to the use of land in contravention of an enforcement notice), subsection (2) of section 72 (as to the determination of development charge in respect of the use of land for a limited period), and section 76 (as to existing development authorised subject to conditions), references to the use of land shall include the carrying out of mining operations and references to the continuance or discontinuance of a use of land shall include the continuance or discontinuance of mining operations.

NOTE

This regulation re-enacts reg. 3 of S.I. 1953 No. 820 (Hill, 2nd Supp., p. B718), which in turn replaced, with some additions to the proviso, reg. 3 (1) of S.I. 1948 No. 1521 (Hill, p. 832).

5.—Subsection (1) of section 22 of the Act of 1947 (which provides for the payment of compensation in the event of a revocation or modification of permission to develop) shall have effect subject to the modification that a claim for expenditure or loss shall not be entertained under the subsection in respect of buildings, plant or machinery unless the claimant can prove that he is unable to use such buildings, plant or machinery or (as the case may be) to use them except at the loss claimed and for this purpose the Lands Tribunal may give directions that such claim be severed from the remainder of the claim and be dealt with at such later date as may be fixed by the Tribunal either in such directions or subsequently on application by either party.

NOTE

This regulation corresponds to reg. 3 (2) (*b*) of S.I. 1948 No. 1521 (Hill, p. 833). Para. (*a*) of the former regulation is omitted. Cf. s. 38 of the Act of 1954, *ante*. Formerly compensation for the sterilisation of minerals (in effect for the loss of development value) was payable only so far as necessary to secure repayment of development charge incurred. The loss was generally to be recovered from the Part VI claim.

6.—An enforcement notice in respect of a breach of any condition subject to which permission to win and work minerals was granted may be served under section 23 of the Act of 1947 at any time within four years after the breach has come to the knowledge of the local planning authority.

NOTES

This regulation re-enacts reg. 4 of S.I. 1953 No. 820 (Hill, 2nd Supp., p. B719), which in turn replaced, in wider terms, reg. 3 (3) of S.I. 1948 No. 1521 (Hill, p. 823). It is a drastic modification of s. 23 of the Act of 1947 (Hill, p. 92; 48 Statutes Supp. 64) as amended by s. 2 of the Act of 1951 (Hill, 2nd Supp., p. B36; 71 Statutes Supp. 96).

Come to the knowledge of the local planning authority. See *R.* v. *Stafford JJ., Ex p. Stafford Corpn.*, [1940] 2 K.B. 33, at pp. 45–46; C.A.; 2nd Digest Supp. Cf. s. 21 (1) of the T. & C.P. (Scotland) Act, 1947 (10 & 11 Geo. 6 c. 53).

7.—(1) In assessing compensation under section 51 of the Act of 1947 for the value of an interest acquired compulsorily in any land in respect of which a planning permission to win and work minerals is in force at the date of the notice to treat:—

(*a*) for the purposes of assessing the value of any buildings, plant or machinery on the land, regard shall be had to that permission;

(*b*) in so far as that permission has diminished the value of the surface of the land by rendering it liable to subsidence or otherwise, regard shall be had to that diminution;

but save as aforesaid, the value of the interest to which the notice to treat relates shall (notwithstanding that any sum has been paid under Part VII of the Act of 1947 as mentioned in paragraph (*a*) of subsection (4) of the said section), be calculated as if the said permission had not been granted.

(2) Where the planning permission referred to in the preceding paragraph was granted by a development order, it shall be assumed for the purposes of this regulation that such permission was for the winning and working subject to such conditions as the local planning authority might reasonably have imposed, of any minerals in adjoining land, the winning and working of which is not dealt with by another planning permission for the time being in force, and which at the date of the notice to treat were vested (whether or not subject to payment of a rent or royalty) in the same person as the land acquired, or were subject to rights enabling him to work them at any future time.

NOTES

Para. (1) of this regulation contains provisions similar in effect to reg. 5 (*b*) and (*c*) of S.I. 1948 No. 1521 (Hill, pp. 834–835). Para. (*a*) of the former regulation is omitted. It allowed regard to be had to planning permission for the limited purpose of securing repayment of development charge paid, so far as it was not otherwise recoverable. See now s. 54 (1) and (2) of the Act of 1954.

Para. (2) of this regulation is new, and defines the permitted development to which regard may be had for the limited purposes of para. 1 (*a*) and (*b*) of the present regulation. Difficulty formerly arose, in this regard, from the unusual nature of the permission granted by art. 3 of, and Class XIX of Part I of the First Schedule to, the G.D.O. of 1950 (Part I of S.I. 1950 No. 728; Hill, 2nd Supp., pp. B170, B197–B200). Such permission is continued, in many cases, until an express permission is granted or refused by the final decision of an application.

Development order. See s. 13 of the Act of 1947 (Hill, p. 68; 48 Statutes Supp. 46). In addition to the G.D.O., mentioned *supra*, it may be necessary to refer to a special development order, extending or restricting the measure of permitted development (cf. the T. & C.P. (Ironstone Areas Special Development) Order, 1950 (S.I. 1950 No. 1177; Hill, 2nd Supp., p. B221)),.or to directions under the G.D.O. The terms which are relevant, however, are not those of the G.D.O. or S.D.O., but those which the local planning authority might reasonably have imposed.

In adjoining land. Cf. Class XIX (1) of the permitted development under the G.D.O. (*ubi supra*). Note the omission, from the present regulation, of the words " (where they form a continuous operation in relation to the land first mentioned) " which occur in Class XIX (1).

8.—Part VI of the Act of 1947 (as amended by the Act of 1953) shall have effect subject to the following modifications:—

(*a*) subsection (3) of section 60 (which provides that claims for payments out of the £300 million fund may be made in respect of an interest in fee simple or a leasehold interest as defined by that Act) shall have effect as if the interests therein specified included an interest in land under a mining lease.

(*b*) Where a claim was duly made on or before the 31st day of December, 1949, in respect of an interest in land in which a mining lease subsisted on the 1st day of July, 1948, the claim shall be treated as if it were also a claim in respect of every other interest in the land which subsisted on that day and comprised or included an interest in the minerals the subject of the mining lease (being an interest in respect of which a claim might have been but was not in fact made under the Act) duly made by the owner thereof.

(*c*) Where a claim is treated as having been made by any person in pursuance of the last preceding paragraph the proviso to subsection (4) of section 60 shall not apply so as to enable the Board to direct that the claim so treated as having been made shall be dealt with together with any claim duly made by that person in respect of any interest in any other land.

(*d*) For the purposes of section 61 (which provides for the ascertainment of development values of land) in calculating the restricted and unrestricted values of an interest in any land wholly or partly used for the purpose of mining operations or in which a mineral undertaker has an interest entitling him (whether subject to the consent of another person or not) to use the land for that purpose, regard shall be had to any increase in the value of the interest arising from the presence of any buildings, plant and machinery used for such purpose or for the purpose of processing minerals, but the value of the buildings, plant and machinery as such shall be excluded.

(*e*) The restricted and unrestricted values of an interest in mineral undertaker's land shall be calculated as if any operations carried out for the winning and working of minerals therein during the period of three years from the 1st day of July, 1948 had been carried out before that date; provided that it shall not be assumed that any other operations would have been advanced thereby.

(*f*) Payment in respect of a claim relating to any interest in land (such interest and the land to which it relates being in this paragraph respectively referred to as " the said interest in land " and " the said land ") shall not be excluded by section 63 (which excludes payments for small claims) where the following conditions are satisfied:—

(i) on the 1st day of July, 1948 (or in a case to which the provisions of subsection (2) of section 91 of the Act of 1947 apply, immediately before the date of the notice to treat) a mineral undertaker, or a trustee for a mineral undertaker, or a subsidiary within the meaning of section 154 of the Companies Act, 1948, of a mineral undertaker, with a view to mining operations held any interest in the said land, which entitled such a person to win and work the minerals therein and in respect of which a claim may be made under the Act, or was under an enforceable contractual obligation to acquire such an interest;

(ii) the development value of the said interest in land is wholly attributable to the prospect of mining operations;

(iii) the area of the said land exceeds 25 acres; and

(iv) the development value of the said interest in land exceeds £500.

NOTES

Para. (*a*) of this regulation corresponds, with a verbal change, to reg. 6 of S.I. 1948 No. 1521 (Hill, p. 835).

Paras. (*b*) and (*c*) re-enact reg. 5 (1) and (2) of S.I. 1949 No. 1996 (Hill, 2nd Supp., p. B94).

Para. (*d*) re-enacts reg. 7 of S.I. 1948 No. 1521 as substituted by reg. 6 of S.I. 1949 No. 1996 (Hill, 2nd Supp., pp. B94, B676).

Para. (*e*) relates to the three-year " moratorium ". Reg. 4 (1) of S.I. 1948 No. 1521 (Hill, p. 834) in pursuance of s. 81 (2) (*a*) of the Act of 1947 (Hill, p. 202; 48 Statutes Supp. 154), provided for freedom from development charge during this period. Reg. 4 (2) of S.I. 1948 No. 1521, in pursuance of s. 81 (2) (*b*) of that Act, correspondingly altered the basis of calculation of Part VI claims. The present para. (*e*) preserves the effect of the former reg. 4 (2), and reg. 4 (1) which is regarded as spent is not re-enacted.

Para. (*f*) modifies the " *de minimis* " provision (cf. s. 1 (3) (*a*) of the Act of 1954, *ante*, and reg. 16 (2) of the present regulations, *post*). It re-enacts reg. 4 of S.I. 1949 No. 1996 (Hill, 2nd Supp., p. B93).

Part VI of the Act of 1947. See ss. 58–68 of that Act (Hill, pp. 156–172; 48 Statutes Supp. 116–132), particularly ss. 60–64.

Act of 1953. See particularly s. 2 thereof, set out in the notes to s. 60 of the Act of 1954, *ante*. As to s. 3 thereof (Hill, 2nd Supp., pp. B700–B703; 78 Statutes Supp. 136), see s. 71 of the Act of 1954 and the Eighth Schedule thereto, *ante*. See also s. 54 (5) of the Act of 1954, *ante*.

9.—(1) Without prejudice to anything contained in section 71 of the Act of 1947 (which provides for payment of development charges) the Board may,

after taking into account any representations made by the applicant, calculate the amount (or any part of the amount) of the development charge payable under Part VII of that Act in respect of any development consisting of the winning and working of minerals by reference to the amount of minerals got from time to time and for this purpose the amount of minerals got may be measured by reference to the amount of the manufactured article produced or by any other method recognised as appropriate to the type of minerals concerned.

(2) The Board may require the mineral undertaker to furnish in such form as the Board may prescribe such periodical returns and other information (including an auditor's certificate) as may be necessary in order to ensure that payment is made in accordance with the Board's determination of the development charge and the Board may, in any case where a mineral undertaker neglects to furnish any such information as aforesaid to their satisfaction, require the mineral undertaker to permit such examination of his books and accounts as may be necessary for the said purpose.

(3) Information obtained by the Board under the preceding paragraph shall be treated as confidential by the Board and the Minister.

NOTE

This regulation re-enacts reg. 8 of S.I. 1948 No. 1521 (Hill, p. 836). It should be read with s. 54 of the Act of 1954, *ante*. Cf. also the definition of " royalty " in s. 69 (1) of that Act, *ante* (by reference to the Mineral Workings Act, 1951) and the note thereto.

10.—(1) Where mining operations have been carried out in any land on or after the 7th day of January, 1937, and at any time an application is made under Part III of the Act of 1947, or is treated as having been so made, for permission to resume or continue any such operations in adjoining land, section 79 of the said Act (which provides for compensation for abortive expenditure on refusal of permission for certain development authorised before the 1st day of July, 1948) shall apply as if the operations in respect of the resumption or continuance of which the application is made, or is treated as having been made, were buildings or works begun or contracted for before the 1st day of July, 1948 but subject to the following modifications:—

(i) the reference in paragraph (*a*) of subsection (1) to permission granted by an interim development order shall include a reference to such a permission granted on or after the 22nd day of July, 1943;

(ii) the reference in paragraph (*c*) of that subsection to expenditure in carrying out work which is rendered abortive and the following reference in that subsection to expenditure shall include a reference to loss by way of depreciation of value or otherwise in respect of buildings, plant and machinery required for the purposes of the said mining operations or of their continuance under a development order or for the purpose of processing minerals thereby got, but a claim for expenditure or loss in respect of buildings, plant and machinery shall not be entertained unless the claimant proves that he is unable to use such buildings, plant or machinery or (as the case may be) to use them except at the loss claimed and for this purpose the Lands Tribunal may give directions that such claim be severed from the remainder of the claim and be dealt with at such later date as may be fixed by the Tribunal either in such directions or subsequently on application by either party; and

(iii) no compensation shall be payable in respect of:—

(*a*) work which was carried out at a time when permission required under the said Act or obtainable under any enactment relating to town and country planning repealed by the said Act was not in force in relation to such work or was not in force in relation to the said mining operations or their continuance; or

(*b*) work which involved a breach of à condition imposed on the grant of any such permission as is referred to in sub-paragraph (*a*), or was in excess of that required for the carrying out or continuance of the said mining operations in accordance with such permission or for the processing of minerals thereby got.

(2) Where on refusal of an application to which the last preceding paragraph applies, or on the grant of permission on such an application subject to conditions, it is shown that the applicant has sustained loss or damage which is directly attributable to such refusal or conditional grant of permission, subsection (1) of section 22 of the Act of 1947 (except the proviso thereto) and subsection (2) of that section shall apply in respect of such loss or damage as it applies to loss or damage which is directly attributable to a revocation or modification of permission, but no compensation shall be payable thereunder in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of such refusal or conditional grant of permission, or in respect of any loss or damage for which a claim may be made under paragraph (1) of this regulation.

NOTES

Para. (1) of this regulation re-enacts reg. 5 of S.I. 1953 No. 820 (Hill, 2nd Supp., p. B719–B721), which in turn was based, with important differences, on reg. 10 of S.I. 1948 No. 1521 (Hill, p. 837). There are certain further changes in the wording of para. (1), but these appear to be of a drafting character. References to the appointed day have been replaced by references to 1st July 1948 (which was the appointed day; except in the Isles of Scilly, as to which see reg. 1 of the present regulations, *ante*). References to " the Act " have been replaced by references to the " Act of 1947 " and " the said Act ". In sub-para. (ii) the words " and the further reference in that subsection to expenditure " and " by way of depreciation of value or otherwise " have been added, apparently for greater clarity.

Para. (2) of this regulation is new, and seems intended to supplement the provisions of para. (1) and to allow claims to be made for abortive expenditure (other than loss by the depreciation of the value of buildings, plant or machinery) without the necessity of a decision by the Minister on an appeal or reference to him.

S. 79 of the said Act. The effect of sub-s. (1) of that section (Hill, p. 197; 48 Statutes Supp. 151) as applied by para (1) of the present regulation appears to be as follows (the words in square brackets indicating additions or amendments required, and the words of the subsection which are not relevant being printed in italics):

> **79.**—(1) Where an application is made under Part III of this Act [or is treated as having been so made] *within six months after the appointed day* [at any time] for permission *to complete or carry out any buildings or works begun or contracted for before that day* [to resume or continue any mining operations in land adjoining any land in which mining operations have been carried out on or after the 7th day of January 1937] and that permission is refused by the Minister, either on appeal or on the reference of the application to him for determination, or is so granted by the Minister subject to conditions, then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown—
>
> (*a*) that *the buildings or works in question* [the mining operations in respect of the resumption or continuance of which the application is made, or is treated as having been made], were begun or contracted for in conformity with the provisions of a planning scheme or of permission granted thereunder, or in accordance with permission granted, at any time [whether] before the twenty-second day of July, nineteen hundred and forty-three [or on or after that date], by or under an interim development order; or
>
> (*b*) that *the buildings or works in question* [the said operations] were begun or contracted for at a time when no resolution to prepare or adopt such a scheme had taken effect; and
>
> (*c*) that the applicant has incurred expenditure in carrying out work which is rendered abortive by the refusal or conditions [including loss by way of depreciation of value or otherwise in respect of buildings, plant and machinery required for the purposes of the said mining operations or of their continuance under a development order or for the purpose of processing minerals thereby got], or has entered into a contract for any work which is abandoned in consequence thereof,
>
> that authority shall pay to the applicant compensation equal to the expenditure so incurred [including such loss as aforesaid] or, as the case may be, to any sum reasonably paid by him in the discharge of any liability arising under the contract in respect of the abandonment of the work [but a claim for expenditure or loss in respect of buildings, plant and machinery shall not be entertained unless the claimant proves (*etc.: as in para.* (1) (*ii*) *of this regulation, supra*)].
>
> [No compensation shall be payable in respect of (*etc.: as in para.* 1 (*iii*) *of this regulation, supra*).]

Sub-ss. (2)–(4) of s. 79 of the Act of 1947 are set out below in their original form. In view of sub-para. (iii) of para. (1) of the present regulation, *supra*, sub-s. (2) seems to have little force. As to sub-s. (3), see also regs. 20 and 24 in Part III of the present regulations, *post*. S. 34 (3) of the Act of 1947, mentioned in s. 79 (4) set out, *infra*, relates to the delegation of the financial liability of the local planning authority; cf. the

note " Liability for compensation ", relating to delegation of financial liability under s. 22 of the principal Act, to s. 38 of the Act of 1954, *ante*. S. 79 (2)–(4) of the principal Act read as follows:

(2) For the purposes of the last foregoing subsection, any expenditure incurred in the preparation of plans for the purposes of any work or upon any similar matters preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid no compensation shall be paid under the said subsection in respect of anything done for the purposes of any such buildings or works as are mentioned in paragraph (*a*) of subsection (1) of this section if it was done before the following date, that is to say—

(*a*) where the building or work was authorised by permission granted under a planning scheme or by or under an interim development order, the date on which permission was so granted;

(*b*) where the building or work was otherwise begun or contracted for in conformity with a planning scheme, the date on which that scheme came into force.

(3) Any compensation payable under this section in respect of an interest in land shall be payable in addition to any compensation payable under Part III of this Act in respect of that interest in consequence of the refusal of the permission or the grant thereof subject to conditions:

Provided that no account shall be taken, in assessing the compensation payable as aforesaid under the said Part III (whether in respect of the compulsory acquisition of the said interest or otherwise), of the value of any works in respect of which compensation is payable under this section.

(4) The reference in subsection (3) of section thirty-four of this Act to compensation under Part III of this Act shall be construed as including a reference to compensation payable under this section.

S. 22 of the Act of 1947. See Hill, p. 88; 48 Statutes Supp. 61. For the repeal of the proviso to s. 22 (1), see s. 71 of the Act of 1954 and the Eighth Schedule thereto, *ante*. See also s. 38 of that Act and the notes thereto, *ante*. The present paragraph (para. (2), *supra*) excludes loss or damage in the nature of depreciation in value of an interest in land, despite the repeal of that proviso. It seems intended, therefore, to allow claims for abortive expenditure which might not be covered by para. (1), *supra*. It is not clear whether para. (1) (iii) excludes compensation for expenditure on preparatory matters, as mentioned in s. 79 (2) of the principal Act, set out, *supra*. If so, compensation for such expenditure rendered abortive by a refusal or conditional grant of permission would seem to be recoverable under s. 22 (2) of that Act, as applied by the present paragraph. Note also that s. 22 (1) of that Act does not require the decision of an application to be by the Minister.

PART III

Adaptations and Modifications of the Act of 1954

11.—In relation to interests in land consisting of or comprising minerals, and in relation to claims established wholly or partly in respect of such land, the provisions of the Act of 1954 shall have effect subject to the adaptations and modifications prescribed by this part of these regulations.

NOTE

Act of 1954 shall effect. The power to make regulations modifying the effect of the Act of 1954 is given by s. 54 (3) of that Act, *ante*. The general effect of the present regulations in this Part is considered in the notes to that section.

12.—Any provision of the Act of 1954 which refers to a provision of the Act of 1947 which is modified in any manner by Part II of these regulations shall have effect as if it were a reference to that provision as so modified.

NOTE

Modified . . . by Part II. S. 81 of the principal Act (Hill, p. 201; 48 Statutes Supp. 154) provided that the provisions of that Act could be adapted or modified by regulations in relation to minerals. The principal Act applies to minerals as so modified. These modifications, so far as preserved, have been substantially consolidated in Part II of the present regulations.

13.—(1) Where an established claim relates to an interest in land comprising minerals, and since the 1st day of July, 1948, the freehold interest in those minerals, or part of them has, by sale or reservation or otherwise, been severed from the freehold interest in the remainder of the land, then if a payment falls to be made under the Act of 1954 in respect of an act or event subsequent to the date of the severance, the claim holding, or as the case may be, the unexpended

balance of established development value shall first be apportioned between the minerals and the remainder of the land and for this purpose subsection (4) of section 2 of the Act of 1954 shall apply as if the minerals and the remainder of the land were respectively parts of the claim area; and thereafter for all the purposes of the Act of 1954, the minerals and the remainder of the land shall be regarded as separate claim areas, and the provisions of this Part of these regulations other than this regulation shall apply only to the claim holding or balance in respect of the minerals.

(2) Nothing in section 17 of the Act of 1954 shall be taken to require the aggregation of a claim holding in respect of land consisting only of minerals with any other claim holding relating to the same area, but any claim holding or claim holdings in respect of any such minerals shall in accordance with the provisions of that section constitute a separate unexpended balance of established development value in respect of those minerals.

NOTES

Established claim. See s. 1 (4) of the Act of 1954, *ante*.

Minerals. See s. 119 (1) of the Act of 1947 (Hill, p. 259; 48 Statutes Supp. 204).

Claim holding. See s. 2 of the Act of 1954, *ante*.

Unexpended balance of established development value. See ss. 17 and 18 of the Act of 1954, *ante*.

Separate claim areas. See s. 2 of the Act of 1954, *ante*. The effect of this provision is to divide the claim holding, as from the date of severance, into two separate claim holdings. The mineral claim holding only will be subject to the present regulations. This subdivision only occurs, however, where the freehold in the minerals has been severed from the freehold in the remainder of the land.

S. 17 of the Act 1954. See notes thereto, *ante*. The severed freeholds are in fact different lands; but this provision removes any doubt or confusion which might arise in considering an area of land.

14.—Where but for

(*a*) the provisions of the Mineral Development Charge Set-Off Regulations, 1951, and subsection (5) of section 54 of the Act of 1954; or

(*b*) the provisions of section 1 of the Act of 1953,

a development charge would have fallen to be determined in respect of minerals got before the commencement of the Act of 1954 then if any payment falls to be made under Part I or Part V of that Act in respect of land which comprised those minerals there shall first be deducted from the claim holding out of which that payment would otherwise be made such part of the development value represented by that claim holding as was attributable to the prospects of winning and working the minerals got before the act or event giving rise to such payment; and for the purposes of that payment and of any other provisions of the Act in relation to that claim holding the claim holding shall be treated as reduced or extinguished accordingly.

NOTES

Mineral Development Charge Set-Off Regulations, 1951. See Hill, 2nd Supp., pp. B254–B283; and for their revocation, see s. 54 (5) of the Act of 1954, *ante*.

S. 1 of the Act of 1953. See Hill, 2nd Supp., p. B695; 78 Statutes Supp. 133.

Development charge . . . there shall be deducted. Since no development charge was paid the development value of the minerals has been realised, and the claim holding is to be reduced accordingly. Note also reg. 19, *post*.

15.—(1) Without prejudice to anything in subsection (3) of section 3 of the Act of 1954, the principal amount of a payment under Case A, in the case of a development charge determined in respect of the winning and working of minerals shall not exceed such part of the claim holding as was attributable to the prospects of winning and working the minerals worked before the 1st day of January, 1955, or where the development charge was determined in respect of a period expiring before that date, before the expiration of that period.

(2) Where a development charge has been paid or is payable by reference to the amount of minerals worked from time to time, the reference in paragraph (*b*) of subsection (3) of section 4 of the Act of 1954 to the single capital payment which would have been payable as therein mentioned shall be construed as a reference to the total gross amount payable by way of development charge in respect of minerals got during the period in question.

NOTES

Case A. See s. 3 of the Act of 1954, *ante*. In the case of mineral development charges, see also s. 54 (2) of that Act, *ante*. In effect the charge only relates to minerals worked up to 1st January 1955; it is therefore only the development value of minerals worked up to that date which has been affected by the charge.

S. 4 (3) of the Act of 1954. See *ante*. See also s. 54 (2), *ante*. S. 4 (3) (*b*) provides that where a charge has been determined otherwise than as a capital sum, it is to be what would have been the capital sum. In case of minerals it was usually determined in the manner of a royalty payment; see reg. 9, *ante*. That payment ended on 1st January 1955, and is to be treated as the gross sum payable up to that date.

16.—(1) Notwithstanding anything in paragraph (*a*) of subsection (4) of section 5 of the Act of 1954, the principal amount of a payment under Case B, in the case of an acquisition or sale to which paragraph (*a*) of subsection (1) of that section relates of the interest of a lessor or a lessee in land, which at the date of the acquisition or sale was subject to a mining lease, shall be the value of the relevant claim holding subject to such adjustment (if any) as the Board or, where the Board's findings are referred to the Lands Tribunal under section 13 of the Act of 1954, that Tribunal may determine to be appropriate having regard:—

(*a*) to any provision as to short workings in the lease and to any variation since the material date in regard to the amount of such short workings accumulated;

(*b*) to any premium or capital sum paid under the lease since the 1st day of July, 1948, and its effect on the royalty or royalties payable under the lease; and

(*c*) in the case of a payment to the lessor, to any variation in the period during which the lessee is liable to pay a rent under the lease which if it had occurred before the said 1st day of July, 1948, would, apart from this regulation, have increased or decreased the value of the lessor's claim holding;

and except to the extent aforesaid, no variation such as is mentioned in sub-paragraph (*a*) or sub-paragraph (*b*) shall be taken into account under the proviso to subsection (4) of section 6 of the Act of 1954:

Provided that—

(i) no adjustment shall be made in any claim holding so as to increase the amount of such claim holding except where and to the extent to which, an adjustment has been or might be made under this regulation so as to reduce another claim holding in respect of the same minerals; and

(ii) in a case where the minerals acquired are part only of the claim area, regard shall be had to the extent to which short workings can be recovered out of minerals included in the lease but not included in the land acquired or sold.

(2) Where an adjustment is made to a claim holding pursuant to paragraph (1) of this regulation, which results in a reduction in the value of that claim holding, and the party to the lease other than the claim holder is a person in respect of whose interest a claim for a payment under the Scheme to be made under section 58 of the Act of 1947 was made, or was deemed by virtue of regulation 5 of the Town and Country Planning (Minerals) Regulations, 1949, to have been made, but is not an established claim for the purposes of the Act of 1954, the amount by which the value of the claim holding is reduced shall be paid to that party.

(3) In computing the principal amount of a payment under Case B, in the case of a sale to which paragraph (*b*) of subsection (1) of section 5 relates—

(*a*) where the payment is in respect of the interest of a lessor or a lessee in land which at the date of the sale was subject to a mining lease, account shall be taken of any increase in the amount of short workings accumulated under the lease since the material date, of any premium or capital sum paid thereunder since the first day of July, 1948, and its effect on the royalty or royalties payable under the lease, and of any increase (or in the case of a lease entered into before the 1st day of July, 1948, any increase or decrease) in the period during which the lessee is liable to pay a rent under the lease which if it had occurred before the 1st day of July, 1948, would, apart from this regulation, have affected the

value of the relevant claim holding, and the amount of the claim holding shall be adjusted accordingly; and

(*b*) in calculating the restricted value of buildings plant or machinery used for the winning and working or the processing of minerals, no regard shall be had to paragraph (*d*) of regulation 8 of these regulations, but where at the date of the sale a planning permission to win and work such minerals was in force regard shall be had to that permission.

(4) Where the planning permission referred to in the preceding paragraph was granted by a development order, it shall be assumed for the purposes of that paragraph that such permission was for the winning and working, subject to such conditions as the local planning authority might reasonably have imposed of any minerals in adjoining land which at the date of the sale were vested (whether or not subject to payment of a rent or royalty) in the same person as the land sold or were subject to rights enabling him to work them at any future time.

(5) In this and succeeding regulations, the expression " the material date " means—

(*a*) in relation to a mining lease entered into prior to the 1st day of July, 1948, the 1st day of July, 1951, or where no minerals were worked under the lease between the 1st day of July, 1948, and the 1st day of July, 1951, the 1st day of July, 1948; and

(*b*) in relation to a mining lease entered into on or after the 1st day of July, 1948, the date of the lease.

NOTES

S. 5 (4) (a) of the Act of 1954. See *ante*. That provision requires the amount of a Case B payment, in the case of a compulsory or quasi-compulsory purchase, to be the value of the holding reduced by any amount by which the price exceeded the existing use value of the interest (as defined in s. 6 (1) of the Act of 1954, *ante*).

Mining lease. See reg. 1 (3), *ante*.

Subject to such adjustment. The modification to be made is that the amount of the payment is the value of the holding adjusted to take account of any transfer of development value between lessor and lessee arising by reason of short workings accumulated since a material date, capital sums paid under the lease since 1st July 1948, which have an effect on royalty payments, and, in the case of the lessor's holding, any variation in the period during which the lessee is liable to pay rent which, if it had happened before 1st July 1948, would have affected the lessor's holding. As to limits on adjustments, note also the proviso to this regulation, *supra*.

Lands Tribunal. As to appeals to the Lands Tribunal, see s. 13 of the Act of 1954, *ante*.

Material date. See para. (5) of this regulation, *supra*. Where the lease was granted before the coming into general operation of the Act of 1947 (on 1st July 1948) it is 1st July 1951, the date of termination of the period of freedom from development charges granted in respect of such leases (the " moratorium "). See reg. 4 of the T. & C.P. (Minerals) Regulations, 1948 (revoked) (S.I. 1948 No. 1521; Hill, p. 834). See also the note to reg. 8 (*e*), *ante*. If no minerals were worked under the lease in the moratorium period it will be 1st July 1948. In the case of a lease after 1st July 1948, it will be the date of the lease.

Party . . . other than the claim holder. A claim by any person interested in land subject to a mining lease was treated under reg. 5 of the T. & C.P. (Minerals) Regulations, 1949 (revoked) (S.I. 1949 No. 1996; Hill, 2nd Supp., p. B94) (see also reg. 8 (*b*), *ante*) as a claim in respect of every other interest. The claim in respect of one party might, however, have been excluded under the *de minimis* rule. See s. 1 (3) (*a*) of the 1954 Act, *ante*. If adjustment results in the reduction of the claim holding of one party, payment will be made to the other.

S. 5 (1) (b) of the Act of 1954. See *ante*. That provision states what is to be the amount of a Case B payment in the case of private sale. In the case of private sales, the provisions of the Act apply but the value of the claim holding is adjusted to take account of similar shifts in development value between lessor and lessee. In the case of private sales it is probable that only one interest has been the subject of a sale. The payment will be the adjusted value of the holding reduced by any amount by which the sale price exceeded the restricted value (as defined in s. 6 (2) of the Act of 1954, *ante*) of the interest. See also reg. 14, *ante*.

Restricted value of buildings. S. 6 (2) of the Act of 1954, *ante*, would require the value of the buildings to be taken into account under reg. 8 (*d*), *ante*. This fails to take account of the proper restricted value. If the minerals had planning permission the buildings would have been paid for. If there was no planning permission, compensation for the buildings could be claimed under reg. 10, *ante*.

Conditions as might reasonably have been imposed. See reg. 7 (2), *ante*.

17.—Where a payment falls to be paid under Case C in respect of a disposition by a lessor of his interest in land subject to a mining lease, the principal amount of such payment shall be reduced by the value of any increase in the amount of short workings accumulated at the date of the disposition over the amount accumulated at the material date.

18.—(1) In determining the principal amount of a payment to be made under section 10 of the Act of 1954 in the case of the grant, renewal or continuance of a mining lease, the Board, or, as the case may be, the Lands Tribunal shall—

(*a*) have regard only to such part of the claim holding as was attributable to the prospects of winning and working the minerals worked before the 1st day of January, 1955; and

(*b*) include in the capital value of the consideration for the grant, renewal or continuance of such lease any realised development value of those minerals.

(2) In this regulation the expression " realised development value " means the amount by which the aggregate gross amount of rents and royalties (excluding the value of any short workings) payable by the lessee before the 1st day of January, 1955, exceeds the sum of:—

(*a*) the gross amount of any rents which would have been payable for the land included in the lease in which the minerals have been worked from the date of the grant, renewal or continuance of the lease, as the case may be, to the 1st day of January, 1955, if the land had been subject to a permanent restriction against new development; and

(*b*) the amount by which on the same assumption and disregarding the lease, the value of the lessor's interest in the land in which the minerals have been worked, after the working of the minerals, is less than such value before such working.

NOTES

S. 10 of the Act of 1954. That provision, *ante*, deals with cases where leases were granted at rents which reflected liability for development charge.

Minerals worked before 1st January 1955. From that date no development charge is payable and the lessor will be entitled to have the lease modified under s. 55 of the Act of 1954, *ante*, to take account thereof from that date.

Realised development value. If the lessor claim holder received part of the development value of the minerals from the lessee, the addition of the gross amount, to the capital value of the consideration, will reduce the payment from the claim holding.

19.—Except so far as regulation 14 of these regulations has already applied in relation to any new development consisting of the winning and working of minerals, subsection (4) of section 18 of the Act of 1954 shall have effect as if a development charge was not, and would not have fallen to be determined in respect of the winning and working of minerals after the 1st day of July, 1951, under the Mineral Development Charge Set-Off Regulations, 1951, notwithstanding anything in those regulations or in subsection (5) of section 54 of the Act of 1954.

NOTE

S. 18 (4) of the Act of 1954. That provision, *ante*, deals with the deductions which are required to be made from any unexpended balance by reason of new development since 1st July 1948 (with exceptions, *e.g.*, where development charge was paid, or development was exempt from charge by regulations under Part VII of the principal Act or by a provision of Part VIII of that Act). Exemption from actual payment of charge, under the Mineral Development Charge Set-Off Regulations, 1951 (S.I. 1951 No. 2156; Hill, 2nd Supp., p. B263), does not exclude the operation of s. 18 (4) of the Act of 1904. That provision will not operate in the case of minerals which were worked during the moratorium and it is not to operate where the value of the claim holding has already been reduced under reg. 14, *ante*.

20.—In determining under section 26 of the Act of 1954 whether or to what extent the value of an interest in land is depreciated by a planning decision, no account shall be taken of any depreciation in the value of buildings, plant or machinery in respect of which compensation has been paid, or is or would be payable, under regulation 10 of these regulations.

21.—(1) Where any interest of a lessor or a lessee under a mining lease is compulsorily acquired as mentioned in subsection (1) of section 30 of the Act of

1954, the amount of compensation payable under subsection (1) of section 31 of that Act to the lessor or the lessee shall, notwithstanding any other provisions of that section, be ascertained as follows:—

(*a*) the amount of the unexpended balance of established development value attributable to the lessor's interest shall be the whole of such balance reduced by:—

(i) the value, in terms of prices current immediately before the 7th day of January, 1947, of any short workings which at the date of the notice to treat the lessee is entitled to recover;

(ii) the value of any profit royalty in the lessee's interest; and

(iii) the value of the right to receive up to the date of operation of any break clause in the lease such part of any rent payable under the lease as is in excess of a rent equivalent to the existing use value of the land; and

(*b*) the amount of such balance attributable to the lessee's interest shall be the aggregate of the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (*a*) hereof;

Provided that if the lease includes land containing any unworked minerals which is not comprised in the compulsory acquisition this regulation shall have effect as if:—

(i) the reference in the said sub-paragraph (i) to any short workings which at the date of the notice to treat the lessee is entitled to recover were a reference to any short workings which the lessee is unable to recover from such other land;

(ii) the reference in the said sub-paragraph (ii) to the value of any profit royalty in the lessee's interest were a reference to the value of any such profit royalty which the lessee cannot recover by reason of the acquisition

and as if for sub-paragraph (iii) of paragraph (*a*) there were substituted the following paragraph:—

" (iii) the value of the right to receive up to the date of operation of any break clause in the lease any rent in excess of existing use value which is appropriate to the part of the land to which the acquisition relates ".

(2) In this regulation, the expression " profit royalty in the lessee's interest " means (i) the amount (if any) by which the tonnage royalty which would, as between a willing lessor and lessee have been reserved in respect of the minerals comprised in the mining lease, if entered into immediately before the 7th day of January, 1947, exceeds the tonnage royalty payable at the date of the notice to treat in respect of those minerals under the mining lease then existing or (ii) where no such royalty is payable the amount of the first-mentioned tonnage royalty; and " tonnage royalty " means a royalty calculated by reference to the amount of minerals got under a mining lease from time to time or of manufactured articles produced from such minerals or by any similar method.

NOTE

This regulation makes a substantial variation in the procedure under s. 31 of the Act of 1954, *ante*, in relation to the division of any unexpended balance between the interests of lessor and lessee under a mining lease. In the entirely different circumstances of the nature of such a lease this is necessary. Though in the form of a hiring a mining lease partakes very much of a sale.

The whole of the current unexpended balance will be attributed to the lessor's interest less the " development value " (value at 7th January 1947 prices) of any short workings which the lessee is entitled to recover, and the value of any profit royalty in the lessee's interest; *i.e.*, less the elements of development value which have passed to the lessee.

There will also be deducted the value of the right to receive up to the date of any break clause such part of any rent payable as is in excess of a rent equivalent to the existing use value. This deduction should reappear in the existing use value.

The lessee's interest will receive the " development value " of the recoverable short workings and the capital value of the profit royalty.

If there is other mineral land in the lease which is not being acquired from which the lessee can recover the short workings or obtain his profit royalty the deductions in respect thereof from the lessor's interest will not be made.

22.—Subsection (2) of section 33 of the Act of 1954 shall have effect as if the reference in paragraph (*b*) thereof to the purchase of an interest in land included

a reference to the taking of a mining lease of minerals in such land, and as if the subsequent references to that interest included references to the interest of the lessee under such a lease.

NOTE

S. 33 of the Act of 1954. That section provides protection to a prospective purchaser who is buying land with the benefit of planning permission against loss by reason of a subsequent compulsory purchase. If, after being informed on application that there is no intention to purchase, the purchaser completes and the land is acquired in the following five years the price will include the value of the land with planning permission. The regulation provides for this protection being given to an intending mining lessee.

23.—Section 36 of the Act of 1954 shall have effect subject to the following modifications:—

(*a*) any compensation for disturbance shall not be assessed at a greater amount than that at which it would have fallen to be assessed if Part V of the Act of 1947 and sections 30 to 35 of the Act of 1954 had not been enacted, or at a lesser amount than that at which it would have fallen to be assessed if the provisions of Part VI of the Act of 1947 had not had effect in relation to the development values of interests in land; and

(*b*) where an interest affected, as defined in subsection (2) of section 36, is an interest in buildings plant or machinery used for the winning and working or the processing of minerals, as if any part of the value of such buildings, plant or machinery, which was immediately before the injurious act or event attributable to the existence of minerals in the relevant land and was lost by reason of that act or event, formed part of the loss of immediate value and not of the loss of development value.

NOTES

Compensation for disturbance. See ss. 36 and 54 of the Act of 1954, *ante*, and the notes thereto. Reg. 23 (*a*) underlines the difficulty of applying this legislation to mining development. The minerals when severed are part of the product of the manufacturing process and the unexpended balance (in that it represents a payment for minerals which are to be left ungotten) could be regarded a part of the payment for disturbance.

The real claim for disturbance in the case of a mineral undertaking should be the loss of goodwill of the business. This regulation may make possible a claim under this head which it was exceedingly difficult to raise under the operation of s. 119 (4) of the principal Act (now repealed) (Hill, p. 261; 48 Statutes Supp. 205). See also s. 71 and the Eighth Schedule to the Act of 1954, *ante*. Note also *Collins* v. *Feltham Urban District Council*, [1937] 4 All E.R. 189; Digest Supp.; *Wimpey & Co., Ltd.* v. *Middlesex County Council*, [1938] 3 All E.R. 781; Digest Supp.; but see also *Horn* v. *Sunderland Corporation*, [1941] 1 All E.R. 480; [1941] 2 K.B. 26, C.A.; 11 Digest (Repl.) 127, *167*.

S. 36 (2) of the Act of 1954. See *ante*. That subsection is concerned with defining terms for the assessment of compensation for severance and injurious affection. The term with which this regulation is concerned is the term " loss of immediate value ". That term is not concerned, as might appear, with the loss suffered by the existing use; but only with the loss suffered by the existing use up to the time when development becomes imminent. Since the exclusion of mineral development from the existing use is an artificial one, mainly for the purposes of the administration of the planning control provisions of the 1947 Act, the regulation provides that the loss of value in the buildings, plant and machinery caused by the injurious act or event is to be included in the loss of immediate value. See also the provisions of regs. 7 and 10, *ante*.

24.—(1) In determining under section 43 of the Act of 1954 whether or to what extent the value of an interest in land is depreciated by a planning decision or order, no account shall be taken of any depreciation of value of buildings plant or machinery in respect of which compensation has been paid or is payable under regulation 5 of the Town and Country Planning (Minerals) Regulations, 1953, or regulation 10 of the Town and Country Planning (Minerals) Regulations, 1948.

(2) In respect of a planning decision or order relating to land comprised in a mining lease, the value of the relevant holding or, as the case may be, the fraction of the said value which attached to the qualified land, shall, for the purposes of section 44 of the Act of 1954, be adjusted to take account of any variation in the amount of short workings accumulated since the material date and of any variation in the period during which the lessee is liable to pay a rent under the lease which, if it had occurred before the 1st day of July, 1948, would, apart

from this provision, have increased or decreased the value of the claim holding: Provided that no adjustment shall be made in any claim holding so as to increase the amount of such holding except where and to the extent to which an adjustment has been or might be made under this regulation so as to reduce another claim holding in respect of the same minerals.

* * * * *

NOTES

S. 43 of the Act of 1954. See *ante*. That section is concerned with payments of compensation for depreciation in value caused by past planning decisions or revocation or other orders. Here again the artificial exclusion of mineral development from the Third Schedule has to be taken into account. The quasi-Third Schedule tolerance given to buildings, plant and machinery under reg. 10, *ante*, could result in a double payment under s. 43.

Reg. 5 of the T. & C.P. (Minerals) Regulations, 1953. S.I. 1953 No. 820 (Hill, 2nd Supp., pp. B719–B721). That regulation is now replaced by reg. 10, *ante*.

S. 44 of the Act of 1954. See *ante*. That section is concerned with the amount of any payment under Part V of the Act of 1954. Similar provision is made in this regulation as is made in reg. 16, *ante*, in relation to Case B payments, for the adjustment of the value of the claim holding or the fraction attaching to the land in respect of which payment is made to take account of shifts of development value between lessor and lessee.

Material date. See note to reg. 16, *ante*.

THE CENTRAL LAND BOARD (PROVISION OF INFORMATION) REGULATIONS, 1954

DATED 23RD DECEMBER 1954, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTIONS 48 AND 68 OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[S.I. 1954 No. 1720]

EXPLANATORY NOTE

These regulations relate to applications for, and the issue of, certificates giving information about the unexpended balance of established development value of any land. The regulations are made under s. 48 of the Act of 1954, *ante*, and should be read with that section and the notes thereto.

A certificate under s. 48 (1) will show an original unexpended balance or balances subject, however, to any outstanding claims under Part I or Part V of the Act (ss. 1–15 and 42–46), *ante*; see s. 48 (1) (*b*), *ante*, and para. (iii) of the form of certificate in the Second Schedule to these regulations. It will contain a general statement of what was taken by the Board to be the state of the land or parts on 1st July 1948; see s. 48 (1) (*a*), *ante*, and para. (ii) of the form of certificate. It may contain additional information about acts or events calling for deductions from the balance or balances shown; see s. 48 (1), *ante*, and the notes thereto, and the explanatory leaflet " Central Land Board—Provision of Information as to Unexpended Balances of Established Development Value—Issue of Certificates under Section 48 (1) of the Town and Country Planning Act, 1954 ", which is obtainable from the Board. The addresses of Regional Offices of the Board are set out in the notes to S.I. 1954 No. 1599, *ante*. The leaflet, mentioned *supra*, contains also a list of offices and addresses of District Valuers.

Applications for this form of certificate are governed by regs. 3 and 5, *infra*. The prescribed form in the First Schedule to these regulations should be followed; printed forms are obtainable from the Board or from the District Valuer. When a " new apportionment ", as defined by s. 48 (9), *ante*, and reg. 2 (2), *infra*, is involved an additional fee is payable; see s. 48 (8), *ante*, and reg. 5, *infra*. Where the additional fee is sent in the first instance, the total fee of £1 may be sent, and no stamps need then be attached.

Attention is drawn to s. 48 (3), limiting the right of application where an apportionment is involved, and providing for opportunities to dispute a certificate involving apportionments or deductions before it is issued. See also, in this connection, the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*.

The other form of certificate under s. 48, *ante*, is the certificate showing the current balance or balances of land which may be issued to an intending acquiring authority. The authority must be one having the benefit of the Act of 1919 and must have served (or be deemed to have served) a notice to treat on or after 1st January 1955 with a view to the acquisition of an interest in the land. The current balance or balances shown will relate to the time immediately before the service of notice to treat.

Application for this form of certificate is governed by reg. 4, *infra*. The form to be followed is that in the Third Schedule to these regulations. No fee is payable. Objections may be made as provided in s. 48 (3), *ante*; and where the amount has been determined, *i.e.*, after any appeal to the Lands Tribunal, the certificate when issued

will be conclusive evidence of the unexpended balance shown; see s. 48 (6), *ante*. Presumably, a single certificate may be issued including several units of land each having a separate balance within the meaning of ss. 17 and 18, *ante*; cf. the form of certificate under s. 48 (1) in the Second Schedule to these regulations.

A certificate issued to an acquiring authority will show a current balance of land, but not the amounts of any such balance which may be attributable to particular interests subsisting in that land. These amounts may have to be determined for the purposes of s. 31, *ante*, which relates to compensation payable as a supplement to compensation on the basis of existing use. Under that section, *ante*, and the Fifth Schedule, *ante*, it will be necessary to attribute amounts of a balance to particular interests in any land, and also incidentally to divide certain units of land which have a balance so as to deal with units where the same competition of interests exists. See, in this connection, the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), *post*. Those regulations may be more readily operated if the amount of the current balance or balances has been settled first by an application for a certificate under s. 48 (2), *ante*, and reg. 4 of the present regulations.

The Notes printed among the paragraphs of the First and Third Schedules, *infra*, are not authors' annotations but are part of the text of the statutory instrument. They are, however, of the nature of instructions to the applicant and do not seem to be a necessary part of the prescribed forms.

Explanatory leaflet. The Central Land Board have issued a leaflet, accompanying Press Notice CLB/51, dated January 1955, and obtainable from the Board, as mentioned *supra*. This gives a clear explanation of the purpose of certificates under s. 48 (1), *ante*, and of the procedure for obtaining such certificates.

Cross-references. As to what units of land can be said to have an unexpended balance, see the notes to ss. 17, 18 and 48, *ante*. As to disputes, see s. 48 (3), *ante*, and S.I. 1955 No. 54, *post*. See particularly the new r. 5A, inserted in the Lands Tribunal Rules by r. 5 of S.I. 1955 No. 54. As to compulsory acquisitions, see s. 31, *ante*, and S.I. 1955 No. 80, *post*. It seems that a certificate under s. 48 (2) should show the separate balances of the areas which, under the Fifth Schedule, *ante*, will have to be considered separately for the purposes of s. 31 (1), *ante*.

1. Citation and commencement.—These regulations may be cited as the Central Land Board (Provision of Information) Regulations, 1954, and shall come into operation on the first day of January, 1955.

2. Interpretation.—(1) The Interpretation Act, 1889, 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 Act, 1954;

" the Board " means the Central Land Board; and

" new apportionment " means an apportionment which relates wholly or partly to any matters relating to which there has not been a previous apportionment as defined by section 69 of the Act.

3. Certificates under subsection (1) of section 48.—(1) An application for a certificate under subsection (1) of section 48 of the Act shall be in the form prescribed in the First Schedule to these regulations, or a form substantially to the like effect, and shall be made by sending the application to the District Valuer of the Inland Revenue Department.

(2) A separate application shall be made in respect of each parcel of land which is in separate occupation or separately rated at the time of the application, except where a certificate is required in respect of two or more contiguous parcels of land by a person entitled to an interest (including a mortgage or rentcharge) in such parcels or for the purposes of a transaction relating thereto.

(3) A certificate issued under subsection (1) of section 48 shall be in the form prescribed in the Second Schedule to these regulations or a form substantially to the like effect.

4. Certificates under subsection (2) of section 48.—An application for a certificate under subsection (2) of section 48 of the Act shall be in the form prescribed in the Third Schedule to these regulations, or a form substantially to the like effect, and shall be made by sending the application to the District Valuer of the Inland Revenue Department.

5. Payment of fees.—(1) Subject to the following paragraph of this regulation, the fee of five shillings payable on an application for a certificate under subsection (1) of section 48 of the Act shall be paid by attaching to the application form adhesive postage stamps to the value of five shillings.

(2) Where an application involves a new apportionment the further fee of fifteen shillings shall be sent to the Board before the certificate is issued, or such further fee may be paid with the initial fee of five shillings by sending with the application a cheque or a money or postal order for the sum of one pound payable to the Board and crossed.

FIRST SCHEDULE

Application No.....
Claim File No...../../S.....

CENTRAL LAND BOARD

TOWN AND COUNTRY PLANNING ACT, 1954

ORIGINAL UNEXPENDED BALANCE OF ESTABLISHED DEVELOPMENT VALUE

Application for a Certificate under Section 48 (1)

1. NAME(S) AND ADDRESS(ES) OF APPLICANT(S) (in block capitals)

(*a*) Surname(s) (state whether Mr., Mrs., Miss) .....
Other name(s) .....
(*b*) Present postal address(es) .....
.....

Note.—In the case of a joint application the names of each applicant should be given, but the Board will send all communications to the first named applicant unless a written request to the contrary is made.

2. PARTICULARS OF AGENT (if any) to whom the applicant wishes any communications about this application to be sent.

NAME .....
Postal address.....
.....
Telephone Number..... Profession.....

3. PARTICULARS OF LAND to which the application relates:—

(i) Description, situation and extent of land (see note 1) .....
.....
.....
(ii) Nature of the applicant's present interest in the land, if freehold or leasehold (if neither, state " none ") (see note 2).....
.....
(iii) Give particulars of any other freehold or leasehold interest in the land with names and addresses of the persons entitled, so far as known (see note 3)
.....
.....

Note 1. If a map is necessary to enable the land to be identified an accurate map of sufficiently large scale and with sufficient detail for this purpose must accompany this application.

Note 2. Only a person who has an interest in the land to which this application relates is entitled under section 48 (1) of the Act to a certificate if a new apportionment will be required before the certificate can be issued. If therefore on examination of this application it is found that the applicant has no interest in the land and that a new apportionment is involved, no certificate will be issued and he will be informed accordingly. In such cases the application fee of 5/- will not be refunded.

Note 3. Question (iii) need not be answered by applicants who have stated " none " in answer to question (ii).

4. PARTICULARS OF CLAIM ESTABLISHED UNDER PART VI OF THE TOWN AND COUNTRY PLANNING ACT, 1947 (if known)

(i) Board's claim file number (as shown on the determination of development value).....//S.....
(ii) Name(s) and address(es) of the person(s) who owned the land, or interests in the land, on 1st July, 1948.....
.....

Note. The completion of this section is optional but it will assist the Central Land Board if the information is provided.

5. APPLICATION FEE

Under section 48 (8) of the Act a fee of 5/- is payable in respect of this application. This fee must be paid by attaching to this form of application in the space provided below postage stamps to this value. If a new apportionment is necessary to enable the certificate to be given in respect of land to which the application relates, a further fee of 15/- will be payable before the certificate is issued. The Board after examining the application will inform the applicant whether this further fee is payable.

6. OFFICE FOR RECEIPT OF APPLICATIONS

This application form when duly completed and stamped should be sent by post or handed in to the District Valuer of the valuation district within which the land to which this application relates is situated, or to the nearest District Valuer.

7. FORMAL APPLICATION (to be signed by the applicant(s) whose name(s) is/are shown in paragraph 1 above).

I/We hereby request the Central Land Board to issue to me/us a certificate in accordance with the provisions of section 48 (1) of the Town and Country Planning Act, 1954, and of the Central Land Board (Provision of Information) Regulations, 1954.

Signature.....

Date..... .....

A POSTAGE STAMP OR STAMPS TO THE VALUE OF FIVE SHILLINGS SHOULD BE ATTACHED TO THIS FORM IN THE SPACE BELOW.

SECOND SCHEDULE

CENTRAL LAND BOARD
(Address).....
.....
.....

CENTRAL LAND BOARD

ORIGINAL UNEXPENDED BALANCE OF ESTABLISHED DEVELOPMENT VALUE

Certificate issued under Section 48 (1) of the Town and Country Planning Act, 1954

DESCRIPTION OF LAND .....
.....
.....
.....

Central Land Board's reference number .....
Date of issue of certificate.....

TO .....
.....
.....

The Central Land Board hereby certify as follows:—

*(i) [the above described land] [the part(s) of the above described land as indicated in the Schedule annexed] has/have severally / has not an original unexpended balance of established development value within the meaning of section 17 of the Town and Country Planning Act, 1954;

†(ii) on the first day of July nineteen hundred and forty-eight the state of [the above described land] [the said parts] was taken by the Board, for the purposes of Part VI of the Town and Country Planning Act, 1947, to be
.....
.....
.....
.....

†(iii) the following [is] [are] the amount(s) of the said original unexpended balance(s) [subject to any outstanding claims under Part I or Part V of the Town and Country Planning Act, 1954] .....
.....

‡(iv)

Signed.....
Authorised in that behalf by the Central Land Board.

* Delete words inapplicable.
† Delete where there is no original unexpended balance.
‡ Additional information, if any, to be inserted here.

THIRD SCHEDULE

Application No.....
Claim File No...../../S.....

CENTRAL LAND BOARD

TOWN AND COUNTRY PLANNING ACT, 1954

UNEXPENDED BALANCE OF ESTABLISHED DEVELOPMENT VALUE

Application for a Certificate under Section 48 (2)

1. NAME AND ADDRESS OF PUBLIC AUTHORITY (in block capitals)

(*a*) Name of Public Authority.....
(*b*) Postal address .....
.....

2. PARTICULARS OF LAND to which the application relates

(i) Description, situation and extent of land.....
.....
(ii) Description of interest(s) being acquired.....
.....
(iii) Details of the powers under which the acquisition is being effected. (It should be stated whether minerals are excluded from the acquisition.)
.....
(iv) The date on which a notice to treat was served, or was deemed to have been served, with a view to the compulsory acquisition of an interest in the land
.....
(v) Is there more than one interest (i.e., freehold or leasehold) in the land? (Answer " Yes " or " No ").....
(vi) If the answer to (v) above is " Yes " give (if known) the names and addresses of the owners of other interests and the nature of their interests.....
.....
.....
.....
.....

*3. PARTICULARS OF CLAIM ESTABLISHED UNDER PART VI OF THE TOWN AND COUNTRY PLANNING ACT, 1947 (if known)

(i) Board's claim file number (as shown on the determination of development value)...../...../S.....
(ii) Name(s) and address(es) of the person(s) who owned the land, or an interest in the land, on 1st July, 1948.....
.....
.....

Note.—Question 3 (ii) need be answered only if the Board's claim file number is not known.

*4. NEW DEVELOPMENT

Has any new development, within the meaning of section 16 of the Town and Country Planning Act, 1954, been carried out on the land since 1st July, 1948? If so, give details, including date of commencement.....
.....
.....

*5. PREVIOUS ACQUISITIONS

Has any interest in the land previously been compulsorily acquired by a public authority or acquired by agreement by a public authority possessing compulsory purchase powers? If the answer is " Yes " give details.....
.....
.....

6. FORMAL APPLICATION

I/We hereby request the Central Land Board to issue to.....
.....(name of authority) a certificate in accordance with the provisions of section 48 (2) of the Town and Country Planning Act, 1954, showing the unexpended balance of established development value, if any, of the land described in paragraph 2 above immediately before the service of the notice mentioned in that paragraph.

Signature.....
(Rank of Signatory).....
For and on behalf of the above authority.
Date.....

* The completion of these sections is optional but it will assist the Central Land Board if the information is provided.

* * * * *

THE TOWN AND COUNTRY PLANNING (MORTGAGES, RENTCHARGES, ETC.) REGULATIONS, 1955

DATED 6TH JANUARY 1955, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTIONS 66 AND 68 OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[S.I. 1955 No. 38]

EXPLANATORY NOTE

These regulations prescribe, in accordance with s. 66 (1) of the Act of 1954, *ante*, the following matters:

(1) the circumstances in which an application or claim under Parts I, II or V of the Act can be made by a mortgagee, or a rentcharge owner, or trustees of settled land;
(2) the right of such persons to receive a Part I payment, or Part II or V compensation, or part thereof;
(3) the manner in which such a payment or such compensation is to be applied; and
(4) the manner in which a Part I payment or Part V compensation, received under the Act by a mortgagee who is a claim holder is to be applied.

The extent to which these matters are dealt with is explained fully in the notes to s. 66 of the Act, *ante*. Short notes have also been appended to certain of the regulations, *infra*, but these have not been repeated where the same words are used over again in the regulations.

PART I

GENERAL

1. Citation and commencement.—These regulations may be cited as the Town and Country Planning (Mortgages, Rentcharges, etc.) Regulations, 1955, and shall come into operation on the twelfth day of January, 1955.

2. Interpretation and information.—(1) The Interpretation Act, 1889, 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 following expressions have the meanings respectively assigned to them, namely:—

" the Act " means the Town and Country Planning Act, 1954;

" the Board " means the Central Land Board;

" the Minister " means the Minister of Housing and Local Government; 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 mortgage created before the 1st day of July, 1948, the expression " mortgagee " in regulation 3 in relation to that interest and in regulation 4 in relation to compensation under Part V of the Act in respect of that interest shall include a person who was a mortgagee of that interest immediately before it ceased to be subject to that mortgage or a person claiming under such a mortgagee.

(4) Where, by these regulations, any mortgagee or rentcharge owner is empowered to give any notice, or claim any compensation, the Board or the Minister, as the case may be, may require that mortgagee or rentcharge 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 persons interested in such land) and the mortgagee or rentcharge owner shall furnish any particulars or evidence available to him within thirty days of any such requirement.

NOTES

Interpretation Act, 1889. See 24 Halsbury's Statutes (2nd Edn.) 205; see also Hill, pp. 1304–1306.

1st January 1955. See the appointed day order under s. 72 (2) of the Act of 1954 (S.I. 1954 No. 1598), *ante*.

Claim holder. See ss. 2 (8) and 60 of the Act, as to mortgages of a holding by assignment.

Mortgage. Includes any charge or lien on any property for securing money or moneys worth; see the note to s. 66 (1) of that Act, *ante*. In regs. 3 and 4, references are to mortgages of an interest in land. These may include local authority charges, or liens arising on vendor and purchaser transactions, as well as formal mortgages by deed, etc. Note particularly the inclusion of "former" mortgagees for the purposes of applications and claims under Parts I and V of the Act.

Part II

Mortgages

3. Payments under Part I of Act.—(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 is exercisable by reference to an interest in land which is subject to a mortgage created before the 1st day of July, 1948, or was, on or after the 6th day of August, 1947, subject to such a mortgage; and

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

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

(2) Where the Board have 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 mortgagee would be entitled on compliance with paragraph (3) of this regulation to receive the payment or part of the payment under paragraph (5) hereof, the Board shall give notice to that mortgagee that such an application has been made, and shall send a copy of the notice to any other mortgagee 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 mortgagee or his agent.

(3) Any mortgagee 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 payment or part of any payment to which this regulation applies, shall if he wishes to receive such payment or part notify the Board in writing within thirty days of the date of the notice, declaring that the monies secured by the mortgage have not been paid in full or charged exclusively on other land, stating whether any other mortgagee has priority to him, and giving particulars of the interest to which the mortgage 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 mortgage, be exercisable by a mortgagee of the said interest, and where such right is so exercised paragraphs (2) and (3) of this regulation shall apply as if that mortgagee were an original applicant as well as a mortgagee and the original applicant shall be entitled, subject as aforesaid, to make application only in respect of his interest in the part of the land (if any) not subject to the mortgage.

(5) Subject to the foregoing provisions of this regulation and to paragraph (4) of regulation 2, where any payment to which this regulation applies falls to be made and the monies secured by the mortgage have not been paid in full or charged exclusively on other land comprised in the mortgage, the principal amount of the payment and the interest thereon shall be paid to the mortgagee who has given notice to the Board under paragraph (3) of this regulation, or where there is more than one such mortgagee, to the mortgagee having priority, and in either case the mortgagee 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 mortgage, or which was so subject, arising under a power of sale exercised by that mortgagee on the date when the payment is made:

Provided that where the rights of the mortgagee 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 mortgage, or which was so subject.

(6) Notwithstanding anything contained in the last preceding paragraph, where no mortgagee 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.

NOTES

Part I of the Act. Relates to payments to be made by the Central Land Board; see s. 13 of the Act and S.I. 1954 No. 1599, *ante*.

1st July 1948; 6th August 1947. The appointed day, and date of passing, of the Act of 1947. Cf. the notes to s. 5 (3), and the note, " Is (or was) subject to a mortgage " to s. 66 (1), of the Act of 1954, *ante*.

Information in their possession. One source of information will be an original applicant's claim form (U.1) under S.I. 1954 No. 1599, *ante*. The Board have also the forms of claim under ss. 58 and 59 of the Act of 1947. If a mortgagee thinks any Part I payment may arise (other than one under the excepted ss. 3, 8 and 11) he should, as a matter of precaution, remind or inform the Board of the existence of his mortgage. A mortgagee notifying the Board, under para. (3), *supra*, must state whether there is any mortgagee having priority.

Give notice. See s. 67 (3) of the Act, *ante*, applying s. 105 of the principal Act.

30th April 1955. See S.I. 1954 No. 1599, *ante*. As to allowing an extended period, see s. 13 (1) of the Act, *ante*. It will be interesting to see at what stage the Board will see fit to enter into negotiations with a mortgagee. Note that under paras. (3) and (5), *supra*, it will be necessary for the mortgagee to satisfy the Board that the moneys secured have not been paid in full or charged exclusively on other land.

Shall be paid. Note that the payment must be made to the first in priority of those mortgagees who have chosen to ask to receive payment under para. (3), *supra*, though there may be a prior mortgagee who has chosen not to do so.

Proceeds of sale. See s. 105 of the Law of Property Act, 1925 (20 Halsbury's Statutes (2nd Edn.) 668).

4. Compensation under Parts II and V of Act.—(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 mortgage 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 mortgage 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 mortgage, and the mortgagee of the said interest is not the holder of the claim holding which relates to that interest,

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

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

(2) Where the Minister has received from an original applicant a claim for any compensation to which this regulation applies and it appears to the Minister that a mortgagee would be entitled on compliance with paragraph (3) of this regulation to receive the compensation or part of the compensation under paragraph (5) hereof the Minister shall give notice to that mortgagee that such a claim has been made, and shall send a copy of the notice to any other mortgagee 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 mortgagee or his agent.

(3) Any mortgagee 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 payment or part notify the Minister in writing within thirty days of the date of the notice, declaring that the monies secured by the mortgage have not been paid in full or charged exclusively on other land, stating whether any other mortgagee has priority to

him, and giving particulars of the interest to which the mortgage 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 mortgage and subject to the allowing of an extended or further extended period by the Minister, be exercisable by a mortgagee of the said interest, and where such right is so exercised paragraphs (2) and (3) of this regulation shall apply as if that mortgagee were an original applicant as well as a mortgagee and the original applicant shall be entitled, subject as aforesaid, to claim compensation only in respect of his interest in the part of the land (if any) not subject to the mortgage.

(5) Subject to the foregoing provisions of this regulation and to paragraph (4) of regulation 2, where any compensation to which this regulation applies falls to be paid and the monies secured by the mortgage have not been paid in full or charged exclusively on other land comprised in the mortgage, the compensation (including, in the case of any compensation under Part V of the Act, the interest thereon) shall be paid to the mortgagee who has given notice to the Minister under paragraph (3) of this regulation, or where there is more than one such mortgagee, to the mortgagee having priority, and in either case the mortgagee shall be liable to account therefor as if such compensation had been proceeds of sale of the interest in land subject to the mortgage, or which was so subject, arising under a power of sale exercised by that mortgagee on the date when the compensation is paid:

Provided that where the rights of the mortgagee 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 the mortgage, or which was so subject.

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

NOTE

Cross-reference. As to prior rentcharges, see para. 4 (*a*) of the Schedule to these Regulations. As to a mortgage having priority over a rentcharge, see para. 4 (*b*) thereof, *post*.

5. Mortgages of claim holdings.—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 under the original claim holder) and he became entitled to the holding in respect of which that payment has become payable as mortgagee; or

(*b*) to compensation under subsection (2) of section 43 of the Act (which provides for the payment of compensation under Part V of the Act to a person entitled to a claim holding as mortgagee),

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 mortgage arising under a power of sale exercised by that mortgagee on the date when the payment is made or the compensation is paid, as the case may be.

PART III

RENTCHARGES

6. Interpretation.—In this Part of these regulations:—

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

" rentcharge claim " means a claim for a rentcharge payment.

7. Rentcharge claims.—(1) Where the Minister 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 rentcharge created—

(*a*) 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;
(*b*) in a case of compensation payable under the said Part V, before the said first day of July,

the Minister shall give to any rentcharge owner appearing to him to be entitled to a rentcharge payment notice of the fact that such a claim has been made, and such notice may be sent to the last known address of any such rentcharge owner or his agent.

(2) Any rentcharge owner who has received a notice under the last preceding paragraph and who is entitled to receive any rentcharge payment shall make a rentcharge claim to the Minister within thirty day of the date of the said notice.

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

(*a*) the name and address of any agent whom the rentcharge owner appoints to act for him in connection with the payment of a rentcharge payment;
(*b*) the names and addresses of the owner of the charged land and the rentcharge owner;
(*c*) the amount of the rentcharge;
(*d*) the date when the rentcharge was created;
(*e*) particulars of the charged land, including if necessary such a plan of suitable size as may be requisite to identify the land; and
(*f*) particulars of any other rentcharge affecting the charged land known to the rentcharge owner.

(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, the right to claim compensation shall, subject to the allowing of an extended or further extended period by the Minister, be exercisable by any rentcharge owner, in so far as it is necessary to enable a rentcharge payment to be made to him or any other rentcharge owner, as if he were an original applicant, and such rentcharge owner shall with his claim under Part II or Part V of the Act furnish to the Minister a rentcharge claim; and where such right is so exercised, the original applicant shall be entitled to any compensation found to be payable in respect of the charged land in excess of any rentcharge payments, and subject as aforesaid may claim compensation only in respect of his interest in the part of the land (if any) not subject to the rentcharge.

NOTES

Give notice. Para. (1), *supra*, varies the requirements of s. 105 of the Act of 1947 (Hill, p. 240; 48 Statutes Supp. 186) as applied by s. 67 (3) of the Act of 1954, *ante*.

Period prescribed. See ss. 22 (2) and 45 (1) proviso of the Act, *ante*.

8. Determination of payments.—The provisions of the Schedule to these regulations (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) shall have effect for the purpose of determining whether a rentcharge payment is payable in respect of a rentcharge claim, and the amount of any such payment.

9. Disputes.—(1) Where a rentcharge claim has been duly made under paragraph (2) or paragraph (4) of regulation 7 in respect of a rentcharge (in this regulation referred to as " the rentcharge in question ") the Minister shall, on giving notice of his findings as to the amount of compensation, send a notice (in this regulation referred to as " a rentcharge notice ") to the original applicant and the owner of the rentcharge in question.

(2) A rentcharge notice shall specify:—

(*a*) the amount of the rentcharge payment which the Minister has determined to be payable in respect of the rentcharge in question, the annual equivalent of the rentcharge payment and the manner in which such amount and value have been ascertained under the Schedule to these regulations; and
(*b*) the amount of any rentcharge payment which the Minister has determined to be payable in respect of any prior rentcharge or would have so determined on a rentcharge claim by that rentcharge owner:

Provided that where no rentcharge 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 rentcharge notice has been sent wishes to dispute any part of that notice, he may, within thirty days of the issue of the rentcharge notice, give in writing to the Lands Tribunal a notice of dispute specifying the part or parts of the rentcharge notice to which the dispute relates, and thereupon the dispute shall be referred to the Lands Tribunal.

(4) Where a notice of dispute has been given under the last preceding paragraph, the Minister shall notify the other person to whom the rentcharge notice was sent, and, where the dispute relates to or affects a rentcharge payment in respect of a rentcharge other than the rentcharge in question, shall notify the owner of that rentcharge.

(5) Where after receipt of a rentcharge notice any person signifies in writing to the Minister his agreement to that notice, he shall not thereafter be entitled to give a notice of dispute under paragraph (3) of this regulation.

(6) The original applicant and the owner of the rentcharge in question and, so far as the dispute relates to or may affect the amount of a rentcharge payment in respect of a rentcharge other than the rentcharge in question, the owner of that rentcharge, 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.

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

Provided that where on a reference of the Minister's findings as to the compensation payable under Part II or Part V of that Act the amount of such compensation has been varied by the Lands Tribunal, that variation shall be taken into account, but, save as aforesaid, the Tribunal shall not by their decision vary such amount.

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

NOTES

Notice of dispute. See r. 3 (2A) of the Lands Tribunal Rules, 1949, inserted by the Lands Tribunal (Amendment) Rules, 1955 (S.I. 1955 No. 54), *post*. Notice is to be given in the form (Form 1A) printed in the Schedule to the Amendment rules (and inserted in the First Schedule to the 1949 Rules, by r. 15 of the Amendment rules), *post*.

On compliance with the rules of the Tribunal. See r. 5A as to appearance by interested persons other than appellants (inserted by r. 5 of the Amendment rules (S.I. 1955 No. 54), *post*).

PART IV

TRUSTS OF A SETTLEMENT

10.—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 settlement, then—

(*a*) the right to make the application or to claim compensation, as the case may be, shall be exercisable by the trustees of the settlement;

(*b*) where an application or claim has been made by reference to such an interest as aforesaid and a 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 the interest thereon) shall be paid to the trustees of the settlement.

NOTE

Para. (b). Note that the words are, " has been made "; *not*, " has been so made ".

Reg. 8

SCHEDULE

Provisions for Determining Rentcharge Payments

1. Definitions.—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 a 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.

2. Entitlement to rentcharge payment.—(1) Where the right to claim any compensation under Part II or Part V of the Act is exercisable by reference to an interest in land (being either a fee simple or a tenancy granted for a term of one hundred years or more) and—

(*a*) there was subsisting at the material time, a rentcharge 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 first day of July,

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

(*b*) the amount of the rentcharge 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 the charged land ascertained in accordance with paragraph 6 of this Schedule,

then, subject to paragraph 4 of this Schedule, that rentcharge owner shall be entitled, if he makes a rentcharge claim, to receive from the Minister, 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:

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 rentcharge as is mentioned in the preceding sub-paragraph, then—

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

(*b*) where a rentcharge owner fails to make a rentcharge 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 rentcharge payments to be made to other rentcharge owners as would have been payable if he had made such a claim.

3. Extinguishment of part of rentcharge.—Where a rentcharge owner receives any sum under paragraph 2 of this Schedule, so much of the rentcharge as is equal to the annual equivalent of the said sum shall be 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 any other land subject to the rentcharge on the other hand, the proper share of the persons interested in the charged land of the liability for the residue of the rentcharge in respect of any period after the extinguishment shall be treated as being the rentcharge attributable to the charged land, less the annual equivalent of the sum so paid.

4. Priority between rentcharges and mortgages.—Where a rentcharge owner makes a rentcharge claim and the right to receive the compensation in respect of the interest in land out of which (or out of which together with any other interest) the rentcharge was created is vested by virtue of the provisions of regulation 4 of these regulations in a mortgagee of that interest, then—

(*a*) if the rentcharge had priority to the mortgage, the sum payable to the mortgagee under regulation 4 shall be reduced by the amount required for giving effect to the right conferred upon the rentcharge owner under paragraph 2 of this Schedule; and

(*b*) if the mortgage had priority to the rentcharge, the Minister shall, when making the payment of any compensation to a mortgagee in pursuance of regulation 4, give to that mortgagee notice of—

(i) the name and address of the rentcharge owner who has claimed the rentcharge payment, or, if that owner has appointed any agent to act

for him in connection with the payment of such a sum, the name and address of that agent; and

(ii) the amount of the rentcharge payment which the Minister, or the Lands Tribunal if any dispute has been referred to them, has determined to be payable to the rentcharge owner out of compensation,

and the mortgagee to whom the compensation is paid under regulation 4 shall give effect to the right conferred by paragraph 2 of this Schedule on the rentcharge owner out of the sum to which the person who would have been entitled to the compensation apart from regulation 4 will become entitled under the provisions of paragraph (5) of regulation 4 relating to a mortgagee accounting for any compensation as if it were proceeds of a sale.

5. Provisions as to registered land.—In cases in which the title to a rentcharge or to land subject thereto is registered under the Land Registration Act, 1925, such provision may, without prejudice to the generality of section one hundred and forty-four of that Act, be made by rules under that section as may be expedient in consequence of the provisions of this Schedule, and in particular for securing (by the imposition of conditions as to the exercise of the right thereby conferred or otherwise) that the extinguishment of any part of a rentcharge by virtue of this Schedule shall not take effect without notice thereof being entered in the register.

6. Computation of rentcharge payment.—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 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 that 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 to the charged land the appropriate part 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 easement 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 amount so far as attributable to any of the charged land, of—

(i) any rentcharge having priority to the rentcharge in question to which the fee simple in the charged land was subject at the material time, or, where that rentcharge was created out of a tenancy of the land, to which either the fee simple therein or that tenancy or any superior tenancy thereof was subject at that time; and

(ii) where that rentcharge was created out of a tenancy of the charged land, the rent reserved by the lease for the year current at the material time:

Provided that in ascertaining the available annual limited value of the charged land no deduction shall be made from the annual limited value thereof in respect of any such amount as aforesaid, in so far as the owner of the rentcharge in question is liable for the payment of that amount as between himself and the owner of the interest out of which the rentcharge was created;

(*c*) the amount attributable to any land of a rentcharge, or of rent reserved by a lease, shall, where at the material time that land was the only land subject to the rentcharge, or out of which the rent issued, be taken to be the whole amount of the rentcharge payable or of the rent reserved for the year current at the said time, and where the charged land was not the only land subject to the rentcharge, 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 rentcharge or rent which may have been made otherwise than so as to be binding on the owner of that rentcharge or on the landlord, as the case may be, before the material time; and

(ii) subject as aforesaid, to the proportion borne by the annual value of that land immediately before the relevant decision to the annual value of the other land subject to the rentcharge or rent immediately before that decision;

(*d*) the capital equivalent of the excess of the amount of the rentcharge so far as attributable to the charged land over the available annual limited value of that land shall be taken to be that excess multiplied by the number of years

purchase which the rentcharge might have been expected to realise on a sale thereof made 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.

* * * * *

THE LANDS TRIBUNAL (AMENDMENT) RULES, 1955

DATED 10TH JANUARY 1955, MADE BY THE LORD CHANCELLOR UNDER SECTION 3 OF THE LANDS TRIBUNAL ACT, 1949

[S.I. 1955 No. 54]

EXPLANATORY NOTES

The Lands Tribunal came into being on 1st January 1950, by virtue of the Lands Tribunal (Appointed Day) Order, 1949 (S.I. 1949 No. 2335; Hill, 2nd Supp., p. B139), made under the Lands Tribunal Act, 1949 (Hill, 2nd Supp., pp. B1–B24; 61 Statutes Supp. 32 *et seq.*). To the Tribunal was transferred the jurisdiction, in England and Wales, of the official arbitrators under the Act of 1919 (Hill, pp. 701–711; 3 Halsbury's Statutes (2nd Edn.) 975–984), including their jurisdiction over matters required to be decided by them under enactments subsequent to the Act of 1919. The Tribunal was given additional jurisdiction by the Lands Tribunal Act itself, and this has subsequently been further extended.

The original jurisdiction included the following matters connected with the Act of 1947:—

A. *References.*

(1) References of disputed compensation payable for the compulsory acquisition of land by an authority entitled to the benefit of the Act of 1919;
(2) References of similar disputes as to the injurious affection caused to other land where compensation is payable under the Lands Clauses Acts by such an authority;
(3) References relating to other incidental matters on compulsory acquisition; *e.g.*, the apportionment of rentcharges, etc., under s. 116 of the Lands Clauses Consolidation Act, 1845 (3 Halsbury's Statutes (2nd Edn.) 947);
(4) References of disputed compensation for planning restrictions in those cases where compensation is payable under the Act of 1947. S. 110 of that Act (as amended) requires compensation under ss. 20, 22 and 27 thereof to be determined in the same manner as compensation for a compulsory acquisition (see Hill, pp. 245, 84, 88, 101; 48 Statutes Supp. 190, 58, 61, 71).
(5) References of disputed compensation for abortive expenditure under s. 79 of the Act of 1947 (Hill, p. 197; 48 Statutes Supp. 151). See also that section as applied by reg. 10 of the T. & C.P. (Minerals) Regulations, 1954 (S.I. 1954 No. 1706), *ante*.

B. *Appeals against Determinations.*

(6) Appeals against the determination, by the Central Land Board, of Part VI claims under the Act of 1947.
(7) Appeals against determinations made for the purposes of the War Damage Scheme under s. 59 of the Act of 1947; cf. the notes to s. 57 of the 1954 Act, *ante*; including appeals against the determination of rentcharge claims thereunder.

The distinction between a reference and an appeal against a determination lies in the fact that (in the latter case) the determining authority is itself the respondent to the appeal against its determination. The present Lands Tribunal (Amendment) Rules provide for appeals against determinations (in the nature of findings, apportionments, proposals, notice, or calculations, as the case may be) made by the following authorities under the Act of 1954, *ante*:—

(*a*) The Central Land Board, as the authority determining Part I payments (s. 13); or issuing certificates as to original or current unexpended balances of established development value (s. 48 (1) and (2));
(*b*) The Minister, as the authority determining the amount of compensation payable under Part II or Part V (ss. 27 and 45); or where the Minister proposes to make an Exchequer contribution to the compensation payable for depreciation in the value of an interest in land by a revocation or modification of planning permission (s. 40); or serves a rentcharge notice, under S.I. 1955 No. 38, *ante* (s. 66).
(*c*) The local planning authority (or delegate authority) apportioning compensation for depreciation for the purposes of registration as a local land charge (s. 39).

(*d*) A Government department, local or public authority, or other acquiring authority having the benefit of the Act of 1919, where the authority propose to pay supplementary compensation by reference to an unexpended balance or balances of established development value (s. 31). In this case a dispute may also be dealt with on the reference of the dispute as to the compensation payable on the compulsory acquisition, see regs. 3 to 5 of the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), *post*; and r. 13A of the Lands Tribunal Rules inserted by r. 13 of the present amendment rules.

The present amendment rules modify the Lands Tribunal Rules, 1949 and 1951 (Hill, 2nd Supp., pp. B116–B139), to allow disputes under ss. 13, 27, 31, 39, 40, 45, 48 or 66 (mentioned, *supra*) to be heard as Appeals against Determinations under Part I (rr. 3 to 7 as amended) of the original Rules. They make provision for persons to be heard who are not the appellant but are entitled to be heard in the dispute. They also provide for joinder of parties on a reference, to enable persons who are entitled to take part in a dispute as to the application of s. 31 to be heard, if that question arises on the reference of a dispute as to the compensation payable for the compulsory acquisition, as mentioned in reg. 5 of S.I. 1955 No. 80, *post*.

The present rules also provide for matters arising under the Landlord and Tenant Act, 1954 (87 Statutes Supp. 32), which are not relevant here, and make a number of consequential amendments to Part V of the original rules, relating to procedure. Form 1A, added to the First Schedule to the Lands Tribunal Rules, 1949, by the Schedule to the present rules, *infra*, is the form to be used in referring a dispute under the sections of the Act of 1954, mentioned *supra*. It will be observed that although the various sections of the Act itself, and the Regulations thereunder, use the expression "refer", the present rules prescribe an "Appeal" not a "Reference" (except as an alternative procedure under s. 31). This is in keeping with the purpose of the Act as a whole, which defines the circumstances in which Part VI claims established under the Act of 1947 will be satisfied. The Act does not purport to provide a general right of compensation for planning restrictions, and there is no true analogy between the rights it does provide and those under ss. 20, 22 and 27 of the principal Act. Those sections of the principal Act give a right of compensation which is determined, if disputed, on a "Reference", not an "Appeal".

Cross-references to Regulations.

The present amendment rules should be read with the regulations made under the relevant sections of the Act of 1954; see the following statutory instruments:—

1954 No. 1599, *ante*.	The Central Land Board Payments Regulations, 1954 (s. 13), see regs. 6 and 7.
1954 No. 1600, *ante*.	The T. & C.P. (Compensation) Regulations, 1954 (ss. 27, 39, 45), see regs. 7 and 8. See also (s. 40) reg. 10 thereof.
1954 No. 1720, *ante*.	The Central Land Board (Provision of Information) Regulations, 1954 (s. 48).
1955 No. 38, *ante*.	The T. & C.P. (Mortgages, Rentcharges, etc.) Regulations, 1955 (s. 66), see reg. 9. See also these Regulations generally as to applications and claims in certain circumstances by mortgagees of land, rentcharge owners, and trustees, in default of, or on behalf of, the person otherwise entitled to apply or claim.
1955 No. 80, *post*.	The Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (s. 31), see regs. 3 and 4 ("Appeals"); reg. 5 ("References"); and reg. 6.

(*Extracts*)

1.—(1) These Rules may be cited as the Lands Tribunal (Amendment) Rules, 1955, and the Lands Tribunal Rules, 1949 and 1951, and these Rules may be cited together as the Lands Tribunal Rules, 1949 to 1955.

(2) In these Rules, unless the context otherwise requires—

(*a*) a rule referred to by number means the rule so numbered in the Lands Tribunal Rules, 1949, as amended by the Lands Tribunal (Amendment) Rules, 1951;

(*b*) a form referred to by number means the form so numbered in the First Schedule to the Lands Tribunal Rules, 1949.

(3) These Rules shall come into operation on the seventeenth day of January, 1955.

NOTE

Lands Tribunal Rules, 1949 and 1951. These are the Lands Tribunal Rules, 1949 (S.I. 1949 No. 2263; Hill, 2nd Supp., pp. B116–B139); and the Lands Tribunal

(Amendment) Rules, 1951 (S.I. 1951 No. 2004), which, so far as relevant, are incorporated in the 1949 Rules as printed in Hill, 2nd Supp. (see also *ibid.*, p. B249).

2 to 7. [Amend rr. 2 to 7 of the 1949 Rules, *v. infra.*]

NOTES

Rule 2 of these amendment rules provides that in " Rule 2 " (*i.e.*, in r. 2 of the 1949 Rules, see r. 1 (2) (*a*), *supra*) a new definition shall be substituted for the definition of " interested person ". This amendment is set out, *infra*, where rr. 2 to 7 of the 1949 Rules are printed as amended.

Rule 3 (*a*) of the present amendment rules inserts a new para. (2A) in r. 3 of the 1949 Rules, set out, *infra*. This requires notice of an appeal under s. 13, 27, 31, 39, 40, 45, 48 or 66 of the T. & C.P. Act, 1954, *ante*, to be substantially in accordance with Form 1A, added to the Schedule to the 1949 Rules, by r. 15 of and the Schedule to the present amendment rules, *post*.

Rule 3 (*b*) of these amendment rules substitutes the word " enactment " for the words " Order in Council " in r. 3 (4) of the 1949 Rules, set out, *infra*. Rule 4 makes a similar amendment in r. 4 of the 1949 Rules.

Rule 5 of these amendment rules inserts a new r. 5A, headed " Appearance by interested parties other than appellants " after r. 5 of the 1949 Rules. The new rule is set out, *infra*, among the extracts from the 1949 Rules. Its purpose can best be understood by reference, for example, to reg. 6 of the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), *ante*. Under reg. 6 (1) of those Regulations, notice of appeal can be given

(1) by the applicant for the Part I payment in question;
(2) any other person who has received particulars of an apportionment under reg. 5 (3); and
(3) any other person who claims to be entitled to an interest in land substantially affected by an apportionment;

provided that persons who have received a notice and signified their assent thereto in writing cannot thereafter appeal (reg. 6 (2)). Subject to that, all the above persons may become appellants by giving a notice of appeal, as required by r. 3 (2A) of the Lands Tribunal Rules, in Form 1A.

Reg. 6 (3) of the above-mentioned regulations (S.I. 1954 No. 1599), *ante*, further provides that the applicant, and so far as the dispute relates to an apportionment, any other person to whom particulars of that apportionment have been given or who establishes that he is entitled to an interest in land which is substantially affected by the apportionment shall, on compliance with the Lands Tribunal Rules, be afforded an opportunity to be heard on any dispute before the Tribunal under that regulation. The new r. 5A therefore provides for appearance by such interested persons. A person who receives a notice that a dispute has been referred, under reg. 6 (1), will have 21 days to enter an appearance in that dispute. A person who does not receive such notice may give notice of his intention to appear not later than 3 days before the day fixed for hearing.

Rule 6 of these amendment rules substitutes new paras. (1) and (2) in r. 6 of the 1949 Rules. This is consequential on the insertion of the new r. 5A in those rules. The amended wording of r. 6 will now enable further and better particulars to be required from, and supplied to, interested persons who are not appellants but who have given notice of intention to appear. The Tribunal may have to prepare extra copies of documents for this purpose; see, in this connection, the new Fee No. 12 prescribed by the Third Schedule to the 1949 Rules as amended by r. 16 of the present amendment rules, *post*.

Rule 7 of the present amendment rules affects a consequential amendment in the wording of r. 7 of the 1949 Rules, set out, *infra*.

Rules 2 to 7 of the 1949 Rules as amended.

For convenience r. 2 (Interpretation), as amended, and Part I (rr. 3 to 7), as amended, of the 1949 Rules, are set out below. The omission of certain words, indicated by dots in r. 2, was required by the 1951 Rules. Words added by the 1955 Rules are shown in square brackets. Words revoked thereby are italicised.

2. Interpretation.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

" The Act " means the Lands Tribunal Act, 1949;

" The Act of 1919 " means the Acquisition of Land (Assessment of Compensation) Act, 1919;

" The President " means the President of the Lands Tribunal, or the member appointed under the provisions of the Act to Act for the time being as deputy for the President;

" Tribunal " means the member or members of the Lands Tribunal selected to deal with a case under the provisions of sub-section (2) of section 3 of the Act;

"The registrar" and "the office" mean respectively the registrar and the office for the time being of the Lands Tribunal;

"Appeal against a determination" means an appeal against a determination of any question by any Government department, authority or person from which . . . an appeal lies to the Lands Tribunal and to which appeal the determining authority is the respondent;

"*Interested person*" *means, in the case of an appeal against a determination, any person at whose instance an appeal against the determination will lie under the enactment conferring a right of appeal or, where the appeal is against a determination by the Central Land Board, the claimant within the meaning of the Claims for Depreciation of Land Values Regulations,* 1948, *or, as the case may be, the Planning Payments (War Damage) Regulations,* 1949;

["Interested person" means, in the case of an appeal against a determination, any person at whose instance an appeal against the determination will lie under the enactment conferring the right of appeal or, where the appeal is against a determination by the Central Land Board under the Claims for Depreciation of Land Values Regulations, 1948, or the Planning Payments (War Damage) Regulations, 1949, the claimant within the meaning of the former or, as the case may be, the latter of those Regulations;]

"Net annual value" means the net annual value of the hereditament to which an appeal relates as appearing in the valuation list, or, if the net annual value of the hereditament does not appear in the valuation list, the rateable value as so appearing;

"Valuation list" includes a draft valuation list;

"Valuation officer" has the meaning assigned to it by section 33 of the Local Government Act, 1948.

(2) A Form referred to by number means the Form so numbered in the First Schedule to these Rules.

(3) The Interpretation Act, 1889, shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

PART I

Appeals against Determinations

3. Notice of appeal.—(1) An appeal against a determination may be instituted by sending to the registrar in duplicate a written notice of appeal.

(2) In the case of an appeal against a determination by the Central Land Board under the Claims of Depreciation of Land Values Regulations, 1948, or the Planning Payments (War Damage) Regulations, 1949, the notice of appeal shall be substantially in accordance with Form 1.

[(2A) In the case of an appeal against a determination by the Minister of Housing and Local Government, the Central Land Board, an acquiring authority or a local planning authority under section 13, 27, 31, 39, 40, 45, 48 or 66 of the Town and Country Planning Act, 1954, the notice of appeal shall be substantially in accordance with Form 1A.]

(3) In the case of an appeal against any determination by the Commissioners of Inland Revenue in respect of which, but for the provisions of the Act, there would be a right of appeal to one of the panel of referees appointed under Part I of the Finance (1909–10) Act, 1910 (including an appeal against a decision of the Commissioners under section 60 of that Act) the notice of appeal shall be substantially in accordance with Form 2.

(4) In the case of any other appeal against a determination, the notice of appeal shall, unless otherwise provided by the *Order in Council* [enactment] by virtue of which an appeal against the determination lies to the Lands Tribunal, state:—

(i) the name and address of the appellant;
(ii) the name of the determining authority and the date, reference number and short particulars of the determination;
(iii) the description of the land or hereditament which is the subject of the appeal;
(iv) the question which the appellant requires to be determined by a tribunal, including a statement of the figure representing the amount or value which the appellant requires to be so determined;
(v) the grounds of appeal;
(vi) whether the appellant does or does not propose to call an expert witness to give evidence in support of any valuation;
(vii) an address to which communications regarding the appeal should be sent.

The President may, if he thinks fit, prescribe forms of notice of appeal for use in connection with appeals to which this paragraph applies.

4. Time for giving notice.—A notice of appeal shall not be valid unless it is given by an interested person and is sent to the registrar within 30 days from the date on which notice of the determination was served upon the appellant, or within such other time as may be prescribed by the *Order in Council* [enactment] by virtue of which an appeal against the determination lies to the Lands Tribunal.

5. Entry of appeal.—(1) Upon receiving a notice of appeal, the registrar shall enter particulars of the appeal in the Register of Appeals against Determinations and shall forthwith send the duplicate notice to the determining authority and shall inform the appellant and the determining authority of the number of the appeal entered in the register, which shall thereafter constitute the title of the appeal.

(2) Upon receiving the duplicate notice of appeal the determining authority shall forthwith send to the registrar a copy of the determination referred to therein.

[**5A. Appearance by interested persons other than appellants.**—(1) Where an appeal against a determination is pending, any interested person (not being the appellant), who claims to be entitled, under the enactment conferring the right of appeal, to be heard in the dispute, shall, if he intends to appear at the hearing, give written notice of his intention to the registrar, the determining authority and the appellant.

(2) Notice of intention to appear given by a person who has received a notice from the determining authority that a dispute has been referred to the Lands Tribunal shall be given not later than 21 days after receipt by him of that notice; and notice of intention to appear given by any other person shall be given not later than 3 days before the day fixed for the hearing.

(3) Every person giving notice of intention to appear under this Rule shall state in the notice—

(i) whether he has been notified that the dispute has been referred to the Lands Tribunal, and if so, by whom and on what date he was so notified;

(ii) the interest in land whereby he claims to be a person entitled to be heard in the dispute;

(iii) whether he intends to appear separately or jointly with some other person;

(iv) the grounds on which he intends to rely;

(v) whether he does or does not propose to call an expert witness;

(vi) an address at which documents may be served upon him.

(4) The registrar shall, on being requested so to do by any person who has given notice of intention to appear or who satisfies the registrar that he is a person qualified to give such a notice, supply such person with copies of the notice of appeal and of any relevant notice of intention to appear received by the registrar from any other person.

(5) Where a dispute as to a proposed apportionment or calculation has been referred to the Lands Tribunal under section 48 of the Town and Country Planning Act, 1954, any person who has received notice under paragraph (*b*) of subsection (3) of that section of the proposed apportionment or calculation, and any other person who is entitled to an interest in land substantially affected by the proposed apportionment or calculation, shall be entitled to be heard in the dispute and the foregoing provisions of this Rule shall apply accordingly.]

6. Power to require further particulars.—(1) *Subject to any directions which may be given by the President, the registrar may, at any time after receiving a valid notice of appeal, require an appellant to furnish a statement setting out further and better particulars of the grounds of appeal and any facts and contentions relevant thereto.*

(2) *The appellant shall, within such time as may be prescribed by the registrar, not being less than 14 days after the date of the requirement, send the statement to the registrar in duplicate and shall send copies thereof to such other appellant, if any, being an appellant who has given notice of appeal against the same determination, as the registrar may direct.*

[(1) Subject to any direction which may be given by the President, the registrar may, at any time after receiving notice of appeal or notice of intention to appear, require the person giving the notice to furnish a statement setting out further and better particulars of the grounds on which he intends to rely and any facts and contentions relevant thereto.

(2) The statement shall be sent in duplicate to the registrar within such time as he may prescribe, not being less than 14 days after the date of the requirement, and copies of the statement shall be sent to such other persons, if any, (being persons who have given notice of appeal or notice of intention to appear in relation to the same proceedings) as the registrar may direct.]

(3) Upon receipt of the statement the registrar shall forthwith send a duplicate copy thereof to the determining authority.

7. Power to require particulars of determination.—The President or the tribunal may at any time request the determining authority to furnish particulars of any determination which appear to be requisite for the decision of the appeal, and thereupon the determining authority shall furnish the particulars to the registrar *and to the appellant* [the appellant and any person from whom the authority has received a notice of intention to appear at the hearing].

8. [*Omitted.*]

NOTE

This inserts a new Part IIA, "Other Appeals", comprising new rules (rr. 10A, 10B and 10C) in the 1949 Rules. These prescribe a procedure for Appeals which do not fall under Part I (Appeals against Determinations) or Part II (Appeals from local valuation courts), *e.g.*, for appeals from a decision of a valuation officer on the rateable value of premises for the purpose of s. 37 of the Landlord and Tenant Act, 1954. A consequential amendment is also made to the wording of Fee No. 1, prescribed by the Third Schedule to the 1949 Rules, by r. 16 (*a*) of the present amendment rules. A new form 3A is added to the First Schedule to the 1949 Rules, for the purposes of "Other Appeals" under the new Part IIA thereof, by r. 15 (*a*) of the present amendment rules.

9. The following Rule shall be inserted after Rule 13:—

"13A. **Joinder of parties for purposes of section 31 of Town and Country Planning Act, 1954.**—(1) Where a reference as to the amount of compensation payable to the owner of a relevant interest within the meaning of section 30 of the Town and Country Planning Act, 1954, involves a dispute as to the application of section 31 of that Act, any person who is entitled to be a party to that dispute under any regulations made by the Minister of Housing and Local Government under the said section 31 shall, if he intends to appear at the hearing, give written notice of his intention to the registrar and the parties to the reference not later than 21 days after receiving a notice under those regulations that he is so entitled.

(2) Every person giving notice of intention to appear under this Rule shall state in the notice—

(i) the date on which he was notified that he was entitled to be a party to the dispute;
(ii) whether he intends to appear separately or jointly with some other person;
(iii) the grounds on which he intends to rely;
(iv) whether he does or does not propose to call an expert witness;
(v) an address at which documents may be served upon him.

(3) The registrar shall, on being requested so to do by any person who has given notice of intention to appear or who satisfies the registrar that he is a person qualified to give such a notice, supply such person with copies of the notice of reference and of any relevant notice of intention to appear received by the registrar from any other person."

NOTES

After r. 13. *I.e.*, this new rule (r. 13A) is to be inserted at the end of Part III (rr. 11–13) of the Lands Tribunal Rules, 1949, which deals with procedure on "References". It is added to deal with the circumstances contemplated by reg. 5 of the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), *post*.

Relevant interest. See s. 30 (2) of the T. & C.P. Act, 1954, *ante*. It means the interest which is acquired compulsorily by an authority having the benefit of the Act of 1919.

S. 31. That section, *ante*, authorises the payment of compensation additional to that calculated on the basis of existing use in the case of certain compulsory acquisitions of an interest in land (the "relevant interest") where there is an unexpended balance of established development value.

Regulations . . . under . . . s. 31. See the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80), particularly reg. 5. For an alternative procedure, by way of a proposal by the acquiring authority followed, in case of dispute, by an appeal under Part I of the Lands Tribunal Rules, set out *ante*, see regs. 3 and 4 of those regulations, *post*. Under the present new rule (r. 13A, *supra*) persons affected may be heard, on the reference, where that procedure has not been used.

10. [*Omitted.*]

NOTE

This rule amends r. 14 in Part IV of the 1949 Rules (Applications under s. 84 of the Law of Property Act, 1925). It is consequential on the amendments made by the Landlord and Tenant Act, 1954.

11. In sub-paragraph (ii) of paragraph (1) of Rule 23 for the words "in the case of an appeal against the decision of a local valuation court" there shall be substituted the words "in the case of any other appeal".

NOTE

R. 23 of the 1949 Rules accordingly reads as follows:

23. Consolidation of appeals or references.—(1) Where more than one notice of appeal or notice of reference has been given in respect of the same land or hereditament, an application to the registrar, in accordance with the provisions of Rule 22, for an order that the appeals or references shall be heard together may be made by—

(i) the determining authority, in the case of an appeal against a determination;

(ii) any person who has given notice of intention to appear in opposition to the appeal, *in the case of an appeal against the decision of a local valuation court* [in the case of any other appeal];

(iii) the authority liable for the payment of compensation, in the case of a reference.

(2) Where any such notices of appeal or notices of reference have been given as are referred to in the last foregoing paragraph, the President or the tribunal may, without any application in that behalf, make an order that the appeals or references shall be heard together.

(3) An order for consolidation may be made with respect to some only of the matters to which the notices of appeal or notices of reference relate.

The amendment is consequential on the insertion of a new Part IIA in the 1949 Rules (rr. 10A, 10B and 10C relating to " Other Appeals ") after Part II (" Appeals from local valuation courts "). It does not therefore affect the application of r. 23 to Appeals against Determinations (including those under the T. & C.P. Act, 1954, *ante*) under Part I of the 1949 Rules, mentioned in r. 23 (1) (i), *supra*.

Attention is, however, drawn to Parts V and VI of the 1949 Rules (rr. 22–54; Hill, 2nd Supp., pp. B123–B133), many of which contain important procedural provisions.

12. Rule 25 shall be amended as follows:—

(*a*) At the beginning of paragraph (2) there shall be inserted the words " Subject to the provisions of the next following paragraph ".

(*b*) The following paragraph shall be inserted after paragraph (2):—

" (2A) Upon receiving notice of intention to appear from a person who is not already a party to the proceedings, the registrar shall send to that person a notice informing him of the place and approximate date of the hearing."

(*c*) In paragraph (3) for the words " Any party to whom such notice has been sent " there shall be substituted the words " Any person to whom notice has been sent under paragraph (2) or (2A) of this Rule ".

NOTE

R. 25 of the 1949 Rules accordingly reads as follows:—

25. Sittings of tribunal.—(1) Tribunals shall sit at such places in the United Kingdom outside Scotland as the President may from time to time determine.

(2) [Subject to the provisions of the next following paragraph, the] *The* registrar shall send to each party to proceedings before the tribunal a notice informing him of the place and approximate date of the hearing, which shall not be earlier than 14 days after the date on which the notice is sent.

[(2A) Upon receiving notice of intention to appear from aperson who is not already a party to the proceedings, the registrar shall send to that person a notice informing him of the place and approximate date of the hearing.]

(3) *Any party to whom such notice has been sent* [Any person to whom notice has been sent under paragraph (2) or (2A) of this Rule] may apply to the registrar in accordance with the provisions of Rule 22 for an alteration of the place or date of the hearing.

This will enable an adjournment to be sought, under r. 22 of the 1949 Rules (Hill, 2nd Supp., p. B123) if some person who claims to be entitled to appear gives notice of his intention to do so. Applications under r. 22 are made, in the first place, in writing to the Registrar (whose address is given in Form 1A, *post*).

13. In Rules 26A and 26B for the words " against a determination or against the decision of a local valuation court " there shall be substituted the words " under Part I, II or IIA of these Rules ".

NOTES

R. 26A. R. 26A of the 1949 Rules (Hill, 2nd Supp., p. B124) as amended empowers the Tribunal to dismiss an appeal under Part I, II or IIA of the Rules, or an application under Part IV thereof, on default of appearance of the appellant or applicant. If

any other party to such proceedings, or any party to a reference (under Part III of the Rules) does not appear, the Tribunal may proceed with the hearing and may make such orders as to costs as it thinks fit. Note that the Rules, as amended, draw a distinction between " the appellant " and any other " interested person "; see, for example, r. 5A, and the amended definition of " Interested person " in r. 2, as set out, *ante*.

R. 26B. R. 26B of the 1949 Rules (Hill, 2nd Supp., p. B125), as amended, limits an appellant under Part I, II or IIA of the Rules, or an applicant under Part IV thereof, to the grounds stated in his notice of appeal (or similar pleading) unless the Tribunal think it just in all the circumstances, and on such terms as to costs or adjournment or otherwise as it may think fit, to allow other grounds to be put forward.

14. The following paragraph shall be substituted for paragraph (6) of Rule 38:—

" (6) The registrar shall send copies of the decision to every party who has appeared before the tribunal, and—

(i) in the case of an appeal against the decision of a local valuation court, to the clerk of the local valuation panel from which that court was constituted and to the valuation officer;

(ii) in the case of an appeal under Part IIA of these Rules, to the court, authority or person from whose decision the appeal was brought ".

NOTE

This amendment of r. 38 of the 1948 Rules (Hill, 2nd Supp., pp. B128–B129) in effect merely adds the new sub-paragraph (ii). R. 38 makes provision as to the form in which the Tribunal's decision will be given, for sending copies of the decision to the parties and others, and for amending any decision as may be necessary if there is an appeal to the Court of Appeal.

15. The First Schedule to the Lands Tribunal Rules, 1949 shall be amended as follows:—

(*a*) Forms 1A and 3A in the Schedule to these Rules shall be inserted after Forms 1 and 3 respectively.

(*b*) In Form 5 for the figures " 70 " and " 50 " in the Particulars there shall be substituted the figures " 40 " and " 25 " respectively.

(*c*) Form 6 shall be amended as follows:—

(i) For the words " being entitled to the benefit " there shall be substituted the words " claim to be entitled to the benefit ".

(ii) The word " and " shall be inserted before the word " hereby ".

(iii) The following Note shall be added at the end of the form:—

" Note:—Claims for compensation can be considered only where the Tribunal is satisfied that the objector is entitled to the benefit of the restrictions ".

NOTE

Only the reference to Form 1A is relevant for the purposes of the T. & C.P. Act, 1954, *ante*. (Form 3A is inserted for the purposes of the new r. 10A; Form 5 relates to applications under the amended Part IV of the Rules and Form 6 is the form of objection under that Part. The amendment to Form 6 is of some interest.)

The new Form 1A is the form to be used in giving notice of appeal against any " determination " (in the form of findings, apportionments, proposals, notice, or calculations, as the case may be) under ss. 13, 27, 31, 39, 40, 45, 48 or 66 of the T. & C.P. Act, 1954, *ante*; see r. 3 (2A), inserted by r. 3 (*a*) of the present amendment rules, and set out in the extracts from the 1949 Rules, *ante*. The form is printed in the Schedule to the present amendment rules, *infra*.

16. The Third Schedule to the Lands Tribunal Rules 1949 shall be amended as follows:—

(*a*) For Fee No. 1 there shall be substituted the following fee:—

" 1. On a notice of appeal under Part I or Part IIA of these Rules (not being an appeal against a determination by the Commissioners of Inland Revenue under the Finance (1909–10) Act, 1910)	£1 0 0."

(*b*) The following fee shall be inserted after Fee No. 11:—

" 12. On supplying a copy of any document: for every 2 folios of 72 words or part thereof	1s.".

* * * * *

NOTES

Third Schedule to the Lands Tribunal Rules, 1949. See Hill, 2nd Supp., pp. B136–B138. See also, as to the fees thereby prescribed, r. 52 of the Rules (Hill, 2nd Supp., p. B132).

Part I. *I.e.*, Part I (rr. 3–7) of the Lands Tribunal Rules, 1949, which is set out in amended form at pp. 291–292, *ante*.

Copy of any document. In the 1949 Rules no provision was made for this item, as the parties supplied sufficient copies. Other interested persons may now, however, establish a right to be heard and be supplied with documents; see particularly r. 5A (4), set out, *ante*, among the extracts from the 1949 Rules, and r. 13A (3), inserted by r. 9 of the present rules, *supra*.

SCHEDULE

FORM 1A

Lands Tribunal Act, 1949

Rule 3(2A)

Notice of Appeal against the determination of a question under section 13 [*or, as the case may be*, section 27, 31, 39, 40, 45, 48 or 66] of the Town and Country Planning Act, 1954.

To:—The Registrar,
Lands Tribunal,
24, Abingdon Street,
London, S.W.1.

Description of land.....
.....
.....

To be copied from the determination.

Minister's
Central Land Board's
Acquiring Authority's
Local Planning Authority's
} Reference Number.....

Strike out words not applicable.

Date of notice of determination.....

I/we .....
of .....

Here state usual address.

being a person[s] having a right of appeal under [*here state the section of the Town and Country Planning Act*, 1954, *or the title of the regulations made thereunder giving the right of appeal*] hereby give notice of appeal against the above-mentioned determination by the Minister of Housing and Local Government [*or* the Central Land Board] [*or insert name of acquiring authority or local planning authority*].

Strike out words not applicable.

I/we dispute the findings [*or* an apportionment included in the findings] [*or as the case may be*] on the following grounds.....
.....
.....

Here state briefly the grounds of the appeal.

I/we/do/do not propose to call an expert witness to give evidence in support of the valuations on which I/we shall rely at the hearing of the appeal.

All communications regarding the appeal should be addressed to me/us at the address shown above [*or* to my/our solicitor/agent Mr.....

Strike out words not applicable.

of.....].

Signed.....
Dated .....

NOTES

R. 3 (2A). R. 3 (2A) inserted in the 1949 Rules by r. 3 (*a*) of the present amendment rules, is set out, *ante*, among the extracts from the 1949 Rules in the notes to rr. 2 to 7 of the present rules. It requires a notice of appeal against a "determination" under any of the above-cited sections of the Act of 1954, *ante*, to be substantially in accordance with Form 1A, *supra*, which in turn is inserted in the First Schedule to the 1949 Rules by r. 15 (*a*) of the present amendment rules.

State the section . . . or regulations. See the note, "Cross-references to Regulations", among the Explanatory Notes introducing the present rules, *ante*.

Minister; Central Land Board, etc. See the Explanatory Notes introducing these rules, *ante*.

Grounds. See also r. 26B of the 1949 Rules (inserted by the 1951 Amendment Rules), Hill, 2nd Supp., p. B125, as amended by r. 13 of the present amendment rules, *ante*, whereunder the appellant is limited to the grounds stated in his notice of appeal (save where the Tribunal allows additional grounds to be advanced) and r. 6 (Power

to require further particulars) of the 1949 Rules, set out as amended, *ante*, in the notes to rr. 2 to 7 of the present rules.

Expert witness. See r. 31 of the 1949 Rules, Hill, 2nd Supp., p. B126.

Appearance by other interested persons. Persons other than the appellant may be entitled to be heard. Notice of intention to appear must be given in accordance with r. 5A, set out, *ante*, in the notes to rr. 2 to 7 of the present amendment rules. It should contain the particulars mentioned in r. 5A (3).

FORM 3A
Lands Tribunal Act, 1949
Notice of Appeal under Part IIA
[*Omitted*]

THE ACQUISITION OF LAND (DIVISION OF UNEXPENDED BALANCE) REGULATIONS, 1955

DATED 15TH JANUARY 1955, MADE BY THE MINISTER OF HOUSING AND LOCAL GOVERNMENT UNDER SECTIONS 31 AND 68 OF THE TOWN AND COUNTRY PLANNING ACT, 1954

[S.I. 1955 No. 80]

EXPLANATORY NOTE

These regulations provide for the determination of certain questions arising under s. 31 of, and the Fifth Schedule to, the Act of 1954, *ante*. With certain exceptions, that section provides for the addition, to compensation calculated on the basis of existing use, of a supplement derived from the unexpended balance or balances of established development value of " the relevant land ", where an interest therein (" the relevant interest ") is acquired by an authority having the benefit of the Act of 1919. S. 31 can apply only when the acquisition is a compulsory acquisition, by such an authority, in pursuance of a notice to treat, or construction notice, served or deemed to be served on or after 1st January 1955.

The supplement is an amount derived from the unexpended balance of the relevant land, being the amount attributable to the relevant interest in accordance with s. 30 (1) and the Fifth Schedule. S. 30 (2), *ante*, under which the present regulations are made, affords certain rights of objection to persons entitled to interests (other than " the relevant interest ") in the relevant land.

Disputes connected with the payment of such supplemental compensation appear to be of three types:

(1) The owner of the relevant interest may wish to maintain that such compensation is payable or that a greater amount should be attributed to his interest; this seems to be a matter to be decided as part of the general question of how much compensation is payable. It can be settled, in the absence of other complications, by a reference of the disputed compensation to the Lands Tribunal, in accordance with the " special Act " under which the acquisition is made.

(2) The owner of the relevant interest, and other persons having interests in the relevant land or part thereof (whether or not such other interests are acquired or left outstanding) may be concerned with apportionments of development value, or with the apportionment or calculation of deductions falling to be made, in finding the original or current unexpended balance or balances of the relevant land or some part or parts thereof. Here the owner of the relevant interest, and other persons having interests in the relevant land or parts thereof, may be in dispute among themselves, or with their neighbours, or with the Central Land Board or the acquiring authority. The addition of s. 48 to the Bill for the Act of 1954 was intended to allow questions as to the current balance or balances to be determined by the Central Land Board; see s. 48 (2), *ante*, and the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1706), *ante*. To a large extent, a certificate of the Board under s. 48 (2) will settle the disputes mentioned in this paragraph. It may still, however, be necessary to sub-divide the units shown as having a balance by such a certificate, into " relevant areas " if competing interests exist in some part only of a unit; cf. the notes to s. 31, *ante*, summarising the effect of the Fifth Schedule. It will be better, if not essential, to have the balances of relevant areas separately certified by the Board.

(3) The owners of the interests, other than the relevant interest, which may subsist wholly or partly in the same land as the relevant interest, may wish to dispute the division of the balance attaching to the whole or any part of the relevant land as between themselves, on the one hand, and the owner of the relevant interest, on the other hand. It seems to be with this type of dispute that the

present regulations are principally concerned. In the course of operating the Fifth Schedule, however, it may be necessary to apportion fractional amounts of any unexpended balance attaching to the relevant land, to find and deal with units when the same competition of interests exists. Presumably this sort of apportionment can be carried out on a dispute under the present regulations, as part of the process of dividing an unexpended balance; it will be better, however, if the relevant areas are separately shown in a certificate under s. 48 (2) of the Act.

The disputes which can be dealt with under the present regulations may arise in different ways. Where any question as to the amount of compensation payable to the owner of the relevant interest, involving a dispute as to the application of s. 31 of the Act of 1954, *ante*, has been referred to the Tribunal, disputes may be dealt with on that reference; see reg. 5 of these regulations, *infra*. In such a case, if the acquiring authority propose to pay compensation in excess of compensation on the basis of existing use, they must serve notice on every person entitled to an interest in the relevant land (other than the owners of the relevant interest and of any " excepted interest "). A person so served may become a party to the reference; see reg. 5 (3), *infra*.

Where no such notice is served, the Tribunal may consider that compensation in excess of compensation on the basis of existing use will be payable. The acquiring authority will then be directed to serve notices, and persons served may become parties to the reference, before the amount of compensation is determined.

In other cases, where the acquiring authority propose to pay compensation in excess of compensation on the basis of existing use, the authority will serve notices as required by reg. 3, *infra*. Persons served may then appeal to the Lands Tribunal if aggrieved by the proposal, and the appeal will be dealt with as an appeal against a determination under the Lands Tribunal Rules (see the notes to S.I. 1955 No. 54, *ante*). On any such appeal all the persons served and the owner of the relevant land may become parties; see reg. 4. The acquiring authority will be the respondent to such an appeal; see r. 2 of the Lands Tribunal Rules, set out as amended in the notes to S.I. 1955 No. 54, *ante*.

It will be noticed that the present regulations make no provision for notifying persons interested in land adjoining or near to the relevant land, who may nevertheless be concerned with apportionments involved in assessing the compensation payable to the owner of the relevant interest. Persons who have had no right to object to apportionments of this sort will not on a future occasion be bound by them, as there will have been no " previous apportionment " as defined in s. 69 (1) of the Act, *ante*, which would be binding for any purpose of the Act. It will also be seen that reg. 3 (1), *infra*, provides for the service of notices thereunder " so soon as the amount " of the balance of any of the relevant land " is finally ascertained ". It seems, therefore, that acquiring authorities will usually be well advised to serve notice to treat with a view to compulsory acquisition and obtain a certificate under s. 48 (2) of the Act and S.I. 1954 No. 1706, *ante*.

1.—These regulations may be cited as the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955, and shall come into operation on the twenty-first day of January, 1955.

2.—(1) In these regulations

" the Act " means the Town and Country Planning Act, 1954;

" section 31 " and " the Fifth Schedule " mean respectively section 31 of the Act and the Fifth Schedule to the Act;

" the relevant interest ", " the relevant land ", " the notice to treat " and " excepted interest " have the meanings respectively assigned to them in section 30 of the Act;

" the relevant area " has the meaning assigned to it in the Fifth Schedule.

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

3.—(1) Where in the case of a compulsory acquisition to which Part III of the Act applies any of the relevant land has an unexpended balance of established development value at the time immediately before the service of the notice to treat and the acquiring authority propose by virtue of section 31 to pay compensation in excess of compensation on the basis of existing use, the acquiring authority shall, except where there has been referred to the Lands Tribunal such a question as is mentioned in regulation 5, serve notice of their proposal upon every person entitled to an interest in the relevant land (other than the relevant interest and any excepted interest) as soon as the amount of the said balance is finally ascertained and they are sufficiently informed as to the interests in the relevant land.

(2) The notice required to be served by the last preceding paragraph of this regulation (in these regulations referred to as a " notice of proposal ") shall specify

(*a*) the relevant area (describing it) and the amount of the unexpended balance of established development value which that area has;

(*b*) the nature of the interests in the relevant area (other than excepted interests) and the persons entitled thereto;

(*c*) the portion of the said balance which the acquiring authority find to be attributable to each such interest and the amounts and values by reference to which such portions have been ascertained under the Fifth Schedule; and

(*d*) which of such portions they propose to pay;

and where the whole or no part of the said balance is attributed to any particular interest, the notice shall specify that fact as if a portion were found to be attributable to that interest.

(3) Any notice of proposal shall be accompanied by a statement of the right to object to the proposal given by paragraph (4) of this regulation.

(4) Any person aggrieved by a proposal in a notice of proposal served on him under this regulation (not being a proposal to pay any portion of the said balance to him) may within 30 days from the date of the notice, unless he has signified to the acquiring authority his agreement with the proposal, give notice in writing to the authority that he objects to the proposal and where such an objection is duly made he may, not earlier than 30 days nor later than 60 days from the date of such objection, give notice in writing (in these regulations referred to as a " notice of dispute ") to the Lands Tribunal and to the acquiring authority that he disputes the proposal.

(5) Where no objection is made to a notice of proposal or all such objections are withdrawn, then on the expiration of the period within which such objections may be made, or, where that period has expired, on withdrawal of all such objections, the persons on whom such notice of proposal was served shall have no further right of appeal against the notice.

NOTES

Compulsory acquisition to which Part III of the Act applies. See s. 30 (1) of the Act of 1954, *ante*. Cf. the Explanatory Note to these regulations, *supra*.

Relevant land. The land in which the interest acquired (the relevant interest) subsists; see reg. 2 (1), and s. 30 (2) of the Act, *ante*.

Has an unexpended balance. See ss. 17 and 18 of the Act, and cf. s. 48 (2) thereof, *ante*. It may be necessary to divide land even though taken as a whole it has a balance, if a competing interest subsists in part only of the unit which would otherwise be chosen; *i.e.*, to find the relevant areas referred to in para. (2) of this regulation, and defined in reg. 2 (1) and para. 1 (3) of the Fifth Schedule, *ante*.

Service of the notice to treat. See reg. 2 (1), and s. 30 (2) of the Act of 1954, *ante*; and s. 119 (3) of the Act of 1947 (Hill, p. 261; 48 Statutes Supp. 205).

Compensation in excess of compensation on the basis of existing use. See ss. 31 (1) and 69 (1) of the Act of 1954, *ante*. This is thought to mean only the supplemental compensation referred to in s. 31 (1), although in a variety of circumstances compensation in excess of existing use compensation, as defined by the Act, will be payable on a compulsory acquisition, quite apart from s. 31. The power under which the present regulations are made (s. 31 (2) of the Act) does not extend to these other cases. See, however, s. 37 of the Act, *ante*, as to the effect of payment of such compensation; the present regulations afford no general means of settling the deductions from an unexpended balance or balances required by s. 37.

Acquiring authority. See s. 30 (1) of the Act, *ante*.

Serve notice. See s. 67 (3) of the Act, *ante*. *Semble* notices might also be served as provided by the " special Act " under which the compulsory acquisition is made.

Other than the relevant interest. " The relevant interest " is defined by reg. 2 (1), and s. 30 (2) of the Act, *ante*, as the interest acquired. Other interests may or may not be acquired.

Excepted interest. See reg. 2 (1), and s. 30 (2) of the Act, *ante*.

The amount of the said balance. *I.e.*, the balance of any of the relevant land. The best, and perhaps the only, method of ascertaining this " finally " is to have it certified by the Central Land Board under s. 48 (2) of the Act and S.I. 1954 No. 1706, *ante*. As the disputes under the present regulations will be concerned with the " relevant areas " where the same competition of interests exist, it will be advisable to have the separate balances of these areas certified by the Board.

Sufficiently informed as to the interests. Note that every person entitled to an interest (presumably, an " interest in land " as defined in s. 69 (1) of the Act, *ante*) must be served. The statute or other authorisation under which the compulsory purchase is made will usually contain provisions enabling an acquiring authority to obtain information.

Relevant area. See reg. 2 (1) and para. 1 (3) of the Fifth Schedule, *ante*.

Notice of dispute. See r. 3 (2A) and Form 1A of the Lands Tribunal Rules (inserted by S.I. 1955 No. 54, *ante*).

4.—Where a notice of dispute is duly given, the dispute shall thereupon be referred to the Lands Tribunal and the acquiring authority shall, within 14 days from the date of the notice of dispute, serve notice accordingly upon any other persons upon whom the notice of proposal was served and upon the owner of the relevant interest, and any such person and the said owner shall, on compliance with the rules of the Lands Tribunal for the time being in force, be entitled to be parties to the dispute.

NOTE

On compliance with the rules. A person who claims to be entitled to be a party should give notice to the Registrar of the Tribunal of his intention to appear. See particularly r. 5A of the Lands Tribunal Rules (inserted by S.I. 1955 No. 54, *ante*).

5.—(1) Where any question of the amount of compensation payable to the owner of the relevant interest in respect of the acquisition of that interest is referred to the Lands Tribunal (being a question involving a dispute as to the application of section 31) the acquiring authority shall, if they propose under section 31 to pay compensation in excess of compensation on the basis of existing use value, within 14 days from the date of the reference to the Lands Tribunal or such longer period as the Tribunal may allow, serve a notice upon every person upon whom a notice of proposal is required to be served, stating in the notice that a question involving such a proposal has been referred to the Lands Tribunal and that the person upon whom the notice is served is entitled to be a party to the reference so far as it relates to that proposal and specifying therein the matters which are required in accordance with paragraph (2) of regulation 3, to be specified in a notice of proposal, unless these matters have been specified in a previous notice under that paragraph.

(2) Before determining the amount of the compensation in any case where no notices such as are referred to in paragraph (1) of this regulation have been served and it appears to the Lands Tribunal that compensation in excess of compensation on the basis of existing use value is payable under section 31, the Tribunal shall direct the acquiring authority to serve such notices as are referred to in the said paragraph (1).

(3) Any person on whom a notice is required to be served by this regulation shall be entitled, on compliance with the rules of the Lands Tribunal for the time being in force, to be a party to the reference.

NOTE

On compliance with the rules. See particularly r. 13A of the Lands Tribunal Rules (inserted by r. 9 of S.I. 1955 No. 54, *ante*).

6.—The Lands Tribunal shall by their decision either confirm or vary the proposal of the acquiring authority and shall notify the parties of their decision stating, where the Tribunal vary the proposal, the portion of the unexpended balance of established development value of the relevant area attributable to each of the parties' interests.

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N.B.—Figures in square brackets refer to the notes

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