

11. Where any interest in land is subject to a mortgage—

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—cont.

- (a) any compensation payable under the foregoing provisions of this Schedule in respect of the diminution in the value of the interest shall be assessed as if the interest were not subject to the mortgage;
- (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- (c) a mortgagee shall not be entitled to claim compensation under the said provisions in respect of his interest as such; and
- (d) the compensation payable in respect of the interest subject to the mortgage may be paid by the Minister to such of the claimants as he thinks proper, and shall be applied by that claimant in such manner as the parties interested may agree, or, in default of such agreement, as may be determined by arbitration.

In this paragraph the expression "mortgage" includes an equitable charge and any other encumbrance, and includes a sub-mortgage, and the expression "mortgagee" shall be construed accordingly.

12. Where the order provides for the creation of any easement over land held by a statutory undertaker for the purposes of the carrying on of his undertaking, or of any right in or in relation to such land, the undertaker shall be entitled to recover compensation from the Minister in accordance with the special provisions of Part III of this Act relating to statutory undertakers in any case in which those provisions apply, and shall not, in any such case, be entitled to recover compensation under the foregoing paragraphs of this Schedule.

This paragraph shall not apply to Northern Ireland.

PART IV

13. In the application of this Schedule to Scotland—

- (a) in paragraph 8, for the words "section six of the Statutory Orders (Special Procedure) Act, 1945," there shall be substituted the words "subsection (4) of section two as read with section ten of the Statutory Orders (Special Procedure) Act, 1945, or under section six of that Act"; and
- (b) for references to a mortgage and to a mortgagee there shall be substituted respectively references to a heritable security and to a creditor in a heritable security; and in paragraph 11 for the words from "In this paragraph" to the end of the paragraph there shall be substituted the words—

"In this paragraph the expression 'heritable security' means a heritable security within the meaning of the Conveyancing (Scotland) Act, 1924, exclusive of a security by way of ground annual and a real burden *ad factum praestandum*, but inclusive of a security constituted by *ex facie absolute disposition*."