



Land Compensation (Scotland) Act 1963

1963 CHAPTER 51

PART III

PROVISIONS DETERMINING AMOUNT OF COMPENSATION

General provisions

12 Rules for assessing compensation

Compensation in respect of any compulsory acquisition shall be assessed 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:
- (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 authority possessing compulsory purchase powers:
- (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 occupants 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 arbiter is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

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- (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 :
 and the following provisions of this Part of this Act shall have effect with respect to the assessment.

13 Disregard of actual or prospective development in certain cases

- (1) Subject to section 15 of this Act, no account shall be taken of any increase or diminution in the value of the relevant interest which, in the circumstances described in any of the paragraphs in the first column of Schedule 1 to this Act, is attributable to the carrying out, or the prospect, of so much of the development mentioned in relation thereto in the second column of that Schedule as would not have been likely to be carried out if—
- (a) (where the acquisition is for purposes involving development of any of the land authorised to be acquired) the acquiring authority had not acquired and did not propose to acquire any of that land; and
 - (b) (where the circumstances are those described in one or more of paragraphs 2 to 4 in the said first column) the area or areas referred to in that paragraph or those paragraphs had not been defined or designated as therein mentioned or (in a case falling within paragraph 4) if the scheme therein mentioned had not come into operation.
- (2) In determining whether the relevant land forms part of such an area as is mentioned in paragraph 3 of Schedule 1.—
- (a) in the case of an area designated as the site of a new town by an order which became operative on or before 29th October, 1958, regard shall be had to that order in the form in which, whether as originally made or as subsequently varied, it was in force on that day, and any variation becoming operative after that day shall be disregarded;
 - (b) in the case of an area designated as the site of a new town by an order which became operative after the said 29th October, whether before or after the passing of this Act, regard shall be had to the order in its original form, and any variation of the order shall be disregarded.
- (3) In this section and in Schedule 1 to this Act—
- " the land authorised to be acquired "—
- (a) in relation to a compulsory acquisition authorised by a compulsory purchase order or a special enactment, means the aggregate of the land comprised in that authorisation, and
 - (b) in relation to a compulsory acquisition not so authorised but effected under powers exercisable by virtue of any enactment for defence purposes, means the aggregate of the land comprised in the notice to treat and of any land contiguous or adjacent thereto which is comprised in any other notice to treat served under the like powers not more than one month before and not more than one month after the date of service of that notice;
- " defence purposes " has the same meaning as in the Land Powers (Defence) Act 1958 ;
- and any reference to development of any land shall be construed as including a reference to the clearing of that land.

14 Effect of certain actual or prospective development of adjacent land in same ownership

- (1) Subject to section 15 of this Act, where, on the date of service of the notice to treat, the person entitled to the relevant interest is also entitled in the same capacity to an interest in other land contiguous or adjacent to the relevant land, there shall be deducted from the amount of the compensation which would be payable apart from this section the amount (if any) of such an increase in the value of the interest in that other land as is mentioned in subsection (2) of this section.
- (2) The said increase is such as, in the circumstances described in any of the paragraphs in the first column of Schedule 1 to this Act, is attributable to the carrying out, or the prospect, of so much of the relevant development as would not have been likely to be carried out if the conditions mentioned in paragraphs (a) and (b) of section 13 (1) of this Act had been satisfied; and the relevant development for the purposes of this subsection is, in relation to the circumstances described in any of the said paragraphs, that mentioned in relation thereto in the second column of the said Schedule 1, but modified, as respects the prospect of any development, by the omission of the words " other than the relevant land", wherever they occur.
- (3) Nothing in this section shall affect the amount which is to be taken as the amount of the compensation for the purposes of section 20 of this Act (which relates to the consideration payable for the discharge of land from feu-duty and incumbrances).

15 Subsequent acquisition of adjacent land and acquisition governed by enactment corresponding to s. 14

- (1) Where, for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land, an increase in the value of an interest in other land has, in any of the circumstances mentioned in the first column of Schedule 1 to this Act, been taken into account by virtue of section 14 of this Act or any corresponding enactment, then, in connection with any subsequent acquisition to which this subsection applies, that increase shall not be left out of account by virtue of section 13 of this Act, or taken into account by virtue of section 14 of this Act or any corresponding enactment, in so far as it was taken into account in connection with the previous acquisition.
- (2) Where, in connection with a compulsory acquisition of an interest in land, a diminution in the value of an interest in other land has, in any of the circumstances mentioned in the first column of the said Schedule 1, been taken into account in assessing compensation for injurious affection, then, in connection with any subsequent acquisition to which this subsection applies, that diminution shall not be left out of account by virtue of section 13 of this Act in so far as it was taken into account in connection with the previous acquisition.
- (3) Subsections (1) and (2) of this section apply to any subsequent acquisition where either—
 - (a) the interest acquired by the subsequent acquisition is the same as the interest previously taken into account (whether the acquisition extends to the whole of the land in which that interest previously subsisted or only to part of that land), or
 - (b) the person entitled to the interest acquired is, or derives title to that interest from, the person who at the time of the previous acquisition was entitled to the interest previously taken into account;

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and in this subsection any reference to the interest previously taken into account is a reference to the interest the increased or diminished value whereof was taken into account as mentioned in subsection (1) or subsection (2) of this section.

- (4) Where, in connection with a sale of an interest in land by agreement, the circumstances were such that, if it had been a compulsory acquisition, an increase or diminution of value would have fallen to be taken into account as mentioned in subsection (1) or subsection (2) of this section, the preceding provisions of this section shall apply, with the necessary modifications, as if that sale had been a compulsory acquisition and that increase or diminution of value had been taken into account accordingly.
- (5) Section 14 of this Act shall not apply to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any corresponding enactment, nor to any compulsory acquisition in respect of which the compensation payable is subject to the provisions of any local enactment which provides (in whatever terms) that, in assessing compensation in respect of a compulsory acquisition thereunder, account shall be taken of any increase in the value of an interest in contiguous or adjacent land which is attributable to any of the works authorised by that enactment.
- (6) Where any such local enactment as is mentioned in subsection (5) of this section includes a provision restricting the assessment of the increase in value thereunder by reference to existing use (that is to say, by providing, in whatever terms, that the increase in value shall be assessed on the assumption that planning permission in respect of the contiguous or adjacent land in question would be granted for development of any class specified in Schedule 3 to the Town and Country Planning (Scotland) Act 1947 but would not be granted for any other development thereof), the enactment shall have effect as if it did not include that provision.
- (7) References in this section to a corresponding enactment are references to any of the following, that is to say—
 - (a) section 13 of the Light Railways Act 1896 ;
 - (b) paragraph (2) (C) of the Schedule to the Development and Road Improvement Funds Act 1909 ;
 - (c) paragraph (a) of the proviso to section 13 (1) of the Restriction of Ribbon Development Act 1935 ;
 - (d) paragraph 5 of Schedule 4 to the Housing (Scotland) Act 1950;

and, in subsection (1), include references to any such local enactment as is mentioned in subsection (5).

16 Disregard of depreciation due to prospect of acquisition by authority possessing compulsory purchase powers

No account shall be taken of any depreciation of the value of the relevant interest which is attributable to the fact that (whether by way of designation, allocation or other particulars contained in the current development plan, or by any other means) an indication has been given that the relevant land is, or is likely, to be acquired by an authority possessing compulsory purchase powers.

Special Cases

17 Acquisition of houses unfit for human habitation

The provisions of Schedule 2 to this Act shall have effect as to compensation in respect of the acquisition of land in the circumstances mentioned in that Schedule.

18 Land of statutory undertakers

In relation to compulsory acquisitions of interests in land which has been acquired by statutory undertakers (within the meaning of the Town and Country Planning (Scotland) Act 1947) for the purposes of their undertaking, the provisions of this Act shall have effect subject to the provisions of section 42(5) of that Act (which makes special provision as to the compensation payable in respect of certain acquisitions of land so acquired).

19 Outstanding right to compensation for refusal, etc. of planning permission

(1) Where, in the case of any compulsory acquisition, a planning decision or order has been made before the service of the notice to treat, and in consequence of the decision or order any person is entitled (subject to the making and determination of a claim in accordance with the relevant provisions, and to the effect of any direction by the Secretary of State under section 23 or section 47 of the Town and Country Planning (Scotland) Act 1954) to compensation for depreciation of the value of an interest in land which consists of or includes the whole or part of the relevant land, then if—

- (a) no notice stating that the compensation has become payable has been recorded before the date of service of the notice to treat (whether or not a claim for compensation has been made); but
- (b) such a notice is recorded on or after that date ;

the compensation payable in respect of the compulsory acquisition shall be, assessed as if the said notice had been recorded before the date of service of the notice to treat.

(2) In this section any reference to compensation for depreciation of the value of an interest in land is a reference to compensation payable either—

- (a) under Part II or Part V of the Town and Country Planning (Scotland) Act 1954 in respect of depreciation of the value of that interest, or
- (b) under section 20(1) of the Town and Country Planning (Scotland) Act 1947, in respect of loss or damage consisting of depreciation of the value of that interest;

any reference to recording is a reference to recording in the appropriate Register of Sasines under section 29(1) or under section 41 of the Town and Country Planning (Scotland) Act 1954, or under the provisions of the said section 29(1) as applied by section 48 of that Act; and " the relevant provisions ", in relation to compensation under the said Part II or the said Part V, means the provisions of the said Part II, or those provisions as applied by the said Part V, and, in relation to compensation under section 20(1) of the Town and Country Planning (Scotland) Act 1947, means the provisions of regulations made under that Act with respect to claims for compensation under that subsection.

20 Consideration in respect of discharge of feu-duty etc.

- (1) Subject to the provisions contained in section 32 of this Act relating to increased compensation in cases falling under section 31 of this Act, the aggregate amount of the consideration payable under section 108 of the Lands Clauses Consolidation (Scotland) Act 1845 in respect of the discharge from all relevant prestations of land the *dominium utile* in which has been acquired (whether compulsorily or by agreement) by an authority possessing compulsory purchase powers, shall be an amount equal to the difference between—
 - (a) the amount of the compensation payable in respect of the acquisition of the *dominium utile* in the land, and
 - (b) the amount of the compensation which would have been so payable if the land had not been subject to any relevant prestation.
- (2) Any reference in this section to a "relevant prestation" is a reference to any feu-duty, or ground annual or other annual or recurring payment or incumbrance (or any portion thereof), to which the said section 108 applies (not being stipend or standard charge in lieu of stipend).
- (3) Where the *dominium utile* has been acquired by agreement it shall be assumed for the purpose of estimating the amounts referred to in subsections (1)(a) and (1)(b) of this section that it was acquired compulsorily in pursuance of a notice to treat served on the date of the making of the agreement.
- (4) If the land is subject to only one relevant prestation the amount of the consideration in respect of the discharge of the land from that prestation shall be equal to the aggregate amount of the consideration.
- (5) If the land is subject to two or more relevant prestations the market value of each such prestation immediately before the service of the notice to treat or, as the case may be, the making of the agreement, shall be estimated and the aggregate amount of the consideration shall be attributed to the discharge of the land from the relevant prestations in order of priority, so however that so much thereof as is attributed to the discharge of the land from any prestation shall (without prejudice to the next following subsection) not exceed the value, estimated as aforesaid, of that prestation.
- (6) If, after giving effect to the provisions of the last preceding subsection in any case to which they apply, there remains an unattributed balance of the aggregate amount of the consideration, the amounts attributed in accordance with those provisions shall be increased proportionately so as to extinguish the balance.
- (7) Subject to the next following subsection references in this section to the compensation payable in respect of the acquisition of the *dominium utile* in any land shall be construed as references to such compensation exclusive of any compensation for disturbance or for severance or injurious affection.
- (8) In relation to the acquisition of the *dominium utile* in any land to which Rule (5) of section 12 of this Act applies, references in this section to the compensation payable in respect of the acquisition shall be construed as references to the compensation (exclusive of any compensation for disturbance or for severance or injurious affection) which would have been so payable if the said Rule (5) had not applied.

21 War-damaged land

- (1) Where an interest in any hereditament or part of a hereditament which has sustained war damage is compulsorily acquired, then if—
 - (a) any of the damage has not been made good at the date of the notice to treat; and
 - (b) the appropriate payment under the War Damage Act 1943 would, apart from the compulsory acquisition and apart from any direction given by the Treasury under section 20(2)(b) of that Act, be a payment of cost of works;the following provisions of this section shall have effect.
- (2) Where the land would, but for the occurrence of the war damage, be devoted to any such purpose as is mentioned in Rule (5) of the rules set out in section 12 of this Act, the provisions of that rule shall have effect for the purposes of the assessment of compensation payable in respect of the compulsory acquisition as if the land were devoted to that purpose.
- (3) Where (whether by virtue of subsection (2) of this section or otherwise) the compensation payable in respect of the acquisition falls to be assessed in accordance with the said Rule (5), the reasonable cost of equivalent reinstatement shall be ascertained for the purposes of that rule by reference to the state of the land immediately before the occurrence of the war damage.

Assumptions as to planning permission

22 Assumptions as to planning permission

- (1) For the purpose of assessing compensation in respect of any compulsory acquisition, such one or more of the assumptions mentioned in sections 23 and 24 of this Act as are applicable to the relevant land or any part thereof shall be made in ascertaining the value of the relevant interest.
- (2) Any planning permission which is to be assumed in accordance with any of the provisions of those sections is in addition to any planning permission which may be in force at the date of service of the notice to treat.
- (3) Nothing in those provisions shall be construed as requiring it to be assumed that planning permission would necessarily be refused for any development which is not development for which, in accordance with those provisions, the granting of planning permission is to be assumed; but, in determining whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of any land, regard shall be had to any contrary opinion expressed in relation to that land in any certificate issued under Part IV of this Act.
- (4) For the purposes of any reference in this section, or in section 23 of this Act, to planning permission which is in force on the date of service of the notice to treat, it is immaterial whether the planning permission in question was granted—
 - (a) unconditionally or subject to conditions, or
 - (b) in respect of the land in question taken by itself or in respect of an area including that land, or
 - (c) on an ordinary application or on an outline application or by virtue of a development order,or is planning permission which, in accordance with any direction or provision given or made by or under any enactment, is deemed to have been granted.

23 Assumptions not directly derived from development plans

(1) In a case where—

- (a) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part thereof, and
- (b) on the date of service of the notice to treat there is not in force planning permission for that development,

it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, such as would permit development thereof in accordance with the proposals of the acquiring authority.

(2) For the purposes of paragraph (b) of the preceding subsection, no account shall be taken of any planning permission so granted as not to enure (while the permission remains in force) for the benefit of the land and of all persons for the time being interested therein.

(3) Subject to subsection (4) of this section, it shall be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in Schedule 3 to the Town and Country Planning (Scotland) Act 1947 (which relates to development included in the existing use of land).

(4) Notwithstanding anything in subsection (3) of this section—

- (a) it shall not by virtue of that subsection be assumed that planning permission would be granted, in respect of the relevant land or any part thereof, for development of any class specified in Part II of the said Schedule 3, if it is development for which planning permission was refused at any time before the date of service of the notice to treat and compensation under section 18 of the said Act of 1947 became payable in respect of that refusal;
- (b) where, at any time before the said date, planning permission was granted, in respect of the relevant land or any part thereof, for development of any class specified in the said Part II, but was so granted subject to conditions, and compensation under the said section 18 became payable in respect of the imposition of the conditions, it shall not by virtue of the said subsection (3) be assumed that planning permission for that development, in respect of the relevant land or that part thereof, as the case may be, would be granted otherwise than subject to those conditions;
- (c) where, at any time before the said date, an order was made under section 24 of the said Act of 1947, in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and compensation became payable in respect of that order under section 25 of that Act, it shall not by virtue of the said subsection (3) be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for the rebuilding of that building or the resumption of that use.

(5) Where a certificate is issued under the provisions of Part IV of this Act, it shall be assumed that any planning permission which, according to the certificate, might reasonably have been expected to be granted in respect of the relevant land or part thereof would be so granted, but, where any conditions are, in accordance with those provisions, specified in the certificate, only subject to those conditions and, if any future time is so specified, only at that time.

24 Special assumptions in respect of certain land comprised in development plans

- (1) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of a site defined in the current development plan as the site of proposed development of a description specified in relation thereto in the plan, it shall be assumed that planning permission would be granted for that development.
- (2) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current development plan as an area allocated primarily for a use specified in the plan in relation to that area, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development which—
 - (a) is development for the purposes of that use of the relevant land or that part thereof, and
 - (b) is development for which planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.
- (3) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current development plan as an area allocated primarily for a range of two or more uses specified in the plan in relation to the whole of that area, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development which—
 - (a) is development for the purposes of a use of the relevant land or that part thereof, being a use falling within that range of uses, and
 - (b) is development for which planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.
- (4) If the relevant land or any part thereof is land subject to comprehensive development, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development for the purposes of a use of the relevant land or that part thereof falling within the planned range of uses (whether it is the use which, in accordance with the particulars and proposals comprised in the current development plan in relation to the area in question, is indicated in the plan as the proposed use of the relevant land or that part thereof, or is any other use falling within the planned range of uses) being development for which, in the circumstances specified in the next following subsection, planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.
- (5) The circumstances referred to in the last preceding subsection are those which would have existed if—
 - (a) the area in question had not been defined in the current development plan as an area of comprehensive development, and no particulars or proposals relating to any land in that area had been comprised in the plan, and
 - (b) in a case where, on the date of service of the notice to treat, land in that area has already been developed in the course of the development or redevelopment of the area in accordance with the plan, no land in that area had been so developed on or before that date ;

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and in that subsection " the planned range of uses " means the range of uses which, in accordance with the particulars and proposals comprised in the current development plan in relation to the area in question, are indicated in the plan as proposed uses of land in that area.

- (6) Where in accordance with any of the preceding subsections it is to be assumed that planning permission would be granted as therein mentioned—
- (a) the assumption shall be that planning permission would be so granted subject to such conditions (if any) as, in the circumstances mentioned in the subsection in question, might reasonably be expected to be imposed by the authority granting the permission, and
 - (b) if, in accordance with any map or statement comprised in the current development plan, it is indicated that any such planning permission would be granted only at a future time, then (without prejudice to the preceding paragraph) the assumption shall be that the planning permission in question would be granted at the time when, in accordance with the indications in the plan, that permission might reasonably be expected to be granted.
- (7) Any reference in this section to development for which planning permission might reasonably have been expected to be granted is a reference to development 'for which planning permission might reasonably have been expected to be granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers.
- (8) In this section "land subject to comprehensive development " means land which consists or forms part of an area defined in the current development plan as an area of comprehensive development.