



# Land Compensation (Scotland) Act 1963

## 1963 CHAPTER 51

### PART III

#### PROVISIONS DETERMINING AMOUNT OF COMPENSATION

##### **Modifications etc. (not altering text)**

- C1** Part III (ss. 12-24) applied (16.1.1995) by 1995 c. i, s. 27(1) (with s. 34)  
Part III (ss. 12-24) applied (14.6.2000) 2000 c. Vi, ss. 1, Sch. ss. 3(2), 5(2) (with Sch. hbss. 3(1), 4, 6(2))

#### *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 <sup>F1</sup> . . . 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:

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- (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:
- (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.

#### Textual Amendments

- F1** Words in s. 12 rule 3 repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 84(6), Sch. 17 Pt. I, para. 5, **Sch. 19**, Pt.IV, (with s. 84(5)); S.I. 1991/2092, art.3, **Sch. 1** (with savings in art. 4, Sch. 2 Pt. I paras. 4, 6)

#### Modifications etc. (not altering text)

- C2** S. 12 applied with modifications by Acts listed in Chronological Table of the Statutes; modified by [Agriculture Act 1967 \(c. 22\)](#), s. 50(8), [New Towns \(Scotland\) Act 1968 \(c. 16\)](#), ss. 13, 26, **Sch. 5 para. 2** and S.I. 1976/1218, art. 4; extended by [Countryside \(Scotland\) Act 1967 \(c. 86\)](#), s. 70(4) and [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), s. 228(1)
- C3** S. 12 applied (with modifications) by [Aviation Security Act 1982 \(c. 36, SIF 9\)](#), **Sch. 1 para. 9(a)** and [Aviation and Maritime Security Act 1990 \(c. 31, SIF 39:2\)](#), s. 43(5), Sch. 2 paras. 4, 8
- C4** S. 12 applied (with modifications) (30.10.1994) by S.I. 1994/2716, **reg. 91(5)**  
 S. 12 applied (with modifications) (27.5.1997) by 1997 c. 8, **ss. 87(1)**, 95(5), 278(2)  
 S. 12 applied (27.5.1997) by 1997 c. 8, **ss. 204(3)**, 278(2)  
 S. 12 applied (27.5.1997) by 1997 c. 8, ss. 234, 278(2), Sch. 9 para. 15(4), **Sch. 10 para. 13(4)**  
 S. 12 applied (with modifications) (27.5.1997) by 1997 c. 9, **ss. 27(1)**, 85(2) (with s. 45(4))  
 S. 12 applied (with modifications) (1.4.1999) by S.I. 1999/481, **reg. 7(2)**  
 S. 12 applied (with modifications) (28.9.2000) by S.S.I. 2000/323, reg. 9(17), **Sch. 6 para. 6(2)**
- C5** S. 12 applied (with modifications) (1.4.2003) by [The Anti-Pollution Works \(Scotland\) Regulations 2003 \(S.S.I. 2003/168\)](#), reg. 1(1), **sch. para. 5(1)**
- C6** S. 12 applied (with modifications) (1.4.2006) by [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/348\)](#), reg. 1(2), **sch. 7 para. 5(1)** (with regs. 4, 50)
- C7** S. 12 applied (with modifications) (24.6.2009) by [The Environmental Liability \(Scotland\) Regulations 2009 \(S.S.I. 2009/266\)](#), reg. 1(b), **sch. 4 para. 5**
- C8** S. 12 applied (with modifications) (31.3.2011) by [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/209\)](#), reg. 1(2), **sch. 7 para. 5(1)** (with reg. 54)

### 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 [F2 of Part I] 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 [F2 of Part I] 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

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- (b) (where the circumstances are those described in one or more of paragraphs 2 to [F<sup>3</sup>4A] in the said first column [F<sup>2</sup>of Part I]) 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.
- [F<sup>4</sup>(2A) The provisions of Part II of Schedule 1 to this Act shall have effect with regard to paragraphs 3 and 3A of Part I of that Schedule][F<sup>5</sup>and the provisions of Part III of that Schedule shall have effect with regard to paragraph 4A.]
- (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 <sup>M1</sup>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.

#### Textual Amendments

- F2** Words inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)](#) **(a)(3)** except where a notice to treat has been served before 13.11.1980
- F3** Word substituted by [Local Government, Planning and Land Act 1980 \(c. 65\), s. 145\(5\)\(a\)](#)
- F4** [S. 13\(2A\)](#) inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)\(b\)\(3\)](#) except where a notice to treat has been served before 13.11.1980
- F5** Words added by [Local Government, Planning and Land Act 1980 \(c. 65\), s. 145\(5\)\(b\)](#)

#### Modifications etc. (not altering text)

- C9** [S. 13](#) excluded by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s. 6\(3\)](#); modified by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s. 47\(2\)](#)

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#### Marginal Citations

**M1** 1958 c. 30.

### 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 [F6 of Part I] 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 [F6 of Part I] 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).

#### Textual Amendments

**F6** Words inserted by [Local Government, Planning and Land Act 1980 \(c. 65\), Sch. 25 Pt. IV para. 9\(2\)\(a\)\(3\)](#) except where a notice to treat has been served before 13.11.1980

#### Modifications etc. (not altering text)

**C10** [S. 14](#) excluded by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s. 6\(3\)](#); modified by [Land Compensation \(Scotland\) Act 1973 \(c. 56\), s.47\(3\)](#)

### 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 [F7 of Part I] 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

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in the first column [<sup>F7</sup>of Part I] 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;

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 [<sup>F8</sup>Schedule 11 to the Town and Country Planning (Scotland) Act 1997] 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 <sup>M2</sup>Light Railways Act 1896;
- (b) ..... <sup>F9</sup>
- (c) ..... <sup>F10</sup>

[<sup>F11</sup>(d) paragraph 4 of Schedule 1 to the Housing (Scotland) Act 1987.]

[<sup>F12</sup>(e) section 35 (3) of the <sup>M3</sup>Roads (Scotland) Act 1970;]

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

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#### Textual Amendments

- F7** Words inserted by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 25 Pt. IV para. 9\(2\)](#) **(a)(3)** except where a notice to treat has been served before 13.11.1980
- F8** Words in s. 15(6) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 9\(1\)](#)
- F9** S. 15(7)(b) repealed by [Miscellaneous Financial Provisions Act 1983 \(c. 29, SIF 99:1\)](#), [Sch. 3](#)
- F10** S. 15(7)(c) repealed by [Roads \(Scotland\) Act 1970 \(c. 20\)](#), [Sch. 2](#)
- F11** S. 15(7)(d) substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339, [Sch. 23 para. 10\(1\)](#)
- F12** S. 15(7)(e) inserted by [Roads \(Scotland\) Act 1970 \(c. 20\)](#), [Sch. 1](#), para. 11.

#### Marginal Citations

- M2** 1896 c. 48.
- M3** 1970 c. 20.

### 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 . . . <sup>F13</sup> 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.

#### Textual Amendments

- F13** Word repealed by [Town and Country Planning \(Scotland\) Act 1969 \(c. 30\)](#), [Sch. 11](#).

### *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.

### [17A <sup>F14</sup> **Expenses of owners not in occupation.**

Where, in consequence of any compulsory acquisition of land—

- (a) the acquiring authority acquire an interest of a person who is not then in occupation of the land; and
- (b) that person incurs incidental charges or expenses in acquiring, within the period of one year beginning with the date of entry, an interest in other land in the United Kingdom,

the charges or expenses shall be taken into account in assessing his compensation as they would be taken into account if he were in occupation of the land.]

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#### Textual Amendments

- F14** S. 17A inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 79, [Sch. 17, Pt. I, para.6](#) (with s. 84(5)); S.I. 1991/2092, [art.3](#) (with art. 4, Sch. 2 Pt. I para. 4)

### 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 [<sup>F15</sup>1997]) for the purposes of their undertaking, the provisions of this Act shall have effect subject to the provisions of [<sup>F15</sup>section 233] of that Act (which makes special provision as to the compensation payable in respect of certain acquisitions of land so acquired).

#### Textual Amendments

- F15** Words in s. 18 substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9](#)

#### Modifications etc. (not altering text)

- C11** S. 18 extended by [Post Office Act 1969 \(c. 48\)](#), [Sch. 4 para. 93\(1\)\(xxi\)](#) and [Civil Aviation Act 1971 \(c. 75\)](#), [Sch. 5 para. 5](#) (s)
- C12** S. 18 extended by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), [Sch. 2 para. 4](#)
- C13** S. 18 modified (1.4.2001) by [2000 c. 38, s. 37](#), [Sch. 5 para. 1\(2\)\(i\)](#) (with s. 106); S.I. 2001/869, [art. 2](#)

### 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 [<sup>F16</sup>section 35 of the Town and Country Planning (Scotland) Act 1972]) 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 <sup>M4</sup>Town and Country Planning (Scotland) Act 1954 in respect of depreciation of the value of that interest, or
- (b) under [<sup>F16</sup>section 153 of the <sup>M5</sup>Town and Country Planning (Scotland) Act 1972], 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

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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 <sup>F16</sup>section 153 of the Town and Country Planning (Scotland) Act 1972], means the provisions of regulations made under that Act with respect to claims for compensation under that subsection.

#### Textual Amendments

**F16** Words substituted by virtue of [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), [Sch. 22 Pt. I para. 2](#)

#### Modifications etc. (not altering text)

**C14** References to [Town and Country Planning \(Scotland\) Act 1954 \(c. 73\)](#), [Pt. II](#) (except reference to provisions of Pt. II as applied by Pt. V) and s. 41 and the first reference to *ibid.*, s. 29(1) to be construed as references to [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), [Pt. VII](#) and ss. 155 and 147(4) respectively

#### Marginal Citations

**M4** 1954 c. 73.

**M5** 1972 c. 52.

## 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 <sup>M6</sup>Lands Clauses Consolidation (Scotland) Act 1845 in respect of the discharge from all relevant prestations of land <sup>F17</sup>... 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 <sup>F17</sup>... 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 <sup>F18</sup>... annual or recurring payment or incumbrance (or any portion thereof), to which the said section 108 applies <sup>F18</sup>....
- (3) Where the <sup>F19</sup>[land] 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



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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<sup>F20</sup> ... 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<sup>F20</sup> ... 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.

#### Textual Amendments

- F17** Words in s. 20(1) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), sch. 12 para. 25(3)(a), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F18** Words in s. 20(2) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), sch. 12 para. 25(3)(b), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F19** Word in s. 20(3) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), **Sch. 12 para. 25(3)(c)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F20** Words in s. 20(7)(8) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), sch. 12 para. 25(3)(d), (e), **sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### Modifications etc. (not altering text)

- C15** S. 20 excluded by [Land Tenure Reform \(Scotland\) Act 1974](#) (c. 38), s. **6(2)(c)(4)**

#### Marginal Citations

- M6** 1845 c. 19.

## 21 War-damaged land.

F21

#### Textual Amendments

- F21** S. 21 repealed by [Statute Law \(Repeals\) Act 1989](#) (c. 43), s. 1(1), **Sch. 1 Pt. VII**

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*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 [<sup>F22</sup>(subject to subsection (3A) of this section)] 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;

[<sup>F23</sup>(3A) In determining—

- (a) for the purpose referred to in subsection (1) of this section whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of any land; or
- (b) whether any of the assumptions mentioned in section 24 of this Act (but not section 23) are applicable to the relevant land or any part thereof,

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 references 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.

[<sup>F24</sup>(5) If, in a case where—

- (a) the relevant land is to be acquired for use for, or in connection with, providing, altering or improving a public road; or
- (b) that use, or its use in that connection, is being considered by the roads authority,

a determination mentioned in subsection (7) of this section falls to be made, that determination shall be made on the following assumption.

- (6) The assumption is that, if the relevant land were not so used, no public road would be provided, altered or improved to meet the same or substantially the same need as would have been met by the provision, alteration or improvement of the public road referred to in paragraph (a) or (b) of subsection (5) of this section.

- (7) The determinations referred to in subsection (5) of this section are—

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- (a) a determination, for the purpose of assessing compensation in respect of any compulsory acquisition, whether planning permission might reasonably have been expected to be granted for any development if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers, and
- (b) a determination under section 25 of this Act as to the development for which, in the opinion of the planning authority, planning permission would or would not have been granted if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers .]

#### Textual Amendments

- F22** Words in s. 22(1) inserted (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 79, **Sch. 17 Pt. I para. 7(1)**, (with s. 84(5)); S.I. 1991/2092, **art.3** (with art. 4, Sch. 2 Pt. II)
- F23** S. 22(3A) substituted (25.9.1991) for words in s. 22(3) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), s. 79, **Sch. 17 Pt. I para. 7(2)**, (with s. 84(5)); S.I. 1991/2092, **art.3** (with art. 4, Sch. 2 Pt. II)
- F24** S. 22(5)(6)(7) added (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 28:2), **s.74**, (with s. 84(5)); S.I. 1991/2092, **art.3** (with art. 4 Sch. 2 Pt. I para. 2)

### 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.

<sup>F25</sup>(3) Subject to subsection (4) of this section, it shall be assumed that, in respect of the relevant land or any part of it, planning permission would be granted—

- (a) subject to the condition set out in [<sup>F26</sup>Schedule 12 to the Town and Country Planning (Scotland) Act 1997], for any development of a class specified in [<sup>F26</sup>paragraph 1 of Schedule 11 to that Act]; and
- (b) for any development of a class specified in [<sup>F26</sup>paragraph 2 of Schedule 11 to that Act].

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

- <sup>F27</sup>(a) .....
- <sup>F27</sup>(b) .....

(c) where, at any time before the said date, an order was made under [<sup>F28</sup>section 71 of the said Act of 1997], in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, and

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compensation became payable in respect of that order under [F28 section 83 of that Act] 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, [F29 would have been] granted in respect of the relevant land or part thereof [F30 if it were not proposed to be acquired by any authority possessing compulsory purchase powers] 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.

#### Textual Amendments

- F25** S. 23(3) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), s. 60(6), [Sch. 12 para. 1\(1\)\(a\)](#), (with s. 84(5)); S.I. 1991/2092, [art. 3](#)
- F26** Words in s. 23(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 9\(3\)\(a\)](#)
- F27** S. 23(4)(a)(b) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 28:2\)](#), ss. 60(6), 84(6), [Sch. 12 para. 1\(1\)\(b\)](#), [Sch. 19 Pt. IV](#) (with s. 84(5)); S.I. 1991/2092, [art. 3](#), [Sch. 1](#)
- F28** Words in s. 23(4)(c) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 9\(3\)\(b\)](#)
- F29** Words substituted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 5\(2\)\(5\)](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 33 para. 7\(1\)\(3\)\(5\)](#) in relation to applications, or certificates issued in pursuance of applications, made after 12.12.1975
- F30** Words inserted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 5\(2\)\(5\)](#); continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 33 para. 7\(1\)\(3\)\(5\)](#) in relation to applications, or certificates issued in pursuance of applications, made after 12.12.1975

## 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 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

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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;

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.

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- (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.

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**Changes to legislation:**

There are currently no known outstanding effects for the Land Compensation (Scotland) Act 1963, Part III.