



# Land Compensation (Scotland) Act 1963

## 1963 CHAPTER 51

### PART III

#### PROVISIONS DETERMINING AMOUNT OF COMPENSATION

##### *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>F1</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>F2</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.]

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*Changes to legislation: There are currently no known outstanding effects for the Land Compensation (Scotland) Act 1963, Cross Heading: Assumptions as to planning permission. (See end of Document for details)*

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- (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>F3</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—
- (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

- F1** 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)
- F2** 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)
- F3** 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—

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- (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>F4</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>F5</sup>Schedule 12 to the Town and Country Planning (Scotland) Act 1997]], for any development of a class specified in [<sup>F5</sup>paragraph 1 of Schedule 11 to that Act]; and
  - (b) for any development of a class specified in [<sup>F5</sup>paragraph 2 of Schedule 11 to that Act].
- (4) Notwithstanding anything in subsection (3) of this section—
- <sup>F6</sup>(a) .....
  - <sup>F6</sup>(b) .....
  - (c) where, at any time before the said date, an order was made under [<sup>F7</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 compensation became payable in respect of that order under [<sup>F7</sup>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, [<sup>F8</sup>would have been] granted in respect of the relevant land or part thereof [<sup>F9</sup>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

- F4** 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](#)
- F5** Words in s. 23(3) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(3\)\(a\)](#)
- F6** 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](#)
- F7** Words in s. 23(4)(c) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 9\(3\)\(b\)](#)

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- F8** 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
- F9** 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 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—

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- (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.
- (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.

**Changes to legislation:**

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