



# New Towns (Scotland) Act 1968

## 1968 CHAPTER 16

### *Statutory undertakers*

#### **26 Extinguishment of rights of way, and rights as to apparatus, of statutory undertakers. S**

- (1) This section applies to land—
  - (a) which has been acquired for the purposes of this Act by a development corporation or local [<sup>F1</sup>roads] authority and is for the time being held by that corporation or authority for those purposes, or
  - (b) which has been acquired under this Act by the Secretary of State and is for the time being held for the purposes for which he acquired it.
- (2) Where, in the case of any land to which this section applies—
  - (a) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, or
  - (b) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking,the acquiring authority may serve on the statutory undertakers a notice stating that, at the end of such period as may be specified in the notice, the right will be extinguished, or requiring that, before the end of such period as may be so specified, the apparatus shall be removed.
- (3) The statutory undertakers on whom a notice is served under subsection (2) above may, before the end of the period of 28 days from the service of the notice, serve a counter-notice on the acquiring authority stating that they object to all or any of the provisions of the notice, and specifying the grounds of their objection.
- (4) If no counter-notice is served under subsection (3) above—
  - (a) any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice, and

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- (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to the removal of the apparatus has not been complied with, the acquiring authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (5) If a counter-notice is served under subsection (3) above on a development corporation or local [<sup>F1</sup>roads] authority, the corporation or authority may either withdraw the notice (without prejudice to the service of a further notice) or may apply to the Secretary of State and the appropriate Minister for an order under this section embodying the provisions of the notice, with or without modification; and if such an application is made, the Secretary of State and the appropriate Minister may make an order under this section accordingly.
- (6) If a counter-notice is served under subsection (3) above on the Secretary of State, he may withdraw the notice (without prejudice to the service of a further notice) or he and the appropriate Minister may make an order under this section embodying the provisions of the notice, with or without modification.
- (7) Where, by virtue of this section, any right vested in or belonging to statutory undertakers is extinguished, or any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the acquiring authority at whose instance the right was extinguished or the requirement imposed; and the provisions of Schedule 5 to this Act shall have effect as regards the assessment of the amount of that compensation.
- [<sup>F2</sup>(8) Except in a case in which section 24 above has effect—
- (a) the reference in paragraph (a) of subsection (2) above to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in accordance with [<sup>F3</sup>the electronic communications code] on the operator of [<sup>F4</sup>an electronic communications code network]; and
- (b) the reference in paragraph (b) of that subsection to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to [<sup>F5</sup>electronic communications apparatus] kept installed for the purposes of any [<sup>F6</sup>such network];

and for the purposes of this subsection, in this section (except in the said paragraphs (a) and (b)) and in Schedule 5 to this Act and section 27 below, references to statutory undertakers shall have effect as references to the operator of any [<sup>F6</sup>such network], references, in relation to such an operator, to the carrying on of his undertaking shall have effect as references to [<sup>F7</sup>the provision of the electronic communications code network] in question and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.]

#### Textual Amendments

- F1** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 61(12)**
- F2** S. 24 substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 47(6), **Sch. 5 para. 45**
- F3** Words in s. 26(8) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 6(1)(d)(2)(a)
- F4** Words in s. 26(8) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 6(1)(d)(2)(b)

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- F5** Words in s. 26(8) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 6(1)(d)(2)(e)
- F6** Words in s. 26(8) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 6(1)(d)(2)(f)
- F7** Words in s. 26(8) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 6(1)(d)(2)(c)

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

- C1** S. 26 restricted by [Post Office Act 1969 \(c. 48, SIF 96\)](#), s. 76, **Sch. 4 para. 86(3)**

## 27 Orders under s. 26. **S**

- (1) Where the Secretary of State and the appropriate Minister propose to make an order under section 26(6) of this Act, they shall prepare a draft of the order.
- (2) Before making an order under section 26(5) or (6) of this Act, the Ministers proposing to make the order—
  - (a) shall afford to the statutory undertakers on whom notice was served under subsection (2) of that section an opportunity of objecting to the application for, or proposal to make, the order, and
  - (b) if any objection is made, shall cause an inquiry to be held, and may then, if they think fit, make the order in accordance with the application or in accordance with the draft order, as the case may be, either with or without modification.
- (3) Where an objection to an order under the said section 26 is duly made and is not withdrawn before the making of the order, the order shall be subject to special parliamentary procedure.
- (4) Subject to subsection (3) above, where an order is made under section 26 of this Act—
  - (a) any right to which the order relates shall be extinguished at the end of the period specified in that behalf in the order, and
  - (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the acquiring authority may remove the apparatus and dispose of it in any way the authority may think fit.

## 28 Extension or modification of functions of statutory undertakers. **S**

- (1) The powers conferred by this section shall be exercisable where, on a representation made by statutory undertakers, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of those undertakers should be extended or modified, in order—
  - (a) to secure the provision of services which would not otherwise be provided, or satisfactorily provided, for the purposes of a new town under this Act, or
  - (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the acts and events mentioned in subsection (2) below.
- (2) The said acts and events are—
  - (a) the acquisition under this Act of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking;

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- (b) the extinguishment of a right or the imposition of any requirement by virtue of section 26 of this Act.
- (3) The powers conferred by this section shall also be exercisable where, on a representation made by a development corporation, it appears to the Secretary of State and the appropriate Minister to be expedient that the powers and duties of statutory undertakers should be extended or modified, in order to secure the provision of new services, or the extension of existing services, for the purposes of a new town under this Act.
- (4) Where the powers conferred by this section are exercisable, the Secretary of State and the appropriate Minister may, if they think fit, by order provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them to be requisite in order to secure the provision of the services in question, as mentioned in subsection (1)(a) or (3) above, or to facilitate the adjustment in question, as mentioned in subsection (1)(b) above, as the case may be.
- (5) Without prejudice to the generality of subsection (4) above, an order under this section may make provision—
  - (a) for empowering the statutory undertakers to acquire (whether compulsorily or by agreement) any land specified in the order, and to erect or construct any building or works so specified;
  - (b) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments relating to the acquisition of land and the construction of works;
  - (c) where it has been represented that the making of the order is expedient for the purposes mentioned in subsection (1)(a) or (3) above, for giving effect to such financial arrangements between the development corporation and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order;
  - (d) for such incidental and supplemental matters (including the amendment or repeal of any provision in any local enactment) as appear to the Secretary of State and the appropriate Minister to be expedient for the purposes of the order.

## 29 Procedure in relation to orders under s. 28. **S**

- (1) As soon as may be after making such a representation as is mentioned in section 28(1) or (3) of this Act—
  - (a) the statutory undertakers, in a case falling within subsection (1) of that section, or
  - (b) the development corporation, in a case falling within subsection (3) thereof, shall publish, in such form and manner as may be directed by the Secretary of State and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time (not being less than 28 days) within which, and the manner in which, objection to the making of an order on the representation may be made, and shall serve a like notice on any persons appearing from the valuation roll to have an interest in any land to which the representation relates, and shall also, if it is so directed by the Secretary of State and the appropriate Minister, serve a like notice on such other persons, or persons of such classes, as may be so directed.
- (2) Orders under the said section 28 shall be subject to special parliamentary procedure.

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### **30 Relief of statutory undertakers from obligations rendered impracticable. S**

- (1) Where, on a representation made by statutory undertakers, the appropriate Minister is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which this subsection applies, the appropriate Minister may, if he thinks fit, by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order.
- (2) Subsection (1) above applies to the following acts and events, that is to say—
  - (a) the compulsory acquisition under this Act of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking;
  - (b) the extinguishment of a right or the imposition of any requirement by virtue of section 26 of this Act.
- (3) As soon as may be after making a representation to the appropriate Minister under subsection (1) above, the statutory undertakers shall, as may be directed by the appropriate Minister, either—
  - (a) publish (in such form and manner as may be so directed) a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time (not being less than 28 days) within which, and the manner in which, objections to the making of an order on the representation may be made, or
  - (b) serve such a notice on such persons, or persons of such classes, as may be so directed, or
  - (c) both publish and serve such notices.
- (4) If any objection to the making of an order under this section is duly made and is not withdrawn before the order is made, the order shall be subject to special parliamentary procedure.
- (5) As soon as may be after an order has been made under this section the appropriate Minister shall publish in such form and manner as he thinks fit a notice stating that the order has been made.
- (6) The provisions of Part V of Schedule 3 to this Act as to the validity and date of operation of compulsory purchase orders shall have effect in relation to an order under this section with the substitution for references to a compulsory purchase order and to publication in accordance with the provisions of that Schedule in that behalf of references to an order under this section and to publication in accordance with subsection (5) above.

### **31 Objections to orders under ss. 28 and 30. S**

- (1) For the purposes of sections 28 and 30 of this Act an objection to the making of an order thereunder shall not be treated as duly made unless—
  - (a) the objection is made within the time and in the manner specified in the notice required by the section under which the order is proposed to be made, and
  - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.

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- (2) Where an objection to the making of such an order is duly made in accordance with subsection (1) above and is not withdrawn, the provisions of Schedule 8 to this Act shall have effect in relation thereto.

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