



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART X

#### STATUTORY UNDERTAKERS

##### *Preliminary*

#### **214 Meaning of “statutory undertakers”.**

- (1) Subject to the following provisions of this section, in this Act “statutory undertakers” means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power or water and a relevant airport operator (within the meaning of Part V of the <sup>M1</sup>Airports Act 1986).
- (2) Subject to the following provisions of this section, in this Act “statutory undertaking” shall be construed in accordance with subsection (1) and, in relation to a relevant airport operator (within the meaning of Part V of the Airports Act 1986), means an airport to which that Part of that Act applies.
- (3) Subject to subsection (5), for the purposes of the provisions mentioned in subsection (4) any public gas transporter, the Post Office and the Civil Aviation Authority shall be deemed to be statutory undertakers and their undertakings statutory undertakings.
- (4) The provisions referred to in subsection (3) are sections 26, 57, 69, 70, 77(3), 90 to 92, 94, 99, 121(11)(b), 194(2)(a), 196 to 198, 200, 202(4)(b), 205(3)(e), 208(2), 215(1) and (2), 216, 218, 219, 221 to 236, 239(10)(a), 255, 270(9), 277(2) and (3), and Schedules 6, 7, 14 and 16.
- (5) Subsection (4) shall apply—

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- (a) as respects the Post Office, as if the reference to sections 26, 194(2)(a), 196, 200, 202(4)(b), 205(3)(e), 208(2), 215(1) and (2) and 277(2) and (3) were omitted;
  - (b) as respects the Civil Aviation Authority, as if the references to sections 200, 215(1) and (2) and 277(2) and (3) were omitted and the reference to Schedule 16 included the words “except paragraph 3”; and
  - (c) as respects any public gas transporter, as if the reference to Schedule 7 were omitted and the reference to Schedule 16 included the words “except paragraphs 1 and 3”.
- (6) Any holder of a licence under section 6 of the <sup>M2</sup>Electricity Act 1989 shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking—
- (a) for the purposes of the provisions mentioned in subsection (7)(a), if he holds a licence under subsection (1) of that section;
  - (b) for the purposes of the provisions mentioned in subsection (7)(b), if he is entitled to exercise any power conferred by Schedule 3 to that Act; and
  - (c) for the purposes of the provisions mentioned in subsection (7)(c), if he is entitled to exercise any power conferred by paragraph 2 of Schedule 4 to that Act.
- (7) The provisions referred to in subsection (6) are—
- (a) sections 26, 77(3), 90 to 92, 94, 99, 194(2)(a), 196, 200, 205(3)(e), 215(1) and (2), 216, 218, 219, 221 to 236, 239(10)(a), 255, 270(9), 277(2) and (3), Schedule 14 and paragraphs 2(2)(a) and (3)(a) of Schedule 16;
  - (b) sections 121(11)(b), 197 and 198; and
  - (c) sections 202(4)(b) and 208(2) and paragraphs 1, 6(2)(b)(iii) and (3), 8(5) and (7) and 9(1), (3) and (4) of Schedule 16.

#### Marginal Citations

**M1** 1986 c. 31.

**M2** 1989 c. 29.

## 215 Meaning of “operational land”.

- (1) Subject to the following provisions of this section and to section 216, in this Act “operational land” means, in relation to statutory undertakers—
- (a) land which is used for the purpose of carrying on their undertaking, and
  - (b) land in which an interest is held for that purpose.
- (2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.
- (3) In sections 77(3), 218 to 236 and paragraph 6 of Schedule 6 “operational land”, in relation to the Post Office and the Civil Aviation Authority, means land of the Post Office’s or, as the case may be, of the Authority’s of any such class as may be prescribed by regulations.
- (4) Such regulations—

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- (a) may define a class of land by reference to any circumstances whatsoever, and
  - (b) in the case of the Civil Aviation Authority, may make provision for different circumstances, including prescribing different classes of land for the purposes of different provisions.
- (5) In the case of the Post Office or the Civil Aviation Authority, if any question arises as to whether land belonging to either of them falls within a class defined by such regulations, it shall be determined by the Secretary of State.

## **216 Cases in which land is to be treated as not being operational land.**

- (1) This section applies where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and—
- (a) the interest was acquired by them on or after 8th December 1969, or
  - (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1947 Act.
- (2) Where this section applies in respect of any land then, notwithstanding the provisions of section 215, the land shall not be treated as operational land for the purposes of this Act unless it falls within subsection (3) or (4).
- (3) Land falls within this subsection if—
- (a) there is, or at some time has been, in force with respect to it a specific planning permission for its development, and
  - (b) that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers' undertaking.
- (4) Land falls within this subsection if—
- (a) the statutory undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the <sup>M3</sup>Transport Act 1968, the <sup>M4</sup>Gas Act 1986 or the <sup>M5</sup>Airports Act 1986 from other statutory undertakers, and
  - (b) immediately before transfer the land was operational land of those other undertakers.
- (5) A specific planning permission for the purpose of subsection (3)(a) is a planning permission—
- (a) granted on an application in that behalf made under Part III,
  - (b) granted by provisions of a development order granting planning permission generally for development which has received specific parliamentary approval,
  - (c) granted by a special development order in respect of development specifically described in the order,
  - (d) deemed to be granted by virtue of a direction of a government department under section 57(1), or
  - (e) deemed to be granted by virtue of paragraph 27 of Schedule 9 to the <sup>M6</sup>Post Office Act 1969.
- (6) In subsection (5)—
- (a) the reference in paragraph (a) to Part III includes a reference to Part III of the 1972 Act and the enactments in force before the commencement of that Act and replaced by Part III of it,

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- (b) the reference in paragraph (b) to development which has received specific parliamentary approval is a reference to development authorised—
- (i) by a local or private Act of Parliament,
  - (ii) by an order approved by both Houses of Parliament, or
  - (iii) by an order which has been brought into operation in accordance with the provisions of the <sup>M7</sup>Statutory Orders (Special Procedure) Act 1945,
- being an Act or order which designates specifically both the nature of the development authorised by it and the land upon which it may be carried out, and
- (c) the reference in paragraph (d) to section 57(1) includes a reference to section 37 of the 1972 Act and section 32 of the 1947 Act.
- (7) This section shall not apply to land in the case of which an interest of the Postmaster General’s vested in the Post Office by virtue of section 16 of the <sup>M8</sup>Post Office Act 1969.
- (8) Where an interest in land is held by the Civil Aviation Authority this section shall not apply for the purpose of determining whether the land is operational land in relation to the Authority for the purposes of this Act.

#### Marginal Citations

<b>M3</b>	1968 c. 73.
<b>M4</b>	1986 c. 44.
<b>M5</b>	1986 c. 31.
<b>M6</b>	1969 c. 48.
<b>M7</b>	1945 c. 18.
<b>M8</b>	1969 c. 49.

## 217 Meaning of “the appropriate Minister”.

- (1) Subject to the following provisions of this section, in this Act “the appropriate Minister” means—
- <sup>F1</sup>(a) .....
  - (b) in relation to statutory undertakers carrying on an undertaking for the supply of hydraulic power and the Post Office, the Secretary of State for Trade and Industry;
  - (c) in relation to statutory undertakers carrying on an undertaking for the supply of water, the Secretary of State for Scotland; and
  - <sup>F2</sup>(d) in relation to any other statutory undertakers or the Civil Aviation Authority, the Secretary of State for the Environment, Transport and the Regions.]
- (2) For the purposes of sections 121(11), 218 to 233, 270(9) and 277(2) and (3) and paragraph 6 of Schedule 6, “the appropriate Minister”—
- (a) in relation to a public gas transporter, means the Secretary of State for Trade and Industry; and
  - (b) in relation to a holder of a licence under section 6 of the <sup>M9</sup>Electricity Act 1989, means the Secretary of State.
- (3) References in this Act to the Secretary of State and the appropriate Minister—

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- (a) if the appropriate Minister is not the one concerned as the Secretary of State, shall be construed as references to the Secretary of State and the appropriate Minister; and
  - (b) if the one concerned as the Secretary of State is also the appropriate Minister, shall be construed as references to the Secretary of State alone,
- and similarly with references to a Minister and the appropriate Minister and with any provision requiring the Secretary of State to act jointly with the appropriate Minister.

#### Textual Amendments

- F1 S. 217(1)(a) repealed (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 38, 39(a)
- F2 S. 217(1)(d) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 38, 39(b)

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

- C1 S. 217(1) extended (27.5.1997) by 1997 c. 9, ss. 78(10), 83(2) (with s. 45(4))  
S. 217(1) extended (27.5.1997) by 1997 c. 10, ss. 35(8), 40(2) (with ss. 9(3), 10(5), 31, 38(6))

#### Marginal Citations

- M9 1989 c. 29.

### *Application of Part III to statutory undertakers*

## **218 Applications for planning permission by statutory undertakers.**

- (1) Where—
  - (a) an application for planning permission to develop land to which this subsection applies is made by statutory undertakers and is referred to the Secretary of State under Part III,
  - (b) an appeal is made to the Secretary of State under that Part from the decision on such an application, or
  - (c) such an application is deemed to be made under subsection (7) of section 133 on an appeal under section 130 by statutory undertakers,the application or appeal shall be dealt with by the Secretary of State and the appropriate Minister.
- (2) Subsection (1) applies to—
  - (a) operational land, and
  - (b) land in which the statutory undertakers hold or propose to acquire an interest with a view to its being used for the purpose of carrying on their undertaking, where the planning permission, if granted on the application or appeal, would be for development involving the use of the land for that purpose.
- (3) Subject to the provisions of this Part as to compensation, this Act shall apply to an application which is dealt with under this section by the Secretary of State and the appropriate Minister as if it had been dealt with by the Secretary of State.
- (4) Subsection (2)(b) shall have effect in relation to the Civil Aviation Authority as if for the reference to development involving the use of land for the purpose of carrying on the Civil Aviation Authority's undertaking there were substituted a reference to development involving the use of land for such of the purposes of carrying on that undertaking as may be prescribed.

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## **219 Conditional grants of planning permission.**

Notwithstanding anything in Part III, planning permission to develop operational land of statutory undertakers shall not, except with their consent, be granted subject to conditions requiring—

- (a) that any buildings or works authorised by the permission shall be removed, or
  - (b) that any use of the land so authorised shall be discontinued,
- at the end of a specified period.

## **220 Development requiring authorisation of government department.**

- (1) The Secretary of State and the appropriate Minister shall not be required under section 218(1) to deal with an application for planning permission for the development of operational land if the authorisation of a government department is required in respect of that development.
- (2) Subsection (1) does not apply where the relevant authorisation has been granted without any direction as to the grant of planning permission.
- (3) For the purposes of this section development shall be taken to be authorised by a government department if—
  - (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment,
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development,
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose,
  - (d) authority is given by the department—
    - (i) for the borrowing of money for the purpose of the development, or
    - (ii) for the application for that purpose of any money not otherwise so applicable, or
  - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,

and references in this section to the authorisation of a government department shall be construed accordingly.

## **221 Revocation or modification of permission to develop operational land.**

In relation to any planning permission granted on the application of statutory undertakers for the development of operational land, the provisions of Part III with respect to the revocation and modification of planning permission shall have effect as if for any reference in them to the Secretary of State there were substituted a reference to the Secretary of State and the appropriate Minister.

## **222 Order requiring discontinuance of use etc. of operational land.**

The provisions of Part III with respect to the making of orders—

- (a) requiring the discontinuance of any use of land,
- (b) imposing conditions on the continuance of it, or

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(c) requiring buildings or works on land to be altered or removed, and the provisions of Schedule 8 with respect to the making of orders under that Schedule shall have effect in relation to operational land of statutory undertakers as if for any reference in them to the Secretary of State there were substituted a reference to the Secretary of State and the appropriate Minister.

## **223 Acquisition of land of statutory undertakers.**

- (1) This section applies to any compulsory purchase order under this Act authorising the acquisition of land which has been acquired by statutory undertakers for the purposes of their undertaking.
- (2) Paragraph 10 (protection of land of statutory undertakers) of Schedule 1 to the <sup>M10</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall not apply to such an order confirmed or made by the appropriate Minister jointly with the Minister or Ministers who would (apart from this subsection) have power to make or confirm it.

### **Marginal Citations**

**M10** 1947 c. 42.

*Extinguishment of rights of statutory undertakers, etc.*

## **224 Extinguishment of rights of statutory undertakers: preliminary notices.**

- (1) This section applies where any land has been acquired by a Minister, a planning authority or statutory undertakers under Part VIII of this Act or Chapter V of Part I of the <sup>M11</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or compulsorily under any other enactment or has been appropriated by a planning authority for planning purposes, and—
  - (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.
- (2) For the purposes of this section the relevant period, in relation to a notice served in respect of any right or apparatus, is the period of 28 days from the date of service of the notice or such longer period as may be specified in it in relation to that right or apparatus.
- (3) If the acquiring or appropriating authority is satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus is necessary for the purpose of carrying out any development with a view to which the land was acquired or appropriated, they may serve on the statutory undertakers a notice—
  - (a) stating that at the end of the relevant period the right will be extinguished, or
  - (b) requiring that before the end of that period the apparatus shall be removed.

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- (4) The statutory undertakers on whom a notice is served under subsection (3) may, before the end of the period of 28 days from the date of service of the notice, serve a counter-notice on the acquiring or appropriating authority—
  - (a) stating that they object to all or any of the provisions of the notice, and
  - (b) specifying the grounds of their objection.
- (5) If no counter-notice is served under subsection (4)—
  - (a) any right to which the notice relates shall be extinguished at the end of the relevant period, and
  - (b) if at the end of that period any requirement of the notice as to the removal of any apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (6) If a counter-notice is served under subsection (4) on a planning authority or on statutory undertakers, the authority or undertakers may either—
  - (a) withdraw the notice (without prejudice to the service of a further notice), or
  - (b) 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.
- (7) If a counter-notice is served under subsection (4) on a Minister—
  - (a) he may withdraw the notice (without prejudice to the service of a further notice), or
  - (b) he and the appropriate Minister may make an order under this section embodying the provisions of the notice, with or without modification.
- (8) In this section any reference to the appropriation of land for planning purposes shall be construed in accordance with section 201(1) as if this section were in Part VIII.

#### Marginal Citations

M11 1997 c. 9.

## 225 Extinguishment of rights of telecommunications code system operators: preliminary notices.

- (1) This section applies where any land has been acquired by a Minister, a planning authority or statutory undertakers under Part VIII or under Chapter V of Part I of the <sup>M12</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or compulsorily under any other enactment or has been appropriated by a planning authority for planning purposes, and—
  - (a) there subsists over that land a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system, 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 telecommunication apparatus kept installed for the purposes of any such system.
- (2) For the purposes of this section the relevant period, in relation to a notice served in respect of any right or apparatus, is the period of 28 days from the date of service of



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the notice or such longer period as may be specified in it in relation to that right or apparatus.

- (3) If the acquiring or appropriating authority is satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus is necessary for the purpose of carrying out any development with a view to which the land was acquired or appropriated, they may serve on the operator of the telecommunications code system a notice—
  - (a) stating that at the end of the relevant period the right will be extinguished, or
  - (b) requiring that before the end of that period the apparatus shall be removed.
- (4) The operator of the telecommunications code system on whom a notice is served under subsection (2) may, before the end of the period of 28 days from the date of service of the notice, serve a counter-notice on the acquiring or appropriating authority—
  - (a) stating that he objects to all or any of the provisions of the notice, and
  - (b) specifying the grounds of his objection.
- (5) If no counter-notice is served under subsection (4)—
  - (a) any right to which the notice relates shall be extinguished at the end of the relevant period, and
  - (b) if at the end of that period any requirement of the notice as to the removal of any apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (6) If a counter-notice is served under subsection (4) on a planning authority or on statutory undertakers, the authority or undertakers may either—
  - (a) withdraw the notice (without prejudice to the service of a further notice), or
  - (b) apply to the Secretary of State and the Secretary of State for Trade and Industry for an order under this section embodying the provisions of the notice, with or without modification.
- (7) If a counter-notice is served under subsection (4) on a Minister—
  - (a) he may withdraw the notice (without prejudice to the service of a further notice), or
  - (b) he and the Secretary of State for Trade and Industry may make an order under this section embodying the provisions of the notice, with or without modification.
- (8) In this section any reference to the appropriation of land for planning purposes shall be construed in accordance with section 201(1) as if this section were in Part VIII.

#### Marginal Citations

M12 1997 c. 9.

## 226 Notice for same purposes as sections 224 and 225 but given by undertakers to developing authority.

- (1) Subject to the provisions of this section, where land has been acquired or appropriated as mentioned in section 224(1) or 225(1) and—

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- (a) there is on, under or over the land any apparatus vested in or belonging to statutory undertakers, and
  - (b) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development,
- the undertakers may serve on the acquiring or appropriating authority a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.
- (2) No notice under this section shall be served later than 21 days after the beginning of the development of land which has been acquired or appropriated as mentioned in section 224(1) or, as the case may be, 225(1).
  - (3) Where a notice is served under this section, the authority on whom it is served may, before the end of the period of 28 days from the date of service, serve on the statutory undertakers a counter-notice—
    - (a) stating that they object to all or any of the provisions of the notice, and
    - (b) specifying the grounds of their objection.
  - (4) If no counter-notice is served under subsection (3), the statutory undertakers shall, after the end of that period, have the rights claimed in their notice.
  - (5) If a counter-notice is served under subsection (3), the statutory undertakers who served the notice under this section may either withdraw it or may apply to the Secretary of State and the appropriate Minister for an order under this section conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State and the appropriate Minister think it expedient to confer on them.
  - (6) Where, by virtue of this section or of an order of Ministers under it, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the acquiring or appropriating authority for the works to be carried out by that authority, under the superintendence of the undertakers, instead of by the undertakers themselves.
  - (7) In subsection (1)(a), the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to telecommunication apparatus kept installed for the purposes of a telecommunications code system.
  - (8) For the purposes of subsection (7), in this section—
    - (a) references (except in subsection (1)(a)) to statutory undertakers shall have effect as references to the operator of any such system, and
    - (b) references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.

## **227 Orders under sections 224 and 225.**

- (1) Where a Minister and the appropriate Minister propose to make an order under section 224(7) or 225(7), they shall prepare a draft of the order.
- (2) Before making an order under subsection (6) or (7) of section 224, or under subsection (6) or (7) of section 225, the Ministers proposing to make the order shall give the statutory undertakers or, as the case may be, the operator of the telecommunications code system on whom notice was served under subsection (3) of

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section 224 or, as the case may be, under subsection (3) of section 225 an opportunity of objecting to the application for, or proposal to make, the order.

- (3) If any such objection is made, before making the order the Ministers shall cause an inquiry to be held and shall give those statutory undertakers or, as the case may be, that operator (and, in a case falling within subsection (6) of either of those sections, the planning authority or statutory undertakers on whom the counter-notice was served) an opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State and the appropriate Minister.
- (4) After complying with subsections (2) and (3) the Ministers may, if they think fit, make the order in accordance with the application or, as the case may be, in accordance with the draft order, either with or without modification.
- (5) Where an order is made under section 224 or 225—
  - (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 or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit.
- (6) In this section references to the appropriate Minister shall in the case of an order under section 225 be taken as references to the Secretary of State for Trade and Industry.

*Extension or modification of statutory undertakers' functions*

**228 Extension or modification of functions of statutory undertakers.**

- (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 any purpose in connection with which a planning authority or Minister may be authorised under Part VIII or under Chapter V of Part I of the <sup>M13</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to acquire land or in connection with which any such person may compulsorily acquire land under any other enactment, 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).
- (2) Those acts and events are—
  - (a) the acquisition under Part VIII or that Chapter or compulsorily under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question;
  - (b) the extinguishment of a right or the imposition of any requirement by virtue of section 224 or 225;
  - (c) a decision on an application made by the statutory undertakers for planning permission to develop any such land as is mentioned in paragraph (a);

*Status: Point in time view as at 26/01/1998.*

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- (d) the revocation or modification of planning permission granted on any such application;
  - (e) the making of an order under section 71 or paragraph 1 of Schedule 8 in relation to any such land.
- (3) The powers conferred by this section shall also be exercisable where, on a representation made by a planning authority or Minister, 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 any purpose in connection with which the planning authority or Minister making the representation may be authorised under Part VIII or under Chapter V of Part I of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to acquire land or in connection with which the local authority or Minister may compulsorily acquire land under any other enactment.
- (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—
- (a) to secure the services in question, as mentioned in subsection (1)(a) or (3), or
  - (b) to secure the adjustment in question, as mentioned in subsection (1)(b),
- as the case may be.
- (5) Without prejudice to the generality of subsection (4), an order under this section may make provision—
- (a) for empowering the statutory undertakers—
    - (i) to acquire (whether compulsorily or by agreement) any land specified in the order, and
    - (ii) to erect or construct any buildings 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), for giving effect to such financial arrangements between the planning authority or Minister 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 as appear to the Secretary of State and the appropriate Minister to be expedient for the purposes of the order.
- (6) Orders under this section shall be subject to special parliamentary procedure.

#### Marginal Citations

M13 1997 c. 9.

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## **229 Procedure in relation to orders under section 228.**

- (1) As soon as possible after making such a representation as is mentioned in section 228(1) or (3) the statutory undertakers, the planning authority or Minister making the representation shall publish notice of the representation.
- (2) A notice under subsection (1)—
  - (a) shall be published in such form and manner as the Secretary of State and the appropriate Minister may direct,
  - (b) shall give such particulars as they may direct of the matters to which the representation relates, and
  - (c) shall specify the time within which (being not less than 28 days), and the manner in which, objections to the making of an order on the representation may be made.
- (3) A similar notice shall be served—
  - (a) on any persons appearing from the valuation roll to have an interest in any land to which the representation relates, and
  - (b) if directed by the Secretary of State and the appropriate Minister, on such persons, or persons of such classes, as may be so directed.

## **230 Relief of statutory undertakers from obligations rendered impracticable.**

- (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) applies to the following acts and events—
  - (a) the compulsory acquisition under Part VIII or under Chapter V of Part I of the <sup>M14</sup>Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers, and
  - (b) the acts and events specified in section 228(2)(b) to (e).
- (3) The appropriate Minister may direct statutory undertakers who have made a representation to him under subsection (1) to publicise it in either or both of the following ways—
  - (a) by publishing in such form and manner as he may direct a notice, giving such particulars as he may direct of the matters to which the representation relates and specifying the time within which (being not less than 28 days), and the manner in which, objections to the making of an order on the representation may be made;
  - (b) by serving such a notice on such persons, or persons of such classes, as he may direct.
- (4) The statutory undertakers shall comply with any direction given to them under subsection (3) as soon as practicable after the making of the representation under subsection (1).

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- (5) 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.
- (6) Immediately after an order is made under this section by the appropriate Minister, he shall—
  - (a) publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours, and
  - (b) serve a similar notice—
    - (i) on any person who duly made an objection to the order and has sent to the appropriate Minister a request in writing to serve him with the notice required by this subsection, specifying an address for service, and
    - (ii) on such other persons (if any) as the appropriate Minister thinks fit.
- (7) Subject to subsection (8), and to the provisions of Part XI, an order under this section shall become operative on the date on which the notice required by subsection (6) is first published.
- (8) Where in accordance with subsection (5) the order is subject to special parliamentary procedure, subsection (7) shall not apply.

#### **Marginal Citations**

**M14** 1997 c. 9.

### **231 Objections to orders under sections 228 and 230.**

- (1) For the purposes of sections 228 and 230, an objection to the making of an order 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 section 229 or, as the case may be, section 230, and
  - (b) a statement in writing of the grounds of the objection is comprised in or submitted with the objection.
- (2) Where an objection to the making of such an order is duly made in accordance with subsection (1) and is not withdrawn, the following provisions of this section shall have effect in relation to it.
- (3) Unless the appropriate Minister decides without regard to the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, before he makes a final decision he—
  - (a) shall consider the grounds of the objection as set out in the statement, and
  - (b) may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates.
- (4) In so far as the appropriate Minister, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the appropriate Minister may treat the objection as irrelevant for the purpose of making a final decision.

*Status: Point in time view as at 26/01/1998.*

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- (5) If—
- (a) after considering the grounds of the objection as so set out, the appropriate Minister is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates, or
  - (b) in a case where a further statement has been required, it is not submitted within the specified period,
- the appropriate Minister may make a final decision without further investigation as to those matters.
- (6) Subject to subsections (4) and (5), before making a final decision the appropriate Minister shall give the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate Minister.
- (7) If the objector takes that opportunity, the appropriate Minister shall give an opportunity of appearing and being heard on the same occasion to the statutory undertakers, planning authority or Minister on whose representation the order is proposed to be made, and to any other persons to whom it appears to him to be expedient to give such an opportunity.
- (8) Notwithstanding anything in the previous provisions of this section, if it appears to the appropriate Minister that the matters to which the objection relates are such as to require investigation by public local inquiry before he makes a final decision, he shall cause such an inquiry to be held.
- (9) Where the appropriate Minister determines to cause such an inquiry to be held, any of the requirements of subsections (3) to (7) to which effect has not been given at the time of that determination shall be dispensed with.
- (10) In this section any reference to making a final decision in relation to an order is a reference to deciding whether to make the order or what modification (if any) ought to be made.
- (11) In the application of this section to an order under section 228, any reference to the appropriate Minister shall be construed as a reference to the Secretary of State and the appropriate Minister.

### *Compensation*

#### **232 Right to compensation in respect of certain decisions and orders.**

- (1) Statutory undertakers shall, subject to the following provisions of this Part, be entitled to compensation from the planning authority—
- (a) in respect of any decision made in accordance with section 218 by which planning permission to develop operational land of those undertakers is refused or is granted subject to conditions where—
    - (i) planning permission for that development would have been granted by a development order but for a direction given under such an order that planning permission so granted should not apply to the development, and
    - (ii) it is not development which has received specific parliamentary approval (within the meaning of section 216(6)(b));

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- (b) in respect of any order under section 65, as modified by section 221, by which planning permission which was granted on the application of those undertakers for the development of any such land is revoked or modified.
- (2) Where by virtue of section 224—
- (a) any right vested in or belonging to statutory undertakers is extinguished, or
  - (b) any requirement is imposed on statutory undertakers,
- those undertakers shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.
- (3) Where by virtue of section 225—
- (a) any right vested in or belonging to an operator of a telecommunications code system is extinguished, or
  - (b) any requirement is imposed on such an operator,
- the operator shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.
- (4) Where—
- (a) works are carried out for the removal or resiting of statutory undertakers' apparatus, and
  - (b) the undertakers have the right to carry out those works by virtue of section 226 or an order of Ministers under that section,
- the undertakers shall be entitled to compensation from the acquiring or appropriating authority.
- (5) Subsection (1) shall not apply in respect of a decision or order if—
- (a) it relates to land acquired by the statutory undertakers after 7th January 1947, and
  - (b) the Secretary of State and the appropriate Minister include in the decision or order a direction that subsection (1) shall not apply to it.
- (6) The Secretary of State and the appropriate Minister may give a direction under subsection (5) only if they are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of the decision or order in question.
- (7) For the purposes of this section the conditions referred to in sections 58 and 59 shall be disregarded.

### **233 Measure of compensation to statutory undertakers etc.**

- (1) Where—
- (a) statutory undertakers are entitled to compensation—
    - (i) as mentioned in subsection (1), (2) or (4) of section 232,
    - (ii) under the provisions of section 83 in respect of an order made under section 71 or paragraph 1, 3, 5 or 6 of Schedule 8 as modified by section 222, or
    - (iii) in respect of a compulsory acquisition of land which has been acquired by those undertakers for the purposes of their undertaking, where the first-mentioned acquisition is effected under a compulsory



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purchase order confirmed or made without the appropriate Minister’s certificate, or

- (b) the operator of a telecommunications code system is entitled to compensation as mentioned in section 232(3),

the amount of the compensation shall (subject to section 234) be an amount calculated in accordance with this section.

- (2) Subject to subsections (4) to (6), that amount shall be the aggregate of—
  - (a) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings or doing work for the purpose of any adjustment of the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system rendered necessary by the proceeding giving rise to compensation (a “business adjustment”),
  - (b) the appropriate amount for loss of profits, and
  - (c) where the compensation is under section 232(2) or (3) and is in respect of the imposition of a requirement to remove apparatus, the amount of any expenditure reasonably incurred by the statutory undertakers or, as the case may be, the operator in complying with the requirement, reduced by the value after removal of the apparatus removed.
- (3) In subsection (2) “the appropriate amount for loss of profits” means—
  - (a) where a business adjustment is made, the aggregate of—
    - (i) the estimated amount of any decrease in net receipts from the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation, and
    - (ii) such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment;
  - (b) where no business adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, the running of the telecommunications code system which is directly attributable to the proceeding giving rise to compensation.
- (4) Where a business adjustment is made, the aggregate amount mentioned in subsection (2) shall be reduced by such amount (if any) as appears to the tribunal referred to in section 235(2) to be appropriate to offset—
  - (a) the estimated value of any property (whether moveable or heritable) belonging to the statutory undertakers or the operator and used for the carrying on of their undertaking or, as the case may be, the running of the telecommunications code system which in consequence of the adjustment ceases to be so used, in so far as the value of the property has not been taken into account under paragraph (c) of that subsection, and
  - (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking or the running of the telecommunications code system in the period after the adjustment has been completed, in so far as that amount has not been taken into account in determining the amount mentioned in paragraph (b) of that subsection and is directly attributable to the adjustment.

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- (5) Where a business adjustment is made the aggregate amount mentioned in subsection (2) shall be further reduced by any amount which appears to that tribunal to be appropriate, having regard to any increase in the capital value of heritable property belonging to the statutory undertakers or the operator which is directly attributable to the adjustment, allowance being made for any reduction made under subsection (4)(b).
- (6) Where—
- (a) the compensation is under section 232(4), and
  - (b) the acquiring or appropriating authority carry out the works,
- then, in addition to any reduction falling to be made under subsection (4) or (5), the aggregate amount mentioned in subsection (2) shall be reduced by the actual cost to the authority of carrying out the works.
- (7) References in this section to a decrease in net receipts shall be construed as references—
- (a) to the amount by which a balance of receipts over expenditure is decreased,
  - (b) to the amount by which a balance of expenditure over receipts is increased, or
  - (c) where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, to the aggregate of the two balances,
- and references to an increase in net receipts shall be construed accordingly.
- (8) In this section—
- “proceeding giving rise to compensation” means—
- (a) except in relation to compensation under section 232(4), the particular action (that is to say, the decision, order, extinguishment of a right, imposition of a requirement or acquisition) in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken, and
  - (b) in relation to compensation under section 232(4), the circumstances making it necessary for the apparatus in question to be removed or resited; and
- “the appropriate Minister’s certificate” means such a certificate as is mentioned in paragraph 10 of Schedule 1 to the <sup>M15</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

#### Marginal Citations

M15 1947 c. 42.

### 234 Exclusion of section 233 at option of statutory undertakers.

- (1) Where statutory undertakers are entitled to compensation in respect of such a compulsory acquisition as is mentioned in section 233(1)(c), the statutory undertakers may by notice in writing under this section elect that the compensation shall be ascertained in accordance with the enactments (other than rule (5) of the rules set out in section 12 of the <sup>M16</sup>Land Compensation (Scotland) Act 1963) which would be applicable apart from section 233.
- (2) If the statutory undertakers so elect the compensation shall be ascertained accordingly.

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- (3) An election under this section may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land.
- (4) Any notice under this section shall be given to the acquiring authority before the end of the period of 2 months from the date of service of notice to treat in respect of the interest of the statutory undertakers.

**Marginal Citations**

**M16** 1963 c. 51.

**235 Procedure for assessing compensation.**

- (1) Where the amount of any such compensation as is mentioned in subsection (1) of section 233 falls to be ascertained in accordance with the provisions of that section, the compensation shall, in default of agreement, be assessed by the tribunal mentioned in subsection (2) below, if apart from this section it would not fall to be so assessed.
- (2) The tribunal referred to in subsection (1) above shall consist of 4 persons, namely—
  - (a) an advocate or solicitor of not less than 7 years' standing, appointed by the Lord President of the Court of Session to act as chairman,
  - (b) two persons appointed by the Secretary of State as persons having special knowledge and experience of the valuation of land and of civil engineering respectively, and
  - (c) for each claim coming before the tribunal, a person selected by the appropriate Minister, as a person having special knowledge and experience of statutory undertakings of the kind carried on by the claimant, from the members of a panel appointed by appropriate Ministers of persons appearing to them to have such knowledge and experience of statutory undertakings.
- (3) The Treasury may pay out of money provided by Parliament to the members of the tribunal such remuneration (whether by way of salaries or by way of fees), and such allowances, as the Treasury may determine.
- (4) For the purposes of any proceedings arising before the tribunal in respect of compensation falling to be ascertained as mentioned in subsection (1), sections 9 and 11 of the <sup>M17</sup>Land Compensation (Scotland) Act 1963 shall apply as they apply to proceedings on a question referred to the Lands Tribunal under section 8 of that Act, but with the substitution, in section 11, for references to the acquiring authority, of references to the person from whom the compensation is claimed.

**Marginal Citations**

**M17** 1963 c. 51.

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### *Advertisements*

#### **236 Special provisions as to display of advertisements on operational land.**

Sections 218 to 222 and 232(1), (5) and (6) do not apply in relation to the display of advertisements on operational land of statutory undertakers.

**Status:**

Point in time view as at 26/01/1998.

**Changes to legislation:**

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