



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART X

STATUTORY UNDERTAKERS

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));
 - (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.

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- (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 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

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- 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.
- (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,

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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 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

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 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.

(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.

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—

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- (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 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.