



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART X

STATUTORY UNDERTAKERS

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 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);

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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.

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 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).
- (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—

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- (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.

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.
- (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.