

Status: Point in time view as at 01/12/2008.

Changes to legislation: Housing and Regeneration Act 2008, Part 1 is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4 **E+W**

POWERS IN RELATION TO, AND FOR, STATUTORY UNDERTAKERS

PART 1 **E+W**

EXTINGUISHMENT OR REMOVAL POWERS FOR THE HCA

Notice for extinguishment of rights of undertakers or for removal of their apparatus

- 1 (1) Sub-paragraph (2) applies if—
- (a) a protected right subsists over land of the HCA and is vested in, or belongs to, statutory undertakers for the purpose of carrying on their undertaking, or
 - (b) apparatus vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking is on, under or over land of the HCA.
- (2) The HCA may serve a notice on the statutory undertakers.
- (3) The notice may, in the case of a protected right, state that, at the end of the relevant period, the right will be extinguished.
- (4) The notice may, in the case of apparatus, require that, before the end of the relevant period, the apparatus must be removed.
- (5) In this paragraph—
- “protected right” means—
 - (a) a right of way on, under or over land, or
 - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land,
 - “relevant period” means—
 - (a) the period of 28 days beginning with the date of service of the notice, or
 - (b) any longer period beginning with that date and specified in the notice.

Commencement Information

II Sch. 4 para. 1 in force at 1.12.2008 by [S.I. 2008/3068](#), [art. 2\(1\)\(g\)](#) (with [arts. 6-13](#))

Counter-notices

- 2 (1) Sub-paragraph (2) applies if the HCA serves a notice under paragraph 1 on statutory undertakers.
- (2) The statutory undertakers may, before the end of the period of 28 days beginning with the date of the service of the notice, serve a counter-notice on the HCA.

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(3) The counter-notice is a notice stating that the statutory undertakers object to all or any provisions of the notice under paragraph 1.

(4) The counter-notice must also specify the grounds of their objection.

Commencement Information

I2 Sch. 4 para. 2 in force at 1.12.2008 by *S.I. 2008/3068, art. 2(1)(g)* (with arts. 6-13)

Effect of unopposed notice

- 3 (1) This paragraph applies if—
- (a) a notice is served under paragraph 1, and
 - (b) no counter-notice is served under paragraph 2.
- (2) Any right to which the notice under paragraph 1 relates is extinguished at the end of the period specified for that purpose in the notice.
- (3) The HCA may—
- (a) remove any apparatus, and
 - (b) dispose of it as it considers appropriate,
- if any requirement of the notice under paragraph 1 as to the removal of the apparatus has not been complied with by the end of the period specified for that purpose in the notice.

Commencement Information

I3 Sch. 4 para. 3 in force at 1.12.2008 by *S.I. 2008/3068, art. 2(1)(g)* (with arts. 6-13)

Opposed notices and Ministerial orders

- 4 (1) This paragraph applies if—
- (a) a notice is served under paragraph 1, and
 - (b) a counter-notice is served under paragraph 2.
- (2) The HCA may—
- (a) withdraw the notice served under paragraph 1, or
 - (b) apply to the Secretary of State and the appropriate Minister for an order under sub-paragraph (3).
- (3) The Secretary of State and the appropriate Minister may make an order embodying, with or without modifications, the provisions of the notice.
- (4) The fact that a notice has been withdrawn under sub-paragraph (2)(a) does not prejudice the service of a further notice.

Commencement Information

I4 Sch. 4 para. 4 in force at 1.12.2008 by *S.I. 2008/3068, art. 2(1)(g)* (with arts. 6-13)

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- 5
- (1) Before making an order under paragraph 4(3), the Secretary of State and the appropriate Minister must give the statutory undertakers on whom notice was served an opportunity to object to the application for the order.
 - (2) The Secretary of State and the appropriate Minister—
 - (a) must consider any objections made by virtue of sub-paragraph (1), and
 - (b) must give—
 - (i) the statutory undertakers who made the objections, and
 - (ii) the HCA,an opportunity to appear before, and be heard by, a person appointed for this purpose by the Secretary of State and the appropriate Minister.
 - (3) The Secretary of State and the appropriate Minister may then—
 - (a) decide not to make an order, or
 - (b) proceed to make an order in accordance with the application (with or without modifications).

Commencement Information

I5 Sch. 4 para. 5 in force at 1.12.2008 by S.I. 2008/3068, art. 2(1)(g) (with arts. 6-13)

- 6
- (1) This paragraph applies if an order is made under paragraph 4(3).
 - (2) Any right to which the order relates is extinguished at the end of the period specified for that purpose in the order.
 - (3) The HCA may—
 - (a) remove any apparatus, and
 - (b) dispose of it as it considers appropriate,if any requirement of the order as to the removal of the apparatus has not been complied with by the end of the period specified for that purpose in the order.

Commencement Information

I6 Sch. 4 para. 6 in force at 1.12.2008 by S.I. 2008/3068, art. 2(1)(g) (with arts. 6-13)

Compensation

- 7
- (1) Statutory undertakers are entitled to compensation from the HCA if—
 - (a) any right vested in, or belonging to, the statutory undertakers is extinguished, or
 - (b) any requirement is imposed on the statutory undertakers, by virtue of this Part of this Schedule.
 - (2) Sections 280 and 282 of the Town and Country Planning Act 1990 (c. 8) (measure of compensation to statutory undertakers) apply to compensation under this paragraph as they apply to compensation under section 279(4) of that Act.

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Commencement Information

I7 Sch. 4 para. 7 in force at 1.12.2008 by S.I. 2008/3068, **art. 2(1)(g)** (with arts. 6-13)

Electronic communications

- 8 (1) The reference in paragraph 1(1)(a) to a protected right vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking includes a reference to a protected right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network.
- (2) The reference in paragraph 1(1)(b) to apparatus vested in, or belonging to, statutory undertakers for the purpose of carrying on their undertaking includes a reference to electronic communications apparatus kept installed for the purposes of any such network.
- (3) Sub-paragraphs (1) and (2) do not apply where paragraphs 12 and 13 of Part 2 of Schedule 3 apply (orders under paragraph 3 of that Schedule which relate to electronic communications apparatus).
- (4) Where paragraph 1 has effect as mentioned in sub-paragraphs (1) and (2) above—
- (a) any reference in this Part of this Schedule to statutory undertakers has effect as a reference to the operator of the electronic communications code network, and
 - (b) any reference in this Part of this Schedule to the appropriate Minister has effect as a reference to the Secretary of State for Business, Enterprise and Regulatory Reform.

Commencement Information

I8 Sch. 4 para. 8 in force at 1.12.2008 by S.I. 2008/3068, **art. 2(1)(g)** (with arts. 6-13)

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