



Town and Country Planning (Scotland) Act 1997

1997 CHAPTER 8

PART X

STATUTORY UNDERTAKERS

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 ^{M1}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

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- (b) requiring that before the end of that period the apparatus shall be removed.
- (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 [F¹Scottish Ministers] 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 [F²the Scottish Ministers]—
- (a) [F²the Scottish Ministers] may withdraw the notice (without prejudice to the service of a further notice), or
 - (b) [F²the Scottish Ministers] 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.

Textual Amendments

- F1** Words in s. 224(6) substituted by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(7)(a)**; S.I. 1998/3178, **art. 3**
- F2** Words in s. 224(7) substituted by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(7)(b)**; S.I. 1998/3178, **art. 3**

Modifications etc. (not altering text)

- C1** Ss. 224-227 applied (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 4 para. 4(5)(6)(c)** (with **Sch. 18**); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with **art. 3**) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with **art. 11**)
- C2** Ss. 224-227 applied (with modifications) (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **Sch. 9 para. 1** (with s. 33)
- C3** Ss. 224-227 applied (with modifications) (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **Sch. 9 para. 1** (with s. 75)
- C4** Ss. 224-227 applied (with modifications) (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **sch. 9 para. 1** (with ss. 76, 84)

Marginal Citations

- M1** 1997 c. 9.

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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 ^{M2}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 [^{F3}electronic communications code] on the operator of [^{F4}an electronic communications code network], 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 [^{F5}electronic communications apparatus] kept installed for the purposes of any such [^{F6}network].
- (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 operator of [^{F7}the electronic communications code network] 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 [^{F7}the electronic communications code network] 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 [^{F8}Scottish Ministers] 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 [^{F9}the Scottish Ministers]—
 - (a) [^{F10}they] may withdraw the notice (without prejudice to the service of a further notice), or

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(b) [^{F10}they] 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.

Textual Amendments

- F3** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(e)
- F4** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(a)
- F5** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(d)
- F6** Word in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(f)
- F7** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(b)
- F8** Words in s. 225(6)(b) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(8)(a); [S.I. 1998/3178](#), [art. 3](#)
- F9** Words in s. 225(7) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(8)(b)(i); [S.I. 1998/3178](#), [art. 3](#)
- F10** Words in s. 225(7) substituted (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(8)(b)(ii); [S.I. 1998/3178](#), [art. 3](#)

Modifications etc. (not altering text)

- C1** Ss. 224-227 applied (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), Sch. 4 para. 4(5)(6)(c) (with Sch. 18); [S.I. 2003/1900](#), arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)
- C2** Ss. 224-227 applied (with modifications) (11.8.2004) by [Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 \(asp 10\)](#), [Sch. 9 para. 1](#) (with s. 33)
- C3** Ss. 224-227 applied (with modifications) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp 6\)](#), [Sch. 9 para. 1](#) (with s. 75)
- C4** Ss. 224-227 applied (with modifications) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp 7\)](#), [sch. 9 para. 1](#) (with ss. 76, 84)

Marginal Citations

- M2** 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—
- (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,

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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 ^[F11]Scottish Ministers 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 ^[F12]the Scottish 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 ^[F5]electronic communications apparatus kept installed for the purposes of ^[F4]an electronic communications code network].
- (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 ^[F6]network], and
 - ^{F13}(b)

Textual Amendments

- F4** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(a)
- F5** Words in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(d)
- F6** Word in ss. 225-227 substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(e)(2)(f)
- F11** Words in s. 226(5) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(9\)\(a\)](#); [S.I. 1998/3178](#), [art. 3](#)
- F12** Words in s. 226(6) substituted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(9\)\(b\)](#); [S.I. 1998/3178](#), [art. 3](#)
- F13** S. 226(8)(b) repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 127\(9\)\(c\)](#), Pt. IV; [S.I. 1998/3178](#), [art. 3](#)

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Modifications etc. (not altering text)

- C1** Ss. 224-227 applied (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 4 para. 4(5)(6)(c) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- C2** Ss. 224-227 applied (with modifications) (11.8.2004) by Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10), **Sch. 9 para. 1** (with s. 33)
- C3** Ss. 224-227 applied (with modifications) (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **Sch. 9 para. 1** (with s. 75)
- C4** Ss. 224-227 applied (with modifications) (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **sch. 9 para. 1** (with ss. 76, 84)

227 Orders under sections 224 and 225.

- (1) Where [^{F14}the Scottish Ministers] 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 [^{F15}Scottish Ministers] shall give the statutory undertakers or, as the case may be, the operator of [^{F7}the electronic communications code network] on whom notice was served under subsection (3) of 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 [^{F16}Scottish Ministers] .
- (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.

^{F17}(6)

Textual Amendments

- F7** Words in ss. 225-227 substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), Sch. 1 para. 13(1)(e)(2)(b)
- F14** Words in s. 227(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(10)(a)**; S.I. 1998/3178, **art. 3**
- F15** Words in s. 227(2) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(10)(b)**; S.I. 1998/3178, **art. 3**

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- F16** Words in s. 227(3) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(10)(c)**; S.I. 1998/3178, **art. 3**
- F17** S. 227(6) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(10)(d)**, Pt. IV; S.I. 1998/3178, **art. 3**

Modifications etc. (not altering text)

- C1** Ss. 224-227 applied (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 4 para. 4(5)(6)(c)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
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