



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART VIII

#### ACQUISITION AND APPROPRIATION OF LAND FOR PLANNING PURPOSES ETC.

##### *Extinguishment of certain rights affecting acquired or appropriated land*

#### **196 Power to override servitudes and other rights.**

- (1) The interests and rights to which this section applies are any servitude, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.
- (2) Subject to subsection (3) the erection, construction or carrying out, or maintenance, of any building or work on land which has been acquired or appropriated by a planning authority for planning purposes, whether done by the planning authority or by a person deriving title from them, is authorised by virtue of this section if it is done in accordance with planning permission, notwithstanding that it involves—
  - (a) interference with an interest or right to which this section applies, or
  - (b) a breach of a restriction as to the use of land arising by virtue of any deed or contract.
- (3) Nothing in subsection (2) authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—
  - (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
  - (b) a right conferred by or in accordance with the [<sup>F1</sup>electronic communications code] on the operator of [<sup>F2</sup>an electronic communications code network].

*Status: Point in time view as at 31/03/2007.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Section 196 is up to date with all changes known to be in force on or before 31 July 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)*

- (4) In respect of any interference or breach in pursuance of subsection (2), compensation—
- (a) shall be payable under section 61 of the <sup>M1</sup>Lands Clauses Consolidation (Scotland) Act 1845 or under section 6 of the <sup>M2</sup>Railways Clauses Consolidation (Scotland) Act 1845, and
  - (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—
    - (i) the compensation is to be estimated in connection with a purchase under those Acts, or
    - (ii) the injury arises from the execution of works on land acquired under those Acts.
- (5) Where a person deriving title from the planning authority by whom the land in question was acquired or appropriated—
- (a) is liable to pay compensation by virtue of subsection (4), and
  - (b) fails to discharge that liability,
- the liability shall, subject to subsection (6), be enforceable against the planning authority.
- (6) Nothing in subsection (5) affects any agreement between the planning authority and any other person for indemnifying the planning authority against any liability under that subsection.
- (7) Nothing in this section shall be construed as authorising any act or omission on the part of any person which is actionable at the instance of any person on any ground other than such an interference or breach as is mentioned in subsection (2).

#### **Textual Amendments**

- F1** Words in s. 196(3) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(b)(2)(e)
- F2** Words in s. 196(3) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), Sch. 1 para. 13(1)(b)(2)(a)

#### **Marginal Citations**

- M1** 1845 c. 19.
- M2** 1845 c. 33.

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