



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART X

#### STATUTORY UNDERTAKERS

##### *Compensation*

#### **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 [<sup>F1</sup>Scottish Ministers' certificate], or
- (b) the operator of [<sup>F2</sup>an electronic communications code network] 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 adjustment of the carrying on of the undertaking or, as the case may be, [<sup>F3</sup>the

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*Status: Point in time view as at 17/09/2003. This version of this provision has been superseded.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Section 233 is up to date with all changes known to be in force on or before 02 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)*

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- provision of the electronic communications code network] 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, [F3the provision of the electronic communications code network] 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, [F3the provision of the electronic communications code network] 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, [F3the provision of the electronic communications code network] 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, [F3the provision of the electronic communications code network] 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 [F3the provision of the electronic communications code network] 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

<sup>F1</sup> [“Scottish Ministers’ certificate”] means such a certificate as is mentioned in paragraph 10 of Schedule 1 to the <sup>M1</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

#### Textual Amendments

- F1** Words in s. 233(1)(a)(iii)(8) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. 1 para. 127(16)**; S.I. 1998/3178, **art. 3**
- F2** Words in s. 232 substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), Sch. 1 para. 13(1)(f)(2)(a)
- F3** Words in s. 233 substituted (17.9.2003) by Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 1(1), Sch. 1 para. 13(1)(f)(2)(c)

#### Marginal Citations

- M1** 1947 c. 42.

**Status:**

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**Changes to legislation:**

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