



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

### PART XI

#### STATUTORY UNDERTAKERS

##### *General provisions*

#### **214 Applications for planning permission by statutory undertakers**

(1) Where—

- (a) an application for planning permission to develop land to which this subsection applies is made by statutory undertakers and is referred to the Secretary of State under Part III of this Act; or
- (b) an appeal is made to the Secretary of State under Part III of this Act from the decision on such an application ; or
- (c) such an application is deemed to be made under subsection (7) of section 85 of this Act on an appeal under that section by statutory undertakers,

the application or appeal shall be dealt with by the Secretary of State and the appropriate Minister.

(2) Subsection (1) of this section applies—

- (a) to operational land; and
- (b) to land in which the statutory undertakers hold, or propose to acquire, an interest with a view to its being used for the purpose of carrying on their undertaking where the planning permission, if granted on the application or appeal, would be for development involving the use of the land for that purpose.

- (3) An application for planning permission which is deemed to have been made by virtue of section 91(5) of this Act shall be determined by the Secretary of State and the appropriate Minister.

- (4) Notwithstanding anything in Part III of this Act, planning permission to develop operational land of statutory undertakers shall not, except with their consent, be granted subject to conditions requiring that any buildings or works authorised by the permission shall be removed, or that any use of the land so authorised shall be discontinued, at the end of a specified period.
- (5) Subject to the provisions of this Part of this Act as to compensation, the provisions of this Act shall apply to an application which is dealt with under this section by the Secretary of State and the appropriate Minister as if it had been dealt with by the Secretary of State.

#### **215 Development requiring sanction of government department**

- (1) Where the sanction of a government department other than the Secretary of State is required in respect of any development of operational land, then, except where that sanction has been granted without any direction as to the grant of planning permission, the Secretary of State and the appropriate Minister shall not be required to deal with an application for planning permission under section 214(1) of this Act.
- (2) The provisions of subsection (3) of section 37 of this Act shall have effect for the purposes of this section as they have effect for the purposes of that section.

#### **216 Revocation or modification of permission to develop operational land**

In relation to any planning permission, granted on the application of statutory undertakers, for the development of operational land, the provisions of Part III of this Act with respect to the revocation and modification of planning permission shall have effect as if, for any reference therein to the Secretary of State, there were substituted a reference to the Secretary of State and the appropriate Minister.

#### **217 Order requiring discontinuance of use etc. of operational land**

The provisions of Part III of this Act with respect to the making of orders requiring the discontinuance of any use of land or imposing conditions on the continuance thereof, or requiring buildings or works on land to be altered or removed, shall have effect, in relation to operational land of statutory undertakers, as if, for any reference therein to the Secretary of State, there were substituted a reference to the Secretary of State and the appropriate Minister.

#### **218 Acquisition of land of statutory undertakers**

- (1) Notwithstanding anything in paragraph 10 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 a compulsory purchase order to which this section applies may be confirmed or made without the appropriate Minister's certificate.
- (2) This section applies to any compulsory purchase order under this Act authorising the acquisition of land which has been acquired by statutory undertakers for the purposes of their undertaking.
- (3) Except where the appropriate Minister's certificate is given, a compulsory purchase order to which this section applies shall be of no effect unless it is confirmed or made

by the appropriate Minister jointly with the Minister or Ministers who would apart from this subsection have power to make or confirm it.

- (4) In this section " the appropriate Minister's certificate " means such a certificate as is mentioned in paragraph 10 of Schedule 1 to the said Act of 1947.

## **219 Extinguishment of rights of way, and rights as to apparatus, of statutory undertakers**

- (1) Where any land has been acquired by a Minister, a local planning authority or statutory undertakers under Part VI of this Act or compulsorily under any other enactment, or has been appropriated by a local 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,

the acquiring or appropriating authority, if 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, may serve on the statutory undertakers a notice stating that, at the end of the period of twenty-eight days from the date of service of the notice or such longer period as may be specified therein, the right will be extinguished or requiring that, before the end of such period as aforesaid, the apparatus shall be removed.

- (2) The statutory undertakers on whom a notice is served under subsection (1) of this section may, before the end of the period of twenty-eight days from the service of the notice, serve a counter-notice on the acquiring or appropriating authority stating that they object to all or any of the provisions of the notice and specifying the grounds of their objection.
- (3) If no counter-notice is served under subsection (2) of this section—
- (a) any right to which the notice relates shall be extinguished at the end of the period specified in that behalf in the notice; and
- (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice 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.
- (4) If a counter-notice is served under subsection (2) of this section on a local planning authority or on statutory undertakers, the authority or undertakers may either withdraw the notice (without prejudice to the service of a further notice) or may apply to the Secretary of State and the appropriate Minister for an order under this section embodying the provisions of tile notice, with or without modification.
- (5) If a counter-notice is served under subsection (2) of this section on a Minister, he may withdraw the notice (without prejudice to the service of a further notice) or he and the appropriate Minister may make an order under this section embodying the provisions of the notice, with or without modification.
- (6) In this section any reference to the appropriation of land for planning purposes shall be construed in accordance with section 122(1) of this Act as if this section were in Part VI of this Act.

**220 Orders under s. 219**

- (1) Where a Minister and the appropriate Minister propose to make an order under section 219(5) of this Act, they shall prepare a draft of the order.
- (2) Before making an order under subsection (4) or subsection (5) of section 219 of this Act, the Ministers proposing to make the order—
  - (a) shall afford to the statutory undertakers on whom notice was served under subsection (1) of that section an opportunity of objecting to the application for, or proposal to make, the order; and
  - (b) if any objection is made, shall cause an inquiry to be held, and may then, if they think fit, make the order in accordance with the application or in accordance with the draft order, as the case may be, either with or without modification.
- (3) Where an order is made under section 219 of this Act—
  - (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.

**221 Notice for same purposes as s. 219 but given by statutory undertakers to developing authority**

- (1) Subject to the provisions of this section, where land has been acquired or appropriated as mentioned in section 219(1) of this Act, 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,

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) Where, after the land has been acquired or appropriated as aforesaid, development of the land is begun to be carried out, no notice under this section shall be served later than twenty-one days after the beginning of the development.
- (3) Where a notice is served under this section, the authority on whom it is served may, before the end of the period of twenty-eight days from the date of service, serve on the statutory undertakers a counter-notice stating that they object to all or any of the provisions of the notice and specifying the grounds of their objection.
- (4) If no counter-notice is served under subsection (3) of this section, the statutory undertakers shall, after the end of the period of twenty-eight days therein mentioned, have the rights claimed in their notice.
- (5) If a counter-notice is served under subsection (3) of this section, the statutory undertakers who served the notice under this section may either withdraw it or may

apply to the Secretary of State and the appropriate Minister 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 Ministers thereunder, 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.

## **222 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 local planning authority or Minister may be authorised under Part VI of this Act 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) of this section.
- (2) The said acts and events are—
- (a) the acquisition under Part VI of this Act 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 219 of this Act;
  - (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) of this subsection;
  - (d) the revocation or modification of planning permission granted on any such application ;
  - (e) the making of an order under section 49 of this Act in relation to any such land.
- (3) The powers conferred by this section shall also be exercisable where, on a representation made by a local 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 local planning authority or Minister making the representation may be authorised under Part VI of this Act 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 to secure the services in question, as mentioned in subsection (1)

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(a) or (3) of this section, or to facilitate the adjustment in question, as mentioned in subsection (1)(b) of this section, as the case may be.

(5) Without prejudice to the generality of subsection (4) of this section, an order under this section may make provision—

- (a) for empowering the statutory undertakers to acquire (whether compulsorily or by agreement) any land specified in the order, and 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) of this section, for giving effect to such financial arrangements between the local 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.

## **223 Procedure in relation to orders under s. 222**

(1) As soon as may be after making such a representation as is mentioned in subsection (1) or subsection (3) of section 222 of this Act-

- (a) the statutory undertakers, in a case falling within subsection (1) of that section ; or
- (b) the local planning authority or Minister making the representation, in a case falling within subsection (3) thereof,

shall publish, in such form and manner as may be directed by the Secretary of State and the appropriate Minister, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time (not being less than twenty-eight days) within which, and the manner in which, objections to the making of an order on the representation may be made, and shall serve a like notice on any persons appearing from the valuation roll to have an interest in any land to which the representation relates, and shall also, if it is so directed by the Secretary of State and the appropriate Minister, serve a like notice on such persons, or persons of such classes, as may be so directed.

(2) Orders under section 222 of this Act shall be subject to special parliamentary procedure.

## **224 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) of this section applies to the following acts and events, that is to say—

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- (a) the compulsory acquisition under Part VI of this Act 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 222(2)(b) to (e) of this Act.
- (3) As soon as may be after making a representation to the appropriate Minister under subsection (1) of this section, the statutory undertakers shall, as may be directed by the appropriate Minister, either publish (in such form and manner as may be so directed) a notice giving such particulars as may be so directed of the matters to which the representation relates, and specify the time (not being less than twenty-eight days) within which, and the manner in which, objections to the making of an order on the representation may be made, or serve such a notice on such persons, or persons of such classes, as may be so directed, or both publish and serve such notices.
- (4) 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.
- (5) Immediately after an order is made under this section by the appropriate Minister, he shall 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 shall serve a like notice—
- (a) 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
  - (b) on such other persons (if any) as the appropriate Minister thinks fit.
- (6) Subject to subsection (7) of this section, and to the provisions of Part XII of this Act, an order under this section shall become operative on the date on which the notice required by subsection (5) of this section is first published.
- (7) Where in accordance with subsection (4) of this section the order is subject to special parliamentary procedure, subsection (6) of this section shall not apply.

## **225 Objections to orders under ss. 222 and 224**

- (1) For the purposes of sections 222 and 224 of this Act, an objection to the making of an order thereunder 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 the section under which the order is proposed to be made; 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) of this section and is not withdrawn, the following provisions of this section shall have effect in relation thereto:

Provided that, in the application of those provisions to an order under section 222 of this Act, any reference to the appropriate Minister shall be construed as a reference to the Secretary of State and the appropriate Minister.

- (3) Unless the appropriate Minister decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the appropriate Minister, before making a final decision, shall consider the grounds of the objection as set out in the statement, and 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, after considering the grounds of the objection as set out in the original statement and in any such further statement, 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 if, 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) of this section, the appropriate Minister, before making a final decision, shall afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate Minister; and if the objector avails himself of that opportunity, the appropriate Minister shall afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers, local planning authority or Minister on whose representation the order is proposed to be made, and to any other persons to whom it appears to the appropriate Minister to be expedient to afford such an opportunity.
- (7) Notwithstanding anything in the preceding 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 ; and where he determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination shall be dispensed with.
- (8) 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.