



# Town and Country Planning (Scotland) Act 1972

## 1972 CHAPTER 52

### PART XI

#### STATUTORY UNDERTAKERS

##### *Preliminary*

#### **211 Meaning of " operational land "**

In this Act " operational land " means, in relation to statutory undertakers—

- (a) land which is used for the purpose of carrying on their undertaking; and
- (b) land in which an interest is held for that purpose,

not being land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

#### **212 Cases in which land is to be treated as not being operational land**

(1) Where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and—

- (a) the interest was acquired by them on or after 8th December 1969; or
- (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the Act of 1947,

then subsection (2) of this section shall have effect for the purpose of determining whether the land is to be treated as operational land for the purposes of this Act and shall so have effect notwithstanding the definition of operational land in section 211 of this Act.

- (2) The land shall not be treated as operational land for the purposes of this Act unless one or both of the following conditions are satisfied with respect to it, namely—
- (a) there is, or at some time has been, in force with respect to the land a specific planning permission for its development and that development, if carried out, would involve or have involved the use of the land for the purpose of the carrying on of the statutory undertakers' undertaking; or
  - (b) the undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the Transport Act 1968 from other statutory undertakers and the land was, immediately before transfer, operational land of those other undertakers.
- (3) A specific planning permission for the purpose of subsection (2)(a) of this section is a planning permission—
- (a) granted on an application in that behalf under Part III of this Act or the enactments previously in force and replaced by that Part of this Act; or
  - (b) granted by provisions of a development order granting planning permission generally for development which has received specific parliamentary approval; or
  - (c) granted by a special development order in respect of development specifically described in the order; or
  - (d) deemed to be granted by virtue of a direction of a government department under section 37 of this Act or section 32 of the Act of 1947;

and the reference in paragraph (b) of this subsection to development which has received specific parliamentary approval shall be construed as referring to development authorised by a local or private Act of Parliament or by an order approved by both Houses of Parliament or by an order which has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Act 1945, being an Act or order which designates specifically both the nature of the development thereby authorised and the land upon which it may be carried out

### **213 Meaning of " the appropriate Minister "**

- (1) In this Act " the appropriate Minister "—
- (a) in relation to statutory undertakers carrying on an under taking for the supply of gas or hydraulic power, means the Secretary of State for Trade and Industry;
  - (b) in relation to statutory undertakers carrying on a light house undertaking, means the said Secretary of State or the Board of Trade;
  - (c) in relation to statutory undertakers carrying on an under taking for the supply of electricity or water, means the Secretary of State; and
  - (d) in relation to any other statutory undertakers, means the Secretary of State for the Environment.
- (2) This Act shall have effect as if references to the Secretary of State and the appropriate Minister—
- (a) were references to the Secretary of State and the appropriate Minister, if the appropriate Minister is not the one concerned as the Secretary of State; and
  - (b) were references to the one concerned as the Secretary of State alone, if he is also the appropriate Minister;

and similarly with references to a Minister and the appropriate Minister and with any provision requiring the Secretary of State to act jointly with the appropriate Minister.

### *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.

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- (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) (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—
- (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

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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.

### *Compensation*

## **226 Right to compensation in respect of certain decisions and orders**

- (1) Statutory undertakers shall, subject to the following provisions of this Part of this Act, be entitled to compensation from the local planning authority—
- (a) in respect of any decision made in accordance with section 214 of this Act whereby planning permission to develop operational land of those undertakers is refused or is granted subject to conditions where—
    - (i) planning permission for that development would have been granted by a development order but for a direction given under such an order that planning permission so granted should not apply to the development; and
    - (ii) it is not development which has received specific parliamentary approval (within the meaning given to that expression by section 212(3) of this Act);
  - (b) in respect of any order under section 42 of this Act, as modified by section 216 thereof, whereby planning permission, granted on the application of those undertakers for the development of any such land, is revoked or modified.
- (2) Where, by virtue of section 219 of this Act, any right vested in or belonging to statutory undertakers is extinguished, or any requirement is imposed on statutory undertakers, those undertakers shall be entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed.
- (3) Where works are carried out for the removal or re-siting of statutory undertakers' apparatus, being works which the undertakers have the right to carry out by virtue of section 221 of this Act or an order of Ministers thereunder, the undertakers shall be entitled- to compensation from the acquiring or appropriating authority.
- (4) Notwithstanding anything in subsection (1) of this section, if the decision or order in question relates to land acquired by the statutory undertakers after 7th January 1947. and the Secretary of State and the appropriate Minister are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of that decision or order, they may include therein a direction that subsection (1) of this section shall not apply to that decision or order.

- (5) For the purposes of this section the conditions referred to in sections 38 and 39 of this Act shall be disregarded and no compensation shall be payable under this section in respect of the imposition of any condition to which section 69 or 80 of this Act applies.

## **227 Measure of compensation to statutory undertakers**

- (1) Where statutory undertakers are entitled to compensation—
- (a) as mentioned in subsection (1), (2) or (3) of section 226 of this Act; or
  - (b) under the provisions of section 159 in respect of an order made under section 49 of this Act as modified by section 217 thereof; or
  - (c) 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 appropriate Minister's certificate;

the amount of the compensation shall (subject to section 228 of this Act) be an amount calculated in accordance with the following provisions of this section.

- (2) The said amount, subject to subsections (3) and (4) of this section, shall be the aggregate of the following amounts, that is to say—
- (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 rendered necessary by the proceeding giving rise to compensation;
  - (b) whichever of the following is applicable, namely—
    - (i) where such an adjustment is made, the estimated amount of any decrease in net receipts from the carrying on of the undertaking pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation, together with such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment;
    - (ii) where no such adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking which is directly attributable to the proceeding giving rise to compensation;
  - (c) where the compensation is under section 226(2) of this Act, and is in respect of the imposition of a requirement to remove apparatus, the amount of any expenditure reasonably incurred by the statutory undertakers in complying with the requirement, reduced by the value after removal of the apparatus removed.
- (3) Where any such adjustment as is mentioned in paragraph (a) of subsection (2) of this section is made, the aggregate amount mentioned in that subsection shall be reduced by such amount (if any) as appears to the tribunal referred to in subsection (2) of section 229 of this Act to be appropriate to offset—
- (a) the estimated value of any property (whether moveable or heritable) belonging to the statutory undertakers and used for the carrying on of their undertaking 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

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- (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as that amount has not been taken into account under paragraph (b) of that subsection and is directly attributable to the adjustment,
- and by any further amount which appears to the tribunal referred to in subsection (2) of section 229 of this Act to be appropriate, having regard to any increase in the capital value of heritable property belonging to the statutory undertakers which is directly attributable to the adjustment, allowance being made for any reduction made under paragraph (b) of this subsection.
- (4) Where the compensation is under section 226(3) of this Act and the acquiring or appropriating authority carry out the works, then, in addition to any reduction falling to be made under subsection (3) of this section, the aggregate amount mentioned in subsection (2) of this section shall be reduced by the actual cost to the authority of carrying out the works.
- (5) References in this section to a decrease in net receipts shall be construed as references to the amount by which a balance of receipts over expenditure is decreased, or a balance of expenditure over receipts is increased, or, where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, as references to the aggregate of the two balances; and references to an increase in net receipts shall be construed accordingly.
- (6) In this section—
- " proceeding giving rise to compensation " means—
- (a) except in relation to compensation under section 226(3) of this Act. 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;
- (b) in relation to compensation under the said section 226(3), the circumstances making it necessary for the apparatus in question to be removed or re-sited;
- " the appropriate Minister's certificate " has the same meaning as in section 218 of this Act.

## **228 Exclusion of s. 227 at option of statutory undertakers**

- (1) Where statutory undertakers are entitled to compensation in respect of such a compulsory acquisition as is mentioned in section 227(1)(c) of this Act, the statutory undertakers may by notice in writing under this section elect that the compensation shall be ascertained in accordance with the enactments (other than rule (5) of the rules set out in section 12 of the Land Compensation (Scotland) Act 1963) which would be applicable apart from section 227 of this Act; and if the undertakers so elect the compensation shall be ascertained accordingly.
- (2) An election under this section may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land.
- (3) Any notice under this section shall be given to the acquiring authority before the end of the period of two months from the date of service of notice to treat in respect of the interest of the statutory undertakers.

## **229 Procedure for assessing compensation where s. 227 applies**

- (1) Where the amount of any such compensation as is mentioned in subsection (1) of section 227 of this Act falls to be ascertained in accordance with the provisions of that section, the compensation shall, in default of agreement, be assessed by the tribunal referred to in subsection (2) of this section, if apart from this section it would not fall to be so assessed.
- (2) The tribunal referred to in this subsection shall consist of four persons, namely—
  - (a) an advocate or solicitor of not less than seven years' standing, appointed by the Lord President of the Court of Session to act as chairman ;
  - (b) two persons appointed by the Secretary of State as persons having special knowledge and experience of the valuation of land and of civil engineering respectively ; and
  - (c) for each claim coming before the tribunal, a person selected by the appropriate Minister, as a person having special knowledge and experience of statutory undertakings of the kind carried on by the claimant, from the members of a panel appointed by appropriate Ministers of persons appearing to them to have such knowledge and experience of statutory undertakings.
- (3) The Treasury may pay out of moneys provided by Parliament to the members of the tribunal such remuneration (whether by way of salaries or by way of fees), and such allowances, as the Treasury may determine.
- (4) For the purposes of any proceedings arising before the tribunal referred to in subsection (2) of this section in respect of compensation falling to be ascertained as mentioned in subsection (1) of this section, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply as they apply to proceedings on a question referred to the Lands Tribunal under section 8 of that Act, but with the substitution in section 11 of that Act, for references to the acquiring authority, of references to the person from whom the compensation is claimed.

### *Supplementary provisions*

## **230 Special provisions as to display of advertisements on operational land**

- (1) The provisions of this Part of this Act specified in subsection (2) of this section do not apply in relation to the display of advertisements on operational land of statutory undertakers.
- (2) The said provisions are sections 214 to 217 and 226(1) and (4) of this Act.