



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART XI

STATUTORY UNDERTAKERS

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.

Status: This is the original version (as it was originally enacted).

- (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;

Status: This is the original version (as it was originally enacted).

- (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
- (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.