



Conwy Tunnel (Supplementary Powers) Act 1983

1983 CHAPTER 7

Remedied action and compensation

9 Extended right to compensation for injurious affection

- (1) This section applies where any land, or any interest in land, has been injuriously affected by the carrying out of any works or the taking of any other action authorised by Schedule 2 to this Act otherwise than on land acquired for or in connection with the principal works.
- (2) Compensation shall be payable in respect of the land or interest injuriously affected under section 10 of the Compulsory Purchase Act 1965, to be assessed in the same manner and subject to the same rules as in the case of other compensation under that section in respect of injurious affection where the injury arises from the execution of works on land acquired in accordance with that Act.
- (3) In section 10(1), as it applies for the purposes of this section, the reference to the acquiring authority shall be read as a reference to the Secretary of State.

10 Expenditure on remedial action

- (1) The Secretary of State is authorised by this section to incur expenditure for or in connection with—
 - (a) the construction or execution of works for mitigating any adverse effects which the tunnel works have or might possibly have on fish or shellfish stocks in Conwy waters;
 - (b) the provision of moorings and other facilities for vessels to replace existing facilities in Conwy harbour which have been or will be removed for the purposes of the tunnel works or to mitigate any adverse effects the tunnel works have or might possibly have on the use of any such existing facilities ;
and

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- (c) the relocation and reinstatement of any such existing facilities which have been displaced for the purposes of the tunnel works.

In paragraph (a) above " Conwy waters" means Conwy harbour and the adjacent sea and the River Conwy and any of its tributaries.

- (2) Without prejudice to the generality of subsection (1)(a) above, expenditure on any action taken for the purpose of restoring, replenishing or renewing—
 - (a) the mussel beds within the Conwy Mussel Fishery ; or
 - (b) stocks of salmon or migratory trout (within the meaning of the Salmon and Freshwater Fisheries Act 1975);
 is authorised by that paragraph.
- (3) Expenditure by the Secretary of State on works or facilities within subsection (1) above is authorised—
 - (a) irrespective of whether the works or facilities are constructed, carried out or provided by the Secretary of State himself or by any other person ; and
 - (b) in the case of works of construction within paragraph (a) or any facilities within paragraph (b) of that subsection, irrespective of whether those works or facilities are permanent or temporary.

11 Compensation for losses arising from the tunnel works

- (1) The Secretary of State may make payments in accordance with this section in respect of losses appearing to him to be losses arising from the tunnel works.
- (2) A person is eligible to receive payments under this section in respect of any loss appearing to the Secretary of State to be a loss arising from those works if it appears to the Secretary of State
 - (a) that he derives a significant part of his income from carrying on a business subject to special damage from works in the Estuary;
 - (b) that that business had been carried on before the construction period (whether by him or by any other person) for a period of not less than three years extending up to the beginning of the construction period ;
 - (c) that the loss was incurred in respect of that business; and
 - (d) that the loss was incurred before the end of the relevant period.
- (3) For the purposes of this section a loss is a loss arising from the tunnel works if it is a financial loss directly attributable to—
 - (a) the tunnel works ; or
 - (b) the exercise by the Secretary of State for the purposes of those works of any power exercisable by him by virtue of a direction under section 7 of this Act; or
 - (c) the effect of any prohibition or restriction under Part II of Schedule 3 to this Act which is applicable during the construction period by virtue of any such direction.
- (4) For the purposes of this section a business is one subject to special damage from works in the Estuary if it involves or is dependent upon any one or more of the following—
 - (a) the taking of fish or shellfish or other operations or activities carried on in waters within Conwy harbour (whether by the person carrying on the business or by other persons);

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- (b) the use (by that person or by other persons) of facilities in Conwy harbour for the purpose of or in connection with carrying on any operations or activities mentioned in paragraph (a) above in waters beyond the limits of Conwy harbour; and
 - (c) the taking of mussels from the Conwy Mussel Fishery by persons licensed to do so under the Conwy Mussel Fishery (Amendment) Order 1948.
- (5) Any operations or activities shall be regarded for the purposes of subsection (4) above as carried on in waters of any description if carried on in, under or over waters of that description or the land beneath those waters.
- (6) For the purposes of this section, the relevant period in relation to any loss—
 - (a) in the case of a loss incurred in respect of a business within subsection (4) (c) above, is the period beginning with the date on which the construction period begins and ending five years after the end of the construction period or after the completion of any action taken or financed by the Secretary of State under section 10 of this Act for the purpose of restoring, replenishing or renewing the mussel beds within the Conwy Mussel Fishery (whichever last occurs); and
 - (b) in any other case, is the period beginning with the date on which the construction period begins and ending five years after the end of the construction period.
- (7) Subject to subsection (2)(a) to (c) above, the Secretary of State may make payments under this section in respect of a loss incurred not more than four years after the end of the relevant period if it appears to him that the person who incurred the loss will suffer hardship if no payment is made under this section in respect of it.
- (8) Without prejudice to the power of the Secretary of State, in determining whether to make any payment under this section in respect of any loss and the amount of any such payment, to take into account any considerations appearing to him to be relevant, he may in particular have regard to any compensation or financial assistance that in his view is or may be available to the person who suffered the loss under any other enactment.
- (9) Payments under this section shall be subject to the consent of the Treasury.

12 Compensation for losses arising from tunnel maintenance works

- (1) The Secretary of State may make payments in accordance with this section in respect of losses appearing to him to be losses arising from tunnel maintenance works.
- (2) A person is eligible to receive payments under this section in respect of any loss appearing to the Secretary of State to be a loss arising from tunnel maintenance works if it appears to the Secretary of State—
 - (a) that he derives a significant part of his income from carrying on a business subject to special damage from works in the Estuary ; and
 - (b) that the loss was incurred in respect of that business.
- (3) For the purposes of this section a loss is a loss arising from tunnel maintenance works if it is a financial loss directly attributable to the effect of any prohibition or restriction under Part II of Schedule 3 to this Act as it applies after the end of the construction period by virtue of section 7(7) of this Act.

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- (4) Subsections (4), (5), (8) and (9) of section 11 of this Act apply for the purposes of this section as they apply for the purposes of that section.

13 Compensation of harbour authority

The Secretary of State may with the consent of the Treasury make payments to the harbour authority in respect of losses appearing to him to be losses attributable to the tunnel works or tunnel maintenance works.

14 Compensation for disturbance to apparatus and moorings

- (1) Where—

- (a) the Secretary of State takes any action in relation to any apparatus under paragraph 1(1)(a) or (b) of Schedule 3 to this Act; and
- (b) any remedial measures rendered reasonably necessary in view of his proposal to take that action are not taken by the Secretary of State before he takes that action ;

the person to whom the apparatus belongs shall be entitled to recover from the Secretary of State any reasonable expenses incurred by that person in, or in connection with, taking those remedial measures.

- (2) In subsection (1) above " remedial measures " means—

- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus ;
- (b) the cutting off of any apparatus from any other apparatus ; and
- (c) the carrying out of any other work or the doing of any other thing reasonably required for the purposes of or in connection with the operation of any apparatus.

- (3) Where the Secretary of State removes any mooring in exercise of his power under paragraph 1(1)(c) of Schedule 3 to this Act, the person to whom the mooring belongs shall be entitled to recover from the Secretary of State any reasonable relocation costs incurred by that person in consequence of the removal of the mooring.

- (4) In subsection (3) above " relocation costs " means, in relation to any mooring removed by the Secretary of State in exercise of the power mentioned in that subsection—

- (a) any expenses incurred in relocating the mooring in a new situation or in removing it from the new situation and reinstating it in its original situation ; and
- (b) any expenses incurred in moving any vessel for which the mooring was used before it was so removed from the original situation of the mooring to a new situation and back again on reinstatement of the mooring in its original situation;

or, in any case where any such vessel is to be kept on dry land during the period when the site from which the mooring is removed is not available for use in consequence of the carrying out of any works or other action which was the occasion for the removal of the mooring, any expenses incurred for the purpose of lifting the vessel from the water on the removal of the mooring or returning it to the water on reinstatement of the mooring in its original situation.

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- (5) References in subsection (4) above, in relation to any mooring removed by the Secretary of State as there mentioned, to the mooring include references to any new mooring provided in place of that mooring (whether by the Secretary of State in exercise of his powers under this Act or by the owner of the mooring).
- (6) Where the owner of any mooring that the Secretary of State proposes to remove in exercise of his power under paragraph 1(1)(c) of Schedule 3 to this Act himself removes it or procures its removal, this section shall apply as if the mooring had been removed by the Secretary of State in exercise of that power.
- (7) This section shall be regarded for the purposes of section 37(5) of the Land Compensation Act 1973 (discretionary compensation for disturbance in absence of entitlement to a disturbance payment or to compensation for disturbance under any other enactment) as providing compensation for disturbance for the owners of moorings removed by the Secretary of State in exercise of his power under paragraph 1(1)(c) of Schedule 3 to this Act.