



Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

1947 CHAPTER 42

1 Procedure for compulsory purchase of land by local authorities, and by the Minister of Transport, the Minister of Civil Aviation and the Secretary of State for certain purposes.

- (1) The authorisation of any compulsory purchase of land—
- (a) by a local authority where, apart from this Act, power to authorise the authority to purchase land compulsorily is conferred by or under any enactment contained in a public general Act and in force immediately before the commencement of this Act, other than any enactment specified in subsection (4) of this section ;
 - (b) by the Minister of Transport under section eleven of the Development and Road Improvement Funds Act, 1909, or that section as applied by section three of the Roads Improvement Act, 1925, or under section thirteen of the Restriction of Ribbon Development Act, 1935, as applied by section four of the Trunk Roads Act, 1936, or by section five of the Trunk Roads Act, 1946, or under section twenty-eight of the Civil Aviation Act, 1946;
 - (c) by the Minister of Civil Aviation under section twenty six of the Civil Aviation Act, 1946 ;
 - (d) by the Secretary of State under section fifty-seven of the National Health Service (Scotland) Act, 1947;

shall, subject to the provisions of this and the next following section, be conferred by an order (in this Act referred to as a " compulsory purchase order ") in accordance with the provisions of the First Schedule to this Act.

- (2) The purchase, in a case falling within the last foregoing subsection, of land—
- (a) which is the property of a local authority or which has been acquired by statutory undertakers for the purposes of their undertaking,
 - (b) forming part of a common or open space or held inalienably by the National Trust for Scotland, or

- (c) being, or being the site of, an ancient monument or other object of archaeological interest,
shall be subject to the special provisions of Part III of the said First Schedule.
- (3) In relation to any compulsory purchase to which the provisions of the First Schedule to this Act apply, the Lands Clauses Acts and other enactments mentioned in Part I of the Second Schedule to this Act shall be incorporated in accordance with the provisions of the said Part I ; and the Acquisition of Land (Assessment of Compensation) Act, 1919, shall have effect in relation to any such compulsory purchase subject to the provisions of Part II of that Schedule.
- (4) The enactments excepted from the operation of subsection (1) of this section are any enactment contained in—
- (a) the Burial Grounds (Scotland) Act, 1855;
 - (b) the Allotments (Scotland) Acts, 1892 to 1922;
 - (c) the Light Railways Acts, 1896 and 1912;
 - (d) Part I of the Housing (Scotland) Act, 1930;
 - (e) Part I of the Housing (Scotland) Act, 1935;
 - (f) the Town and Country Planning (Scotland) Act, 1945.
- (5) Nothing in this Act shall prevent the authorisation by special order or Provisional Order of the compulsory purchase of land under the Electricity (Supply) Acts, 1882 to 1936.

2 Temporary powers for speedy acquisition of land in urgent cases.

- (1) Where during the period of five years beginning with the eighteenth day of April, nineteen hundred and forty-six, any authority (hereinafter referred to as a "confirming authority ") having power to authorise the compulsory purchase of land by a local authority for any purpose is satisfied—
- (a) that it is expedient that the local authority (hereinafter referred to as the "acquiring authority") should purchase any land for the said purpose, and
 - (b) that it is urgently necessary in the public interest that the acquiring authority should be enabled to obtain possession of the land without delay,
- then, if apart from this section the acquiring authority could be authorised by the confirming authority under any enactment to purchase the land compulsorily for the said purpose in accordance with the provisions of the foregoing section or of the Town and Country Planning (Scotland) Act, 1945, the acquiring authority may, in lieu of being so authorised in accordance with the said provisions, be so authorised, subject to the provisions of the Third Schedule to this Act, by an authorisation in writing given by the confirming authority under this subsection.
- (2) Where during the period aforesaid the Minister of Transport is satisfied that it is expedient that he should purchase any land under any enactment mentioned in paragraph (b) of subsection (1) of the foregoing section except section twenty-eight of the Civil Aviation Act, 1946, or the Board of Trade are satisfied that it is expedient that they should purchase any land under the Distribution of Industry Act, 1945, and the Minister or the Board are satisfied that it is urgently necessary in the public interest that the Minister or the Board should be enabled to obtain possession of the land without delay, the Minister or the Board may, in lieu of being authorised to purchase the land in accordance with the provisions of the foregoing section or of the Distribution of Industry Act, 1945, be so authorised, subject to the provisions of the Third Schedule

to this Act, by an authorisation in writing given by the Minister or the Board under this subsection.

In the following provisions of this section and in the Third Schedule to this Act, the expressions "acquiring authority" and "confirming authority" include the Minister of Transport or the Board of Trade acting under this subsection.

- (3) At any time not earlier than seven days nor later than three months after the giving of an authorisation under this section, the acquiring authority may enter on, and take possession of, the land to which the authorisation relates, notwithstanding that the purchase of the land has not been completed.
- (4) Where the acquiring authority has taken possession of land pursuant to an authorisation under this section, the authority shall have power to purchase the land compulsorily as if authorised so to do under the enactment referred to in subsection (1) or (2) of this section and in accordance with the provisions of the foregoing section, the Town and Country Planning (Scotland) Act, 1945, or the Distribution of Industry Act, 1945, as the case may be, and the provisions of Part III of the Second Schedule to this Act; and the authority shall as soon as may be after taking possession of the land, serve notice under section seventeen of the Lands Clauses Consolidation (Scotland) Act, 1845, of its intention to take the land and shall in all respects be liable as if such notice had been given on the date of the authority's entering on the land, except that the power conferred by subsection (2) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, to withdraw such a notice shall not be exercisable.
- (5) A power to enter on and take possession of land conferred by an authorisation given under this section may, save as provided in the Third Schedule to this Act, be exercised without notice to, or the consent of, any person and without compliance with sections eighty-three to eighty-eight of the Lands Clauses Consolidation (Scotland) Act, 1845, but subject to payment of the like compensation, and interest on the compensation agreed or awarded, as the acquiring authority would have been required to pay if the provisions of those sections had been complied with.
- (6) Notwithstanding anything in the two last foregoing subsections, where apart from this subsection the compensation for the compulsory purchase of land in respect of which an authorisation has been given under this section would be reduced by virtue of paragraph 8 of the Fifth Schedule to the Town and Country Planning (Scotland) Act, 1945 (which relates to purchases under that Act of houses unfit for human habitation) the reduction shall not be made unless an order under the said paragraph 8 has come into operation before the date on which the acquiring authority took possession of the land.
- (7) While the acquiring authority is in possession of land pursuant to an authorisation given under this section, the authority shall be treated, as regards the use of the land and the rights of other persons affected by the use thereof, as if the authority had completed the purchase of the land; and in particular, any provision for the extinction of rights over the land on completion of the purchase thereof shall apply as if the authority had completed the purchase thereof at the time when possession was taken.
- (8) In this section references to the use of land include references to the erection of buildings or structures on the land and the carrying out of work thereon.
- (9) If at any time before the expiration of the period during which authorisations may be given under this section an address is presented to His Majesty by each House of Parliament praying that the said period shall be extended for a further year from the

time at which it would otherwise expire, His Majesty may by Order in Council direct that the said period shall be so extended.

- (10) This section shall not apply to any compulsory purchase of land under section eleven of the Police (Scotland) Act, 1946 or under section two of the Civic Restaurants Act, 1947, or under section fifty-seven of the National Health Service (Scotland) Act, 1947.

3 Power to extinguish certain public rights of way over land acquired.

- (1) Subject to the provisions of this section, where land is acquired, or proposed to be acquired.—
- (a) in pursuance of a compulsory purchase order made under section one of this Act or an authorisation given under section two thereof, or
 - (b) by agreement for a purpose, and by an authority, such that the compulsory acquisition of the land could be authorised by such an order or authorisation as aforesaid,

and there subsists over any part of the land a public right of way, not being a right enjoyable by vehicular traffic, then if the Secretary of State is satisfied that a suitable alternative right of way has been or will be provided, or that the provision thereof is not required, he may by order extinguish the right of way as from such date as may be specified in the order, not being earlier than—

- (i) the making of the order;
- (ii) if in the exercise of any power conferred by this Act or by agreement the acquiring authority takes possession of the land before the acquisition thereof is completed, the date on which the authority takes possession of the land;
- (iii) if the acquiring authority does not take possession of the land in the exercise of any such powers aforesaid, the date on which the acquisition of land is completed:

Provided that where a right of way is extinguished under this subsection at a date before the acquisition of the land in question is completed, then if at any time thereafter it appears to the Secretary of State that the proposal to acquire the land has been abandoned, he shall by order direct that the right shall revive, without prejudice, however, to the making of a new order extinguishing the right.

- (2) The Secretary of State shall cause a notice stating the effect of any order that he proposes to make under this section extinguishing a right of way, and specifying the time (not being less than twenty-one days from the publication of the notice) within which, and the manner in which, objections to the proposal may be made, to be published in such manner as appears to him to be requisite, and, in any case where the acquiring authority is not the local planning authority within the meaning of the Town and Country Planning (Scotland) Act, 1945, for the area in which the land is situated, shall serve a like notice on the said local planning authority.
- (3) If any objection to the proposal is duly made and is not withdrawn, the Secretary of State shall, before making the order, cause a public local inquiry to be held.
- (4) No order shall be made under subsection (1) of this section extinguishing a right of way over land, on, over or under which there is any apparatus belonging to statutory undertakers unless the undertakers consent to the making of the order, and any such consent may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they may reasonably require.

The consent of statutory undertakers to any such order shall not be unreasonably refused, and any question arising under this subsection whether any requirement or refusal is reasonable shall be determined by the appropriate Minister.

- (5) The foregoing provisions of this section shall not apply in any case where section twenty-two of the Town and Country Planning (Scotland) Act, 1945 (which relates to the extinction of public rights of way over land acquired or appropriated for the purposes of Part I, of that Act) applies.
- (6) Except, as provided by the foregoing provisions of this section or by the said section twenty-two, nothing in this Act shall be taken to authorise the extinction of any public right of way.
- (7) This section shall not have effect in relation to land acquired or proposed to be acquired by the Minister of Civil Aviation under section twenty-six of the Civil Aviation Act, 1946.

4 Notification of purchase' of war-damaged land to War Damage Commission.

- (1) On the date on which any such action as the following is taken, that is to say—
 - (a) notice to treat is served for the compulsory purchase under any enactment of an interest in any land that has sustained war damage any of which has not been made good at that date,
 - (b) any other action is taken by virtue of which compulsory purchase under any enactment of an interest in such land becomes obligatory, or
 - (c) there is withdrawn a notice to treat for the compulsory purchase under any enactment of an interest in any land that has sustained war damage any of which had not been made good at the time when the notice to treat was served,or as soon as may be after that date, the person or body of persons by whom the action is taken shall notify the War Damage Commission that the action has been taken :

Provided that this subsection shall not apply to a notice to treat deemed to have been served by virtue of the Sixth Schedule to the Town and Country Planning (Scotland) Act, 1945.

- (2) If any person or body of persons, being authorised under any enactment to purchase compulsorily land which has sustained war damage, enter into an agreement for the purchase of an interest in the land and at the date when the agreement is made any of the damage has not been made good, the person or body of persons shall, on or as soon as may be after that date, notify the War Damage Commission that they have entered into the agreement. '
- (3) Any notification under this section may be given to the War Damage Commission by delivering it to an officer of the Commission at any office of the Commission, or by sending it in a registered letter addressed to the Commission at any office of the Commission.
- (4) In this section the expression " war damage " has the same meaning as in the War Damage Act, 1943, and the expression " enactment " includes an enactment passed after the commencement of this Act.

5 Provisions as to inquiries and as to service of certain notices.

- (1) For the purposes of the execution of his powers and duties under this Act, a Minister may cause to be held such public local inquiries as are directed by this Act and such other public local inquiries as he may think fit, and, subject to the provisions of the next following subsection, the provisions of the Fourth Schedule to this Act shall have effect with regard to any such inquiry.
- (2) Any inquiry in relation to a compulsory purchase order which, by virtue of Part III of the First Schedule to this Act, becomes in certain events subject to special parliamentary procedure shall, if the confirming authority so directs, be held by Commissioners under the Private Legislation Procedure (Scotland) Act, 1936, and where any direction has been so given—
 - (a) it shall be deemed to have been given under section two, as read with section ten, of the Statutory Orders (Special Procedure) Act, 1945 ;
 - (b) if publication of notice in accordance with the provisions of head (a) of subparagraph (1) of paragraph 3 of the First Schedule to this Act has been made, the provisions of subsection (1) of the aforesaid section two with regard to advertisement of notice shall be deemed to have been complied with ; and
 - (c) the provisions of the Fourth Schedule to this Act shall not apply to such inquiry.
- (3) Any provision contained in the Schedules to this Act requiring notice to be served on owners, lessees or occupiers of any land shall be deemed to be complied with if notice is served on all the persons appearing from the valuation roll or otherwise known to the acquiring authority to have an interest in the land, and any reference in the said Schedules to owners, lessees and occupiers shall be construed accordingly.

Service of a notice on a person so appearing to have an interest may be effected by sending the-notice in a registered letter addressed to him at his address as entered in the valuation roll.

6 Application of s. 1 to local Acts.

- (1) Where, apart from this Act, power to authorise a local authority to purchase land compulsorily is conferred by any enactment contained in a local Act and in force immediately before the eighteenth day of April, nineteen hundred and forty-six, the Secretary of State may by order made on the application of the local authority direct that section one of this Act shall apply in relation to the enactment as if the enactment were contained in a public general Act :

Provided that nothing in an order under this section shall empower the authorisation of a compulsory purchase in accordance with the provisions of section two of this Act.

- (2) Where an order has come into operation under this section or under section seven of the Acquisition of Land (Authorisation Procedure) Act, 1946, the local Act shall have effect subject to the amendments thereof provided for in the order, being amendments appearing to the Secretary of State to be consequential on the making of the order, and as if the said amendments had-been in force immediately before the eighteenth day of April, nineteen hundred and forty-six.
- (3) Any order under this section made after the seventeenth day of April, nineteen hundred and forty-eight, shall be subject to special parliamentary procedure.

7 Interpretation.

(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" appropriate Minister " means—

(a) in relation to any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, the Minister of Transport,

(b) in relation to any undertaking for the supply of electricity, gas or hydraulic power (other than that of the North of Scotland Hydro-Electric Board), the Minister of Fuel and Power.

(c) in relation to any undertaking for the supply of water or to the undertaking of the North of Scotland Hydro-Electric Board, the Secretary of State ;

" ancient monument " has the same meaning as in the Ancient Monuments Acts, 1913 and 1931 :

" common " includes any town or village green ;

" held inalienably ", in relation to land belonging to the National Trust for Scotland, means that the land is inalienable under section twenty-two of the Order confirmed by the National Trust for Scotland Order Confirmation Act, 1935 ;

" land ", in relation to compulsory purchase under any enactment, includes anything falling within any definition of that expression in that enactment, and in relation to compulsory purchase under the Harbours, Piers and Ferries (Scotland) Act, 1937, includes also a marine work within the meaning of that Act;

" local authority " means any county council, town council or district council, or any other authority within the meaning of the Local Authorities Loans (Scotland) Act, 1891, and includes any joint board or joint committee of which all the constituent authorities are such local . authorities as aforesaid ;

" National Trust for Scotland " means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the National Trust for Scotland Order Confirmation Act, 1935;

" open space " means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground ;

" owner ", in relation to any land, includes any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking, and includes also a lessee under a lease the unexpired period of which exceeds three years ;

" statutory undertakers " means any persons authorised by any Act (whether public, general or local), or by any order or scheme made under or confirmed by an Act, to construct, work or carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water.

(2) If any question arises under this Act which Minister is the appropriate Minister, the question shall be determined by the Treasury.

(3) For the removal of doubt, it is hereby declared that any power conferred by or under this Act or any enactment passed before the commencement thereof to purchase land compulsorily is, except in so far as any express provision of any such enactment

restricts the exercise of the power, exercisable notwithstanding any other enactment providing that the land shall be inalienable.

- (4) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment, including this Act.

8 Repeals and consequential and transitional provisions.

- (1) The enactments specified in the Fifth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) References to the Acquisition of Land (Authorisation Procedure) Act, 1946, or to" particular provisions thereof, contained in the Fourth Schedule to that Act (which sets forth minor and consequential amendments of various enactments) shall be construed as references to this Act or to the provisions of this Act corresponding to the particular provisions of the said Act of 1946, as the case may require.
- (3) Where before the commencement of this Act proceedings for obtaining authorisation of a compulsory purchase in accordance with the provisions of any enactment in force at the time have been begun but not completed, the proceedings may be completed as if this Act had not been passed.

9 Short title and extent.

- (1) This Act may be cited as the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947.
- (2) This Act shall extend to Scotland only.