



# Civil Aviation Act 1982

## 1982 CHAPTER 16

### PART II

#### AERODROMES AND OTHER LAND

*Powers in relation to land exercisable in connection with civil aviation*

#### **41 Power of Secretary of State to acquire and manage land.**

- (1) The Secretary of State may, for any purpose connected with the exercise of his functions relating to civil aviation, acquire land by agreement or be authorised to acquire land compulsorily.
- (2) The <sup>M1</sup>Acquisition of Land Act 1981—
  - (a) shall have effect, without Part VI, with respect to the compulsory purchase of land in England and Wales by the Secretary of State under this section; and
  - (b) may, for the purpose of the compulsory purchase under subsection (1) above by the Secretary of State of land in Northern Ireland, be extended by Order in Council to Northern Ireland subject to any modifications which may be provided for by the Order.
- (3) The Secretary of State shall have power to manage, sell, let or exchange any land vested in him and to pay or receive money in respect of equality of exchange; but nothing in this subsection shall be taken to affect the operation of section 5 of the Defence of the <sup>M2</sup>Realm (Acquisition of Land) Act 1916 (which confers on a person from whom land was acquired under that Act a right of pre-emption in the case of the subsequent sale of the land) as respects any land acquired under that Act.
- (4) The Secretary of State shall have power to manage and (subject to the terms of the lease) to sublet any land taken on lease by him or assign the lease.

#### **Marginal Citations**

**M1** 1981 c. 67.

*Status: Point in time view as at 21/08/1991. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Civil Aviation Act 1982, Cross Heading: Powers in relation to land exercisable in connection with civil aviation. (See end of Document for details)*

M2 1916 c. 63.

## 42 Acquisition of land by CAA.

- (1) The CAA may be authorised by the Secretary of State to acquire land in Great Britain compulsorily for any purpose connected with the performance of the CAA’s functions and the following enactments, that is to say—
  - (a) if the land is in England and Wales, the <sup>M3</sup>Acquisition of Land Act 1981, other than Part VI, and
  - (b) if the land is in Scotland, the <sup>M4</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, except section 3 of that Act,
 shall apply in relation to the compulsory purchase of land by the CAA and, in the case of the latter Act, shall so apply as if the CAA were a local authority and as if this subsection were contained in an Act in force immediately before the commencement of that Act.
- (2) Where the CAA proposes to acquire, otherwise than by agreement, any land in Northern Ireland required by it for any purpose connected with the performance of its functions, or as to which it can reasonably be foreseen that it will be so required, it may apply to the Secretary of State for an order vesting that land in it, and the Secretary of State shall have power to make such an order.
- (3) Schedule 6 to the <sup>M5</sup>Local Government Act (Northern Ireland) 1972 shall, subject to the modifications specified in Schedule 6 to this Act, apply for the purposes of the acquisition of land by means of an order under subsection (2) above as it applies to the acquisition of land by means of a vesting order under that Act.
- (4) For the purpose of the acquisition by the CAA of land in Great Britain by agreement the following provisions shall apply, that is to say—
  - (a) if the land is in England and Wales, the provisions of Part I of the <sup>M6</sup>Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 27 and 31; and
  - (b) if the land is in Scotland, the provision of the <sup>M7</sup>Lands Clauses Consolidation (Scotland) Act 1845 (so far as applicable), other than sections 120 to 125, 127, 142 and 143.
- (5) Any land vested in the CAA by virtue of this section shall be deemed for all purposes to have been acquired by the CAA for the purposes of its undertaking.
- (6) In subsections (2) and (3) above, “land” has the meaning assigned to it by section 45(1) (a) of the <sup>M8</sup>Interpretation Act (Northern Ireland) 1954.

### Modifications etc. (not altering text)

C1 S. 42(1): Functions transferred (S.) (1.7.1999) by S.I. 1999/1750, art. 2, Sch. 1

### Marginal Citations

M3 1981 c. 67.  
M4 1947 c. 42.  
M5 1972 c. 9 (N.I.).  
M6 1965 c. 56.  
M7 1845 c. 19.

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**M8** 1954 c. 33 (N.I.).

VALID FROM 01/04/2001

**[<sup>F1</sup>42A Acquisition of land: air traffic services licence holders.**

- (1) A licence holder may be authorised by the Secretary of State to acquire land in Great Britain compulsorily for any purpose connected with the carrying out of the activities authorised by the licence.
- (2) Where a licence holder proposes to acquire, otherwise than by agreement, any land in Northern Ireland—
  - (a) which is required by the licence holder for any purpose connected with the carrying out of the activities authorised by the licence, or
  - (b) as to which it can reasonably be foreseen that it will be so required,the licence holder may apply to the Secretary of State for an order vesting the land in it, and the Secretary of State shall have power to make such an order.
- (3) The Secretary of State shall not grant an authorisation under subsection (1) or an order under subsection (2) to a licence holder in respect of land which is owned by another licence holder who—
  - (a) is using it, or
  - (b) will, in the opinion of the Secretary of State, use it at some time in the period of five years beginning with the date on which he receives the request for the authorisation or order.
- (4) A reference in subsection (3) to use of land by a licence holder is a reference to use for a purpose connected with the carrying out of the activities authorised by the licence.
- (5) The following provisions of section 42 shall apply for the purposes of this section in relation to a licence holder as they apply for the purposes of that section in relation to the CAA—
  - (a) in subsection (1), the words from “and the following enactments” to the end,
  - (b) subsection (3),
  - (c) subsection (5) (with the reference to acquisition for the purposes of the CAA’s undertaking being construed as a reference to acquisition in connection with the carrying out of the activities authorised by the licence), and
  - (d) subsection (6).]

**Textual Amendments**

**F1** S. 42A inserted (1.4.2001) by 2000 c. 38, s. 36, **Sch. 4 para. 2** (with s. 106); S.I. 2001/869, **art. 2**

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#### **43 Rights granted over land to Secretary of State or CAA to bind grantor's successors.**

- (1) Subject to section 55 below, where any person having an interest in land (in this section referred to as “the grantor”) grants or agrees to grant any relevant right in or in relation to that land—
- (a) for any purpose connected with the exercise by the Secretary of State of his functions relating to civil aviation, to the Secretary of State, or
  - (b) to the CAA,
- the grant or agreement shall, to the same extent that it is binding upon the grantor, be binding upon any person deriving title or otherwise claiming under the grantor, notwithstanding that it would not have been binding upon that person apart from the provisions of this subsection.
- (2) In this section “relevant right” means any right, whether in perpetuity or for any other period and whether or not capable of subsisting as a legal estate (or, in Scotland, as an estate), in or in relation to land, including the following rights, that is to say—
- (a) right to enter upon that land;
  - (b) a right to carry out and maintain works on that land;
  - (c) a right to install or maintain structures or apparatus on, under, over or across that land; and
  - (d) a right restrictive of the user of that land.

#### **44 Power to obtain rights over land.**

- (1) The Secretary of State may make an order under this section if he is satisfied that it is expedient to do so in order—
- (a) to secure the safe and efficient use for civil aviation purposes of any land which is vested in a relevant authority or which such an authority proposes to acquire; or
  - (b) to secure the provision of any services required in relation to any such land; or
  - (c) to secure that civil aircraft may be navigated with safety and efficiency.
- (2) Such an order may provide for the creation—
- (a) if it is made by virtue of paragraph (a) or (b) of subsection (1) above, in favour of the relevant authority in question or, where that authority is Eurocontrol, either of Eurocontrol or of the Secretary of State, or
  - (b) if it is made by virtue of paragraph (c) of that subsection, in favour of the Secretary of State,
- of easements or servitudes over land or of other rights in or in relation to land, including rights to carry out and maintain works on any land and to install and maintain structures and apparatus on, under, over or across any land.
- (3) Any such order may contain such consequential, incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order, including, in particular, provisions for authorising persons to enter upon land for the purpose of carrying out, installing, maintaining or removing any works, structures or apparatus.
- (4) Subject to subsection (5) below, no person shall, in the exercise of a power conferred by any such order, enter upon land which is occupied, unless, not less than seven days

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before the day upon which the entry is made, there has been served upon the occupier of the land a notice—

- (a) stating that an entry will be made upon the land upon that day in the exercise of powers conferred by the order; and
- (b) specifying the purposes for which the entry will be made.

(5) Nothing in subsection (4) above shall restrict the right of any person to enter upon land in a case of emergency or for the purpose of performing any functions which are required to be performed from time to time in connection with the maintenance or use of any works, structures or apparatus.

(6) Where any land is damaged in the exercise of any power of entry conferred by any such order, then—

- (a) if the relevant authority in whose favour the order was made is the Secretary of State or Eurocontrol, the Secretary of State, and
- (b) if the relevant authority in whose favour the order was made is the CAA, the CAA,

shall pay such compensation to the persons interested in the land as may be just; and where any dispute arises as to whether compensation is payable under this subsection, or as to the amount of any such compensation, or as to the persons to whom it is payable, the dispute shall be referred to and determined by the Lands Tribunal.

(7) The ownership of anything shall not be affected by reason only that it is placed on or under, or affixed to, any land in pursuance of any such order; and, so long as any such order is in force, no person shall, except with the consent of the Secretary of State, or, if the relevant authority in whose favour the order is made is the CAA, of the Secretary of State or the CAA, wilfully interfere with any works carried out on any land in pursuance of the order, or with anything installed on, under, over or across any land in pursuance of the order.

(8) Subject to the special provisions of this Part of this Act relating to statutory undertakers, Schedule 7 to this Act shall have effect with respect to orders under this section.

(9) Where an order under this section provides for the creation of an easement or servitude over land held by a statutory undertaker for the purposes of the carrying on of his undertaking, or of any other right in or in relation to such land, then, if on a representation made to the Secretary of State before the expiration of the time within which objections to the order may be made the Secretary of State is satisfied that the easement, servitude or right could not be enjoyed without serious detriment to the carrying on of the undertaking, and certifies accordingly, the order shall be subject to special parliamentary procedure.

(10) If any person contravenes the provisions of subsection (7) above he shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £500 or to both; and every person who wilfully obstructs any person in the exercise of any power of entry conferred by an order under this section shall be liable, on summary conviction, to a fine not exceeding £100.

(11) Proceedings for an offence under this section shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or by or with the consent of the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or by the Attorney General for Northern Ireland;

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except that in England and Wales and in Northern Ireland such proceedings may be instituted by the CAA without such consent if the relevant authority in whose favour the order in question was made is the CAA.

- (12) The following are relevant authorities for the purposes of this section, that is to say—
- (a) the Secretary of State;
  - (b) Eurocontrol; and
  - (c) the CAA;

and in this section and in Schedule 7 to this Act as it has effect with respect to orders under this section, references to land vested in or proposed to be acquired by a relevant authority shall include references to land occupied or, as the case may be, proposed to be occupied by Eurocontrol.

**Modifications etc. (not altering text)**

C2 Ss. 44–46 extended with modifications by [Airports Act 1986 \(c. 31, SIF 9\)](#), s. 59(3)(4)

**45 Power to restrict use of land for purpose of securing safety at aerodromes.**

- (1) Subject to subsection (2) below, the Secretary of State may by order impose such prohibitions or restrictions on the use of any area of land or water as a place for the arrival and departure of civil aircraft as he thinks expedient for the purpose of securing that aircraft may arrive and depart with safety at any aerodrome vested in him or under his control or at any aerodrome in the United Kingdom owned or managed by the CAA.
- (2) Nothing in subsection (1) above shall authorise the imposition of any such prohibition or restriction in relation to tidal waters beyond those of the territorial waters adjacent to the United Kingdom.
- (3) Part I of Schedule 7 to this Act shall have effect in relation to any order made under this section other than an order for the imposition of prohibitions or restrictions on the use of water; and in the case of an order for the imposition of prohibitions or restrictions on the use of water the Secretary of State—
  - (a) shall, before making the order, publish notice of his intention to make the order in such manner as he thinks best calculated to bring his intention to the notice of persons who will be affected thereby; and
  - (b) shall, immediately after the order has been made, publish in one or more newspapers circulating in the locality to which the order relates a notice stating that the order has been made and naming a place where a copy of the order may be seen at all reasonable hours, and shall serve a like notice upon any person who in his opinion will be affected thereby.
- (4) Part II of Schedule 7 to this Act and Schedule 8 to this Act shall have effect with respect to orders under this section; but where any aerodrome was first established as such after 31st July 1946 no compensation shall be payable by reason of the imposition under this section of prohibitions or restrictions upon the use of that aerodrome unless it was so established with the consent of the Secretary of State.
- (5) Any person who contravenes the provisions of any order under this section shall be liable in respect of each offence—

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- (a) on summary conviction to a fine which shall not exceed the statutory maximum or to imprisonment for a term not exceeding three months or to both; and
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.
- (6) Any offence against any order under this section committed on tidal waters outside the ordinary jurisdiction of a court of summary jurisdiction may be tried and punished by such a court as if it had been committed in the nearest part of the United Kingdom which is within the ordinary jurisdiction of such a court; but nothing in this subsection shall in its application to Scotland be construed as conferring jurisdiction on any court of summary jurisdiction other than the sheriff court.
- (7) Proceedings for an offence against any order under this section shall not be instituted—
- (a) in England and Wales, except by or with the consent of the Secretary of State or by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or by the Attorney General for Northern Ireland;
- except that in England and Wales and in Northern Ireland such proceedings may be instituted by the CAA without such consent if the order in question is made in respect of an aerodrome owned or managed by the CAA.
- (8) In this section “aerodrome” includes part of an aerodrome; and, without prejudice to section 105(3) below, the reference in subsection (4) above to the Secretary of State shall, in relation to any time before the passing of this Act, have effect as a reference to whoever at that time was charged with exercising the functions which by virtue of this section are vested in the Secretary of State.

**Modifications etc. (not altering text)**

**C3** Ss. 44–46 extended with modifications by Airports Act 1986 (c. 31, SIF 9), s. 59(3)(4)

**46 Power to exercise control over land in interests of civil aviation.**

- (1) The Secretary of State may, if he is satisfied that it is necessary to do so in order to secure the safe and efficient use for civil aviation purposes (including the testing of aircraft designed for civil aviation) of any land, structures, works or apparatus vested in a relevant authority or which such an authority proposes to acquire or install, by order declare that any area of land specified in the order shall be subject to control by directions given in accordance with the provisions of this section; and in this Part of this Act that authority, in relation to the making of such an order, is referred to as the person in respect of whom the order is or, as the case may be, is to be made.
- (2) Where an order under subsection (1) above is in force, the Secretary of State may, in pursuance of any general or special authority given by the order, give directions—
- (a) for requiring the total or partial demolition of any building or structure within the area to which the order relates;
  - (b) for restricting the height of trees upon any land within the area, or for requiring any tree upon any such land to be cut down or reduced in height;
  - (c) for extinguishing any private right of way over land within the area;
  - (d) for restricting the installation of cables, mains, [F2sewers,] pipes, wires or other apparatus upon, across, under or over any land within the area;

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- (e) for extinguishing, at the expiration of such period as may be determined by the directions, any subsisting right of installing or maintaining any such apparatus as aforesaid upon, across, under or over any land within the area;
  - (f) for requiring that, before the expiration of such period as may be determined by the directions, any such apparatus shall be removed from any land within the area.
- (3) An order under subsection (1) above may contain such consequential, incidental and supplemental provisions, as appear to the Secretary of State to be necessary or expedient for the purposes of the order, including, in particular, provisions for empowering any person authorised for the purpose by the Secretary of State, to remove, pull down, cut down, or alter so as to bring into conformity with the requirements of any directions given under the order, any building, structure, tree or apparatus which contravenes those requirements.
- (4) An order under subsection (1) above, other than an order relating to land in Northern Ireland, shall be subject to special parliamentary procedure.
- (5) Before making any order under this section, the Secretary of State shall consult every local authority within the area of which the whole or any part of the area of land to which the proposed order will relate is situated.
- (6) Notwithstanding anything in section 2(1) of the <sup>M9</sup>Statutory Orders (Special Procedure) Act 1945, the duty of the Secretary of State to comply with the requirements of subsection (5) above in relation to England and Wales shall not excuse him from the duty of complying with the requirements of Schedule 1 to that Act.
- (7) Subject to the special provisions of this Part of this Act relating to statutory undertakers, Schedule 9 to this Act shall have effect with respect to directions given under an order made under this section.
- (8) The powers of the Secretary of State under this section shall not prejudice his power to acquire land for the purpose of securing the observance of any requirement or restriction which might have been imposed in relation to the land under this section.
- (9) The Secretary of State may, after consultation with any local authority which appears to him to be concerned, by order repeal or amend any enactment in a local Act which appears to him to be unnecessary having regard to, or to be inconsistent with, the provisions of this Part of this Act relating to orders made or to be made under subsection (1) above in respect of a relevant authority falling within paragraph (d) of subsection (10) below.
- (10) The following are relevant authorities for the purposes of this section, that is to say—
- (a) the Secretary of State;
  - (b) Eurocontrol;
  - (c) the CAA; and
  - (d) the licensee of any aerodrome licensed under an Air Navigation Order;
- and in this section and in Schedule 9 to this Act, references to land, structures, works or apparatus vested in or proposed to be acquired or installed by a relevant authority shall include references to land, structures, works or apparatus occupied or, as the case may be, proposed to be occupied by Eurocontrol.



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#### Textual Amendments

**F2** Word inserted by [Water Act 1989 \(c. 15, SIF 130\)](#), **ss. 58(7), 101(1)**. 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 25 para. 67(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58

#### Modifications etc. (not altering text)

**C4** [Ss. 44–46](#) extended with modifications by [Airports Act 1986 \(c. 31, SIF 9\)](#), **s. 59(3)(4)**

#### Marginal Citations

**M9** [1945 c. 18](#). (9 & 10 Geo. 6).

### 47 Warning of presence of obstructions near licensed aerodromes.

- (1) Subject to the provisions of this section, if the Secretary of State is satisfied with respect to any building, structure or erection in the vicinity of a licensed aerodrome that, in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building, structure or erection, he may by order authorise (subject to any conditions specified in the order) the proprietor of the aerodrome, and any person acting under the proprietor's instructions—
  - (a) to execute, install, maintain, operate and, as occasion requires, to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified in the order; and
  - (b) so far as may be necessary for exercising any of the powers conferred by the order to enter upon and pass over (with or without vehicles) any such land as may be specified in the order.
- (2) An order shall not be made under this section in relation to any building, structure or erection if it appears to the Secretary of State that there have been made, and are being carried out, satisfactory arrangements for the giving of such warning as aforesaid of the presence of the building, structure or erection.
- (3) The Secretary of State shall, before making an order under this section—
  - (a) cause to be published, in such manner as he thinks best for informing persons concerned, notice of the proposal to make the order and of the place where copies of the draft order may be obtained free of charge; and
  - (b) take into consideration any representations with respect to the order which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to him by any person appearing to him to have an interest in any land which would be affected by the order;and at the end of that period the order may, subject to the provisions of this section, be made with such modifications (if any) of the original draft as the Secretary of State thinks proper.
- (4) Every order under this section shall provide—
  - (a) that, except in a case of emergency, no works shall be executed on any land in pursuance of the order, unless, at least fourteen days previously, the proprietor of the aerodrome to which the order relates has served in the manner specified in the order on the occupier of that land, and on every other person known by the proprietor to have an interest therein, a written notice containing such particulars of the nature of the proposed works, and the manner in which and

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the time at which it is proposed to execute them, as may be specified in or in accordance with the order; and

- (b) that if, within fourteen days after service of the said notice on any person having such an interest, the proprietor of the aerodrome receives a written intimation of objection on the part of that person to the proposals contained in the notice, being an intimation which specifies the grounds of objection, then unless and except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific sanction of the Secretary of State;

and shall also provide for requiring the proprietor of the aerodrome to which the order relates to pay to any person having an interest in any land affected by the order such compensation for any loss or damage which that person may suffer in consequence of the order as may, in default of agreement, be determined from time to time by a single arbitrator appointed by the Lord Chief Justice or, in Scotland, by a single arbiter appointed by the Lord President of the Court of Session.

- (5) For the purposes of subsection (4) above, any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of an order under this section, and so much of any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which such an order relates as is attributable to the operation of the order, shall be deemed to be loss or damage suffered in consequence of the order.
- (6) The ownership of anything shall not be taken to be affected by reason only that it is placed in, or affixed to, any land in pursuance of an order under this section; and (subject to the provisions of subsection (8) below) so long as any such order in respect of an aerodrome is in force, no person shall, except with the consent of the proprietor of the aerodrome, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed, in, on or over any land in pursuance of the order.
- (7) If any person contravenes the provisions of subsection (6) above, he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding [<sup>F3</sup>level 4 on the standard scale] or to both; and every person who wilfully obstructs a person in the exercise of any of the powers conferred by an order under this section shall be liable, on summary conviction, to a fine not exceeding [<sup>F4</sup>level 3 on the standard scale].
- (8) Nothing in this section shall operate, in relation to any building, structure or erection, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building, structure or erection if—
  - (a) notice of the doing of that work is given as soon as may be to the proprietor of the aerodrome; and
  - (b) the giving of warning of the presence of the building, structure or erection in the manner provided by any order under this section in force in relation thereto is not interrupted.
- (9) The following provisions shall have effect, without prejudice to the general application of subsections (4) and (5) above, for the protection of statutory undertakers—
  - (a) any order made under this section affecting any property held by such undertakers for the purposes of their undertaking shall be so framed as to avoid interference with the proper carrying on of the undertaking;

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- (b) no person shall, except in a case of emergency, enter, in pursuance of such an order, upon any land held by such undertakers for the purposes of their undertaking, unless he has given to the undertakers at least three clear days' notice of his intention so to do, and any person so entering on any such land shall comply with any reasonable directions given to him by or on behalf of the undertakers for preventing interference with the proper carrying on of the undertaking;
- (c) if any such undertakers show that, by reason of the operation of such an order, they have been obliged to take special measures for the purpose of ensuring the safety of persons so entering on any such land or otherwise acting under the order in relation to any property of the undertakers, the amount of any expenses reasonably incurred by the undertakers in taking such measures shall be paid to them by the proprietor of the aerodrome to which the order relates, and any dispute as to whether any sum is payable under this paragraph, or as to the amount of any sum so payable, shall unless the parties otherwise agree, be referred for determination to a single arbitrator appointed by the Lord Chief Justice or, in Scotland, to a single arbiter appointed by the Lord President of the Court of Session.

(10) In this section—

“licensed aerodrome” means any premises which, by virtue of an Air Navigation Order, are for the time being licensed as an aerodrome for public use, but does not include any premises belonging to the Secretary of State;

“proprietor of the aerodrome” means, in relation to any premises used or appropriated for use as an aerodrome, the person carrying on or entitled to carry on the business of an aerodrome in those premises;

and nothing in section 104(1) below shall affect the construction of the reference in the definition in this subsection of “licensed aerodrome” to premises belonging to the Secretary of State.

#### Textual Amendments

- F3** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c.21, SIF 39:1\)](#), [ss. 289F, 289G](#) and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)
- F4** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c.21, SIF 39:1\)](#), [s. 289G](#) and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

#### Modifications etc. (not altering text)

- C5** [S. 47, 48](#) extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), [s. 112\(1\)](#), [Sch. 16 para. 2\(2\)\(h\)\(9\)](#)
- C6** [S. 47](#) modified (1.4.1992) by [S.I. 1992/231 \(N.I. 1\)](#), [art. 95\(1\)](#), [Sch. 12 para. 3\(a\)](#); [S.R. 1992/117](#), [art. 3\(1\)](#).

## 48 Power of Secretary of State to stop up and divert highways etc. in interests of civil aviation.

- (1) Subject to subsection (2) below, the Secretary of State may if he is satisfied that it is necessary to do so in order to secure the safe and efficient use for civil aviation purposes (including the testing of aircraft designed for civil aviation) of any land vested in the Secretary of State or the CAA, or of any land which the Secretary of

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State or the CAA proposes to acquire, by order authorise the stopping-up or diversion of any highway.

- (2) The power conferred by subsection (1) above shall, in Northern Ireland, be exercisable by the Department of the Environment for Northern Ireland (in this section referred to as “the Department”) instead of by the Secretary of State, and notwithstanding anything in section 104(1) below, the reference in subsection (1) above to land which is vested in the Secretary of State or which the Secretary of State proposes to acquire shall include a reference to land which is vested in him, or which he proposes to acquire, as the case may be, in connection with the exercise of the following functions, that is to say—
- (a) his functions under the <sup>M10</sup>Supply Powers Act 1975; and
  - (b) the related functions which by virtue of the <sup>M11</sup>Ministry of Supply (Transfer of Powers) (No. 1) Order 1939 became exercisable by the Minister of Supply and which have subsequently become vested in the Secretary of State.
- (3) An order under subsection (1) above may provide for all or any of the following matters, that is to say—
- (a) for securing the provision or improvement of any highway so far as the Secretary of State or, as the case may be, the Department thinks such provision or improvement necessary or desirable in consequence of any such stopping-up or diversion as aforesaid;
  - (b) for directing that any highway to be provided or improved in pursuance of the order shall—
    - (i) in England and Wales, be a highway which for the purposes of the <sup>M12</sup>Highways Act 1980 is maintainable at public expense;
    - (ii) in Scotland, be maintained and managed by a regional, islands or district council; and
    - (iii) in Northern Ireland be a public roads within the meaning of the <sup>M13</sup>Roads (Northern Ireland) Order 1980;
  - (c) for specifying—
    - (i) in England and Wales or Northern Ireland, the highway authority which is to be the highway authority for any highway to be provided or improved in pursuance of the order; and
    - (ii) in Scotland, the council which is to be responsible for the maintenance and management referred to in paragraph (b)(ii) above;
  - (d) for directing that any highway to be provided or improved in consequence of the stopping-up or diversion of a trunk road under the order shall itself be a trunk road for all or any of the purposes of the enactments relating to trunk roads;
  - (e) for the retention or removal of any cables, mains, [<sup>F5</sup>sewers,] pipes, wires or similar apparatus placed along, across, over or under any highway stopped up or diverted under the order, and for the extinguishment, modification or preservation of any rights as to the use or maintenance of that apparatus;
  - (f) if any highway is to be provided or improved under the order, for authorising or requiring the provision of any such apparatus as aforesaid along, across, over or under that highway, in lieu of any apparatus removed from a highway in pursuance of the order, and for conferring rights as to the use or maintenance of apparatus so provided;
  - (g) for requiring the Secretary of State or the department or any other specified authority or person—

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- (i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is ascribable to the doing of any such work; or
  - (ii) to repay, or to make contributions in respect of, any compensation paid by a highway authority in England and Wales or Scotland in respect of restrictions imposed under section 1 or 2 of the <sup>M14</sup>Restriction of Ribbon Department Act 1935 as respects any highway stopped up or diverted under the order.
- (4) An order under subsection (1) above may contain such consequential, incidental and supplemental provisions as appear to the Secretary of State or, as the case may be, the Department to be necessary or expedient for the purposes of the order.
- (5) An order under subsection (1) above shall, if made in respect of land in England and Wales or Scotland, be subject to special parliamentary procedure; and—
  - (a) if the order was made in respect of land in England and Wales, Schedule 1 to the <sup>M15</sup>Statutory Orders (Special Procedure) Act 1945 (which sets out the notices to be given and the other requirements to be complied with before an order is made), and
  - (b) if the order was made in respect of land in Scotland, section 2 of that Act (which contains comparable provision for Scotland), as that section applies by virtue of section 10 of that Act to Scotland,shall apply in relation to the order, but in their application in relation thereto, shall have effect as if paragraph 1 of the said Schedule 1 or subsection (1) of the said section 2, as the case may be, included the provisions set out in subsection (6) below.
- (6) The said provisions are provisions—
  - (a) requiring notice of the order as proposed to be made to be displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted under the order;
  - (b) requiring notice of the order as proposed to be made to be sent to every local authority in whose area any highway to be stopped up or diverted under the order, or any highway to be provided or improved under the order, is or will be situated; and
  - (c) requiring notice of the order as proposed to be made to be served upon any water, gas electricity undertakers having any cables, mains, [<sup>F5</sup>sewers,] pipes or wires laid along, across, under or over any highway to be stopped up or diverted under the order.
- (7) In subsection (6) above—
  - (a) the reference in paragraph (b) to a local authority shall include a reference to a parish council in England, to a parish meeting of a parish in England not having a separate parish council, to a council of a community in Wales and to the community in the case of a community in Wales without a council; and
  - (b) the reference in paragraph (c) to electricity undertakers shall be deemed to include references to the Post Office and [<sup>F6</sup>the operator of a telecommunications code system][<sup>F7</sup>and]
  - [<sup>F7</sup>(c) the reference in paragraph (c) to water undertakers is a reference to the National Rivers Authority, a water undertaker or a sewerage undertaker.].
- (8) The powers of the Secretary of State and of the Department under subsection (1) above shall include power to make an order authorising the stopping-up or diversion of any highway which is temporarily stopped up or diverted under any other enactment;

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and the provisions of this section shall not prejudice any power conferred upon the Secretary of State or the Department by any other enactment to authorise the stopping-up or diversion of a highway.

(9) The following provisions (which relate to telegraphic lines of British Telecommunications affected by the stopping-up, diversion or improvement of a highway), that is to say—

- (a) in England and Wales, [<sup>F8</sup>subsections (1) to (4) of section 256 of the Town and Country Planning Act 1990];
- (b) in Scotland, subsections (1) and (2) of section 209 of the <sup>M16</sup>Town and Country Planning (Scotland) Act 1972; and
- (c) in Northern Ireland, paragraphs 2 and 3 of Schedule 7 to the <sup>M17</sup>Roads (Northern Ireland) Order 1980.

shall have effect as if references in those subsections to an order under [<sup>F8</sup>section 247 of the said Act of 1990] and to an order under section 198 of the said Act of 1972 and in those paragraphs to an order under Article 40 of the said Order of 1980 included references to an order made under subsection (1) above in relation to land which is vested in the CAA or which the CAA proposes to acquire.

#### Textual Amendments

- F5** Word inserted by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), **Sch. 25 para. 67(2)(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F6** Words substituted by virtue of [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 84, **Sch. 5 para. 45**
- F7** S. 48(7)(c) and the word “and” immediately preceding it inserted by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), Sch. 25 para. 67(2)(b) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**)
- F8** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2 para. 55(1)**

#### Modifications etc. (not altering text)

- C7** S. 48(1)–(8) extended with modifications by [Airports Act 1986 \(c. 31, SIF 9\)](#), s. 59(3)(4)
- C8** S. 47, 48 extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 2(2)(h)(9)**
- C9** S. 48(6) extended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 2(3)(9)**
- C10** S. 48(6) modified (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 3(b)**; S.R. 1992/117, **art. 3(1)**
- C11** S. 48(6)(c) amended by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1)(3), **Sch. 7 para. 2(2)(f)**, Sch. 8 para. 33

#### Marginal Citations

- M10** 1975 c. 9.
- M11** 1939 S.R. & O. No. 877.
- M12** 1980 c. 66.
- M13** S.I. 1980/1085 (N.I. 11).
- M14** 1935 c. 47.
- M15** 1945 c. 18 (9 & 10 Geo. 6.)
- M16** 1972 c. 52.
- M17** S.I. 1980/1085 (N.I. 11).

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#### **49 Power to acquire land in connection with order under s. 48.**

- (1) The Secretary of State may be authorised to purchase land in Great Britain compulsorily for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order under section 48(1) above or for any other purpose for which land is required in connection with such an order.
- (2) The <sup>M18</sup>Acquisition of Land Act 1981 shall apply, in relation to land in England and Wales, to a compulsory purchase under subsection (1) above.
- (3) The CAA's power of acquiring land compulsorily under this Act may be exercised for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order made under section 48(1) above in relation to land which is vested in the CAA or which the CAA proposes to acquire or for any other purpose for which land is required in connection with such an order.
- (4) The powers of compulsory acquisition of land exercisable by the Department of the Environment for Northern Ireland under paragraph (3) of Article 53 of the Roads (Northern Ireland) Order 1980 shall include the power to acquire lands compulsorily in accordance with the provisions of that Article for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order under section 48(1) above or for any other purpose for which land is required in connection with such an order; and the said Order of 1980 shall have effect accordingly.
- (5) The powers conferred on the Department of the Environment for Northern Ireland by subsection (4) above shall be exercisable in relation to any land notwithstanding that the land is the property of a statutory undertaker or is declared by any other enactment to be inalienable

#### **Modifications etc. (not altering text)**

**C12** Ss. 49, 51 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 2(2)(h)(9)**

**C13** S. 49 modified (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 3(a)**; S.R. 1992/117, **art. 3(1)**.

#### **Marginal Citations**

**M18** 1981 c. 67.

#### **50 Power of entry for purposes of survey.**

- (1) This section applies—
  - (a) where the Secretary of State has confirmed or is considering the confirmation of an order authorising the CAA to acquire land in Great Britain compulsorily;
  - (b) where the CAA proposes to acquire land in Northern Ireland compulsorily;
  - (c) where the Secretary of State has made or has under consideration the making of an order under section 44 above providing for the creation in favour of the CAA of easements or servitudes over land or of other rights in or in relation to land;
  - (d) where the Secretary of State has made, or has under consideration the making of, an order under section 46(1) above in respect of the CAA or the licensee of an aerodrome licensed under an Air Navigation Order, being an order declaring that an area of land shall be subject to control by directions; and

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- (e) in any case not falling within paragraphs (a) to (d) above where the Secretary of State has made, or has under consideration the making of, an order under or in pursuance of this Part of this Act, being—
- (i) an order authorising the compulsory purchase of land; or
  - (ii) an order providing for the creation in favour of a particular person of easements or servitudes over land or of other rights in or in relation to land; or
  - (iii) an order declaring that an area of land shall be subject to control by directions.
- (2) Where this section applies any person authorised in writing by the Secretary of State may at all reasonable times on producing if so required evidence of his authority for the purpose enter upon any of the land in question in order to make a relevant survey.
- (3) In subsection (2) above “a relevant survey” means—
- (a) in a case falling within subsection (1)(a) above, any survey which the Secretary of State or the CAA requires to be made for the purpose of any steps to be taken in consequence of the order, or, as the case may be, for the purpose of determining whether the order should be confirmed;
  - (b) in a case falling within subsection (1)(b) above, any survey which the Secretary of State or the CAA requires to be made for the purpose of ascertaining whether the land would be suitable for the purposes for which it is proposed to acquire it;
  - (c) in a case falling within subsection (1)(c) above, any survey which the Secretary of State or the CAA requires to be made for the purpose of any steps to be taken in consequence of the order or, as the case may be, for the purpose of determining whether the order should be made;
  - (d) In a case falling within subsection (1)(d) above, any survey which the Secretary of State or the person in respect of whom the order under the said section 46(1) has been, or is to be, made requires to be made for the purpose of any steps to be taken in consequence of that order or, as the case may be, for the purpose of determining whether the order should be made;
  - (e) in a case falling within subsection (1)(e) above, any survey which the Secretary of State requires to be made for the purpose of any steps to be taken in consequence of the order in question or, as the case may be, for the purpose of determining whether the order should be made.
- (4) Admission shall not, by virtue of subsection (2) above, be demanded as of right to any land which is occupied unless the following notice of the intended entry has been served on the occupier, that is to say—
- (a) in a case falling within subsection (1) (a) to (d) above, eight days’ notice; and
  - (b) in a case falling within subsection (1)(e) above, twenty-four hours’ notice.
- (5) If any person obstructs a person authorised as mentioned in subsection (2) above in the exercise of any power conferred by this section he shall be liable on summary conviction to a fine not exceeding [<sup>F9</sup>level 2 on the standard scale].
- (6) Proceedings for an offence under this section shall not be instituted—
- (a) in England and Wales, except by or with the consent of the Secretary of State or by or with the consent of the Director of Public Prosecutions;
  - (b) in Northern Ireland, except by or with the consent of the Secretary of State or by the Attorney General for Northern Ireland,



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except that in England and Wales and in Northern Ireland such proceedings may be instituted without such consent, in a case falling within subsection (1)(a) to (c) above, by the CAA and, in a case falling within subsection (1)(d) above, by the person in respect of whom the order in question has been, or is to be, made.

(7) Where any land is damaged in the exercise of a power of entry conferred in pursuance of an authority given under this section, or in the making of any survey for the purpose of which any such power of entry has been conferred—

- (a) in a case falling within subsection (1)(a) to (c) above, the CAA,
- (b) in a case falling within subsection (1)(d) above, the person in respect of whom the order in question has been, or is to be, made,
- (c) in a case falling within subsection (1)(e) above, the Secretary of State,

shall pay such compensation to the persons interested in the land as may be just; and where any dispute arises as to whether compensation is payable under this subsection, or as to the amount of any such compensation or as to the persons to whom it is payable, the dispute shall be referred to and determined by the Lands Tribunal.

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#### **Textual Amendments**

**F9** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 46](#), (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [s. 289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\)](#), [art. 5](#)

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#### **Modifications etc. (not altering text)**

**C14** [S. 50](#) extended with modifications by [Airports Act 1986 \(c. 31, SIF 9\)](#), [s. 59\(3\)\(4\)](#)

**C15** [S. 50\(2\)](#): Functions transferred (S.) (1.7.1999) by [S.I. 1999/1750](#), [art. 2](#), [Sch. 1](#)

**Status:**

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