



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

1947 CHAPTER 42 10 and 11 Geo 6

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

(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 . . . ^{F1}, 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 . . . ^{F2} 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

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acquiring authority is not the local planning authority within the meaning of the Town and Country Planning (Scotland) Act, ^{M1}[^{F3}1947, for the district] 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 [^{F4}Scottish Ministers].

- [^{F5}(4A) In subsection (4) above, the reference to apparatus belonging to statutory undertakers shall include a reference to apparatus kept installed for the purposes of [^{F6}an electronic communications code network] ; and in relation to any such apparatus the references to the undertakers shall have effect as references to the operator of [^{F7}the network].]
- (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, ^{M2} 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 [^{F8}by the Secretary of State under section 41 of the Civil Aviation Act 1982].

Textual Amendments

- F1** Words repealed by Statute Law (Repeals) Act 1973 (c. 39), s. 1(1), **Sch. 1 Pt. IX**
- F2** Words repealed by Statute Law (Repeals) Act 1973 (c. 39), s. 1(1), **Sch. 1 Pt. IX**
- F3** Words substituted by Town and Country Planning (Scotland) Act 1947 (c. 53), **Sch. 8**
- F4** Words in s. 3(4) substituted (1.7.1999 as specified in S.I. 1998/3178, **art. 3**) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. 1 para. 20(2)**
- F5** S. 3(4A) inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 23, **Sch. 5 para. 45**
- F6** Words in s. 3(4A) substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 1(2)(a)**
- F7** Words in s. 3(4A) substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 1(2)(b)**
- F8** Words substituted by Civil Aviation Act 1982 (c. 16, SIF 9), **Sch. 15 para. 2(2)**

Modifications etc. (not altering text)

- C1** S. 3 applied with modifications by Opencast Coal Act 1958 (c. 69), **s. 15**.

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C2 Functions of Minister of Transport under s. 3(4) in relation to lighthouse undertakings now exercisable by Board of Trade or Secretary of State: [S.I. 1953/1204](#) (1953 I, p. 1225), 1959/1768 (1959 I, p. 1793), 1965/145 and 1970/1681

Marginal Citations

M1 1947 c. 53.

M2 1945 c. 33.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [2021 asp 9 s. 68\(4\)](#)