



Land Compensation (Scotland) Act 1973

1973 CHAPTER 56

PART II

MITIGATION OF INJURIOUS EFFECT OF PUBLIC WORKS

Insulation against noise

18 Sound-proofing of buildings affected by public works

- (1) The Secretary of State may make regulations imposing a duty or conferring a power on responsible authorities to insulate buildings against noise caused or expected to be caused by the construction or use of public works or to make grants in respect of the cost of such insulation.
- (2) Regulations under this section may—
 - (a) make provision as to the level of noise giving rise to a duty or power under the regulations and the area in which a building must be situated if a duty or power is to arise in respect of it;
 - (b) specify the classes of public works and of buildings in respect of which a duty or power is to arise, and the classes of persons entitled to make claims, under the regulations;
 - (c) specify the nature and extent of the work which is to be undertaken under the regulations and the expenditure in respect of which and the rate at which grants are to be made under the regulations ;
 - (d) make the carrying out of work or the making of grants under the regulations dependent upon compliance with conditions;
 - (e) make provision as to the funds out of which expenses incurred by responsible authorities under the regulations are to be defrayed;
 - (f) make provision for the settlement of disputes arising under the regulations.
- (3) Without prejudice to the generality of paragraph (a) of subsection (2) above, regulations made by virtue of that paragraph may provide for the relevant level of noise or the relevant area in a particular case to be determined by reference to a document

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published by or on behalf of the Secretary of State or by any other authority or body or in such other manner as may be provided in the regulations.

- (4) If regulations under this section impose a duty or confer a power to carry out, or make a grant in respect of the cost of, work in respect of a building which is subject to a tenancy on a claim in that behalf made by the landlord or the tenant, provision may also be made by the regulations for enabling the work to be carried out notwithstanding the withholding of consent by the other party to the tenancy.
- (5) Regulations under this section may authorise or require local authorities to act as agents for responsible authorities in dealing with claims and in discharging or exercising the duties or powers of responsible authorities under the regulations, and may provide for the making by responsible authorities of payments to local authorities in respect of anything done by them as such agents.
- (6) Regulations under this section may contain such supplementary provisions as appear to the Secretary of State to be necessary or expedient and may make different provision with respect to different areas or different circumstances.
- (7) The power to make regulations under this section shall be exercisable by statutory instrument.
- (8) A draft of any regulations under this section shall be laid before Parliament and the first regulations shall not be made unless the draft has been approved by a resolution of each House of Parliament.
- (9) The purposes for which advances may be made by the Secretary of State under section 8 of the Development and Road Improvement Funds Act 1909 shall include the discharge or exercise by a highway authority of any duty or power imposed or conferred on the authority under this section.
- (10) In sections 24(4) and 29(a) of the Rent (Scotland) Act 1971 (increase of rent for improvements) after the words " section 15 of the Airports Authority Act 1965 (grants towards cost of soundproofing)" there shall be inserted the words " or regulations under section 18 of the Land Compensation (Scotland) Act 1973 ".
- (11) In this section "public works" and "responsible authority " have the same meaning as in section 1 above except that " public works " does not include an aerodrome and except that " responsible authority", in relation to a highway, includes any authority having power to make an order in respect of that highway under section 1 or 6 of the Road Traffic Regulation Act 1967 (traffic regulation orders).

19 Sound-proofing of buildings affected by aerodromes

In section 15 of the Airports Authority Act 1965 (grants towards sound-proofing of dwellings affected by noise from aerodromes) references to dwellings shall include references to buildings other than dwellings but a scheme under that section need apply only to such classes of buildings as the Secretary of State thinks fit.

Powers of highway authorities

20 Acquisition of land in connection with highways

- (1) Subject to subsection (3) below, a highway authority may acquire land compulsorily or by agreement for the purpose of mitigating any adverse effect which the existence

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or use of a highway constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the highway.

- (2) Subject to subsection (3) below, a highway authority may acquire by agreement—
- (a) land the enjoyment of which is seriously affected by the carrying out of works by the authority for the construction or improvement of a highway ;
 - (b) land the enjoyment of which is seriously affected by the use of a highway which the authority have constructed or improved,
- if the interest of the vendor is one which falls within section 181(3) to (5) of the Town and Country Planning (Scotland) Act 1972 (interests qualifying for protection under blight provisions) taking references to the date of service of a notice under section 182 of that Act as references to the date on which the purchase agreement is made.
- (3) The powers conferred by subsection (2) (b) above shall not be exercisable unless the date on which the highway or, as the case may be, the improved highway is first open to public traffic falls on or after 17th October 1971 and the powers conferred by subsections (1) and (2)(a) above shall not be exercisable unless that date falls on or after 17th October 1972; and—
- (a) if that date falls not later than one year after 23rd May 1973.—
 - (i) the powers conferred by subsection (1) above to acquire land compulsorily and the powers conferred by subsection (2) (a) above shall not be exercisable unless the acquisition is begun before the end of one year after 23rd May 1973 ;
 - (ii) the powers conferred by subsection (1) above to acquire land by agreement and the powers conferred by subsection (2) (b) above shall not be exercisable unless the acquisition is begun before the end of one year after 23rd May 1973 or one year after that date, whichever ends later;
 - (b) if that date falls more than one year after 23rd May 1973.—
 - (i) the powers mentioned in paragraph (a)(i) above shall not be exercisable unless the acquisition is begun before that date;
 - (ii) the powers mentioned in paragraph (a)(ii) above shall not be exercisable unless the acquisition is begun before the end of one year after that date.
- (4) Where under the powers of this section a highway authority have acquired, or propose to acquire, land forming part of a common or open space and other land is required for the purpose of being given in exchange for the first-mentioned land, the authority may acquire that other land compulsorily or by agreement.
- (5) A power to acquire land compulsorily conferred by this section on a local highway authority shall be exercisable in any particular case on their being authorised by the Secretary of State to exercise it; and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall have effect—
- (a) in relation to the compulsory acquisition of land under this section by a local highway authority, as if this section had been in force immediately before the commencement of that Act;
 - (b) in relation to the compulsory acquisition of land under this section by the Secretary of State, as if this section had been in force immediately before the commencement of that Act and as if this section were included among the enactments specified in section 1(1)(b) of that Act.
- (6) For the purposes of subsection (3) above the acquisition of any land is begun—

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(a) if it is compulsory, on the date on which the notice required by paragraph 3(1) (a) of Schedule 1 to the said Act of 1947 is first published ;

(b) if it is by agreement, on the date on which the agreement is made;

and where the compulsory acquisition of any land under subsection (1) is begun within the time limited by subsection (3) above but is not proceeded with, any subsequent compulsory acquisition of that land under subsection (1) above shall be treated for the purposes of this section as begun within that time.

(7) For the purpose of assessing the compensation payable on the compulsory acquisition of land under this section—

(a) the land shall be treated as if it were being acquired for the construction of the highway or, as the case may be, the improvement in question ;

(b) section 35(3) of the Roads (Scotland) Act 1970 (matters to be taken into account by Lands Tribunal) shall, so far as applicable, apply as it does in relation to compulsory acquisition under the provisions there mentioned.

(8) In section 5(2) of the Trunk Roads Act 1946 (delegation of functions relating to trunk roads) after the words " section 29(4) of the Roads (Scotland) Act 1970 " there shall be inserted the words " or under section 20 of the Land Compensation (Scotland) Act 1973. " .

(9) In this section references to the construction or improvement of a highway include references to the construction or improvement of a highway by virtue of an order under section 3 or 14 of the Special Roads Act 1949 or section 15 of the Roads (Scotland) Act 1970.

21 Execution of works in connection with highways

(1) A highway authority may carry out—

(a) on land acquired by them under section 20 above;

(b) on any other land belonging to them ;

(c) on any highway for which they are the highway authority;

(d) on any highway which they have been authorised to improve or construct by virtue of an order under section 3 or 14 of the Special Roads Act 1949 or section 15 of the Roads (Scotland) Act 1970,

works for mitigating any adverse effect which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway.

(2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.

(3) A highway authority may develop or redevelop any land acquired by them under section 20 above, or any other land belonging to them, for the purpose of improving the surroundings of a highway in a manner which they think desirable by reason of its construction, improvement, existence or use.

22 Agreements as to use of land near highways

(1) For the purpose of mitigating any adverse effect which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway, the highway authority may enter into an agreement with any person interested in

land adjoining or in the vicinity of the highway for restricting or regulating the use of the land either permanently or during such period as may be specified in the agreement; and any such agreement may, in particular, make provision for the planting and maintenance of trees, shrubs or plants of any other description on the land and for restricting the lopping or removal of trees, shrubs or other plants on the land.

- (2) An agreement under this section may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the highway authority to be necessary or expedient for the purposes of the agreement.
- (3) Subject to subsection (4) below, the provisions of any agreement made under this section with any person interested in land shall be binding on persons deriving title from that person in respect of the land.
- (4) No provision shall be enforceable by virtue of subsection (3) above against a third party who shall have in good faith and for value acquired right (whether completed by infetment or not) to land prior to the agreement being recorded in the Register of Sasines, or against any person deriving title from such third party.
- (5) This section is without prejudice to section 50 of the Town and Country Planning Act (Scotland) 1972 (agreements regulating development or use of land).

23 Advances for exercise of powers by highway authorities

The purposes for which advances may be made by the Secretary of State under section 8 of the Development and Road Improvement Funds Act 1909 shall include the exercise by a highway authority of any powers conferred by sections 20 to 22 above.

Powers of authorities responsible for other public works

24 Acquisition of land in connection with public works

- (1) Subject to the provisions of this section, a responsible authority may acquire land by agreement for the purpose of mitigating any adverse effect which the existence or use of any public works has or will have on the surroundings of the works.
- (2) Subject to the provisions of this section, a responsible authority may acquire by agreement—
 - (a) land the enjoyment of which is seriously affected by the carrying out of works by the authority for the construction or alteration of any public works;
 - (b) land the enjoyment of which is seriously affected by the use of any public works,if the interest of the vendor is of the kind mentioned in section 20(2) above.
- (3) The powers conferred by subsection (2)(b) above shall not be exercisable unless the date on which the public works or, as the case may be, the altered public works, are first used falls on or after 17th October 1971 and the powers conferred by subsections (1) and (2)(a) above shall not be exercisable unless that date falls on or after 17th October 1972 ; and—
 - (a) if that date falls not later than one year after 23rd May 1973.—
 - (i) the powers conferred by subsections (1) and (2) (b) above shall not be exercisable unless the acquisition is begun before the end of one year after 23rd May 1973 or one year after that date, whichever ends later;

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- (ii) the powers conferred by subsection (2) (a) above shall not be exercisable unless the acquisition is begun before the end of one year after 23rd May 1973 ;
- (b) if that date falls more than one year after 23rd May 1973.—
 - (i) the powers mentioned in paragraph (a)(i) above shall not be exercisable unless the acquisition is begun before the end of one year after that date;
 - (ii) the powers mentioned in paragraph (a)(ii) above shall not be exercisable unless the acquisition is begun before that date.
- (4) For the purposes of subsection (3) above the acquisition of any land shall be treated as begun when the agreement for its acquisition is made.
- (5) This section applies only where the responsible authority have statutory powers to acquire land (whether compulsorily or by agreement) for the purposes of their functions but would not, apart from this section, have power to acquire land as mentioned in subsections (1) and (2) above.
- (6) In this section " public works " and " responsible authority " have the same meaning as in section 1 above except that " public works " does not include a road or any works forming part of a statutory undertaking as defined in section 275(1) of the Town and Country Planning (Scotland) Act 1972.

25 Execution of works etc. in connection with public works

- (1) A responsible authority may carry out—
 - (a) if they have power to acquire land under section 24 above, on any land acquired by them under that section;
 - (b) on any other land belonging to them,
 works for mitigating any adverse effect which the construction, alteration, existence or use of any public works has or will have on the surroundings of the works.
- (2) Without prejudice to the generality of subsection (1) above, the works that may be carried out under that subsection include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.
- (3) A responsible authority may—
 - (a) develop or redevelop any land acquired by them under section 24 above, or any other land belonging to them, for the purpose of improving the surroundings of public works in any manner which they think desirable by reason of the construction, alteration, existence or use of the works ;
 - (b) dispose of any land acquired by them under section 24 above.
- (4) This section applies only where the responsible authority are a body incorporated by or under any enactment and has effect only for extending the corporate powers of any such authority.
- (5) In this section " public works " and " responsible authority " have the same meaning as in section 1 above except that " public works " does not include a road.

Expenses of persons moving temporarily during construction works etc.

26 Power to pay expenses of persons moving temporarily during construction works etc.

- (1) This section has effect where works are carried out—
 - (a) by a highway authority for the construction or improvement of a road ; or
 - (b) by a responsible authority for the construction or alteration of any public works other than a road,and the carrying out of those works affects the enjoyment of a dwelling adjacent to the site on which they are being carried out to such an extent that continued occupation of the dwelling is not reasonably practicable.
- (2) Subject to subsection (3) below, the highway authority or responsible authority, as the case may be, may pay any reasonable expenses incurred by the occupier of the dwelling in providing suitable alternative residential accommodation for himself and members of his household for the whole or any part of the period during which the works are being carried out.
- (3) No payment shall be made to any person under this section in respect of any expenses except in pursuance of an agreement made between that person and the authority concerned before the expenses are incurred; and no payment shall be so made except in respect of the amount by which the expenses exceed those which that person would have incurred if the dwelling had continued to be occupied.
- (4) In this section—
 - (a) " highway authority " has the same meaning as in the Roads (Scotland) Act 1970; and
 - (b) " public works " and " responsible authority " have the same meaning as in section 1 above.