



Requisitioned Land and War Works Act 1945

1945 CHAPTER 43

PART VII

APPLICATION AND AMENDMENTS OF DEFENCE ACTS, &C.

32 Application of Defence Acts to acquisitions by virtue of Part II.

- (1) Subject to the provisions of this and the next succeeding section, the provisions of the Defence Acts specified in the Schedule to this Act shall have effect as if references in whatever terms to the principal officers of Her Majesty's ordnance or to the Secretary of State for the War Department or to the ordnance department included references to the Minister of War Transport, the Postmaster General and the Minister of Works and to their respective departments, so as to confer on those Ministers any powers, rights or privileges in relation to the acquisition of land by virtue of Part II of this Act and in relation to the holding, management, use and disposal in any manner of land so acquired, which under the said provisions are vested in the Secretary of State for War as respects land which, apart from the said Part II, he has power to acquire under the Defence Acts.
- (2) Subject to the provisions of this and the next succeeding section, the Defence Acts shall, in relation to the said Ministers and to any Minister who, apart from the said Part II, has power to acquire land under the Defence Acts, have effect as if any acquisition by virtue of the said Part II were an acquisition under those Acts for the purposes of the department of the Minister in question or the defence of the realm.
- (3) Notwithstanding anything in the preceding provisions of this section, nothing in section fourteen of the Defence Act, 1842 (which provides for the resale, free of incumbrances, of land acquired under that Act) or in the corresponding provisions of the Admiralty Lands and Works Act, 1864, shall enable any land acquired by virtue of Part II of this Act to be disposed of free from any restriction as to user of that land or as to building thereon.

33 Modifications of Defence Acts in relation to acquisitions not by virtue of Part II.

- (1) The power of any Minister to acquire land under the Defence Acts for any purpose otherwise than by virtue of Part II of this Act shall, where the notice to treat is given before the expiration of two years from the end of the war period, include power to acquire for the same purpose, in accordance with the provisions in that behalf contained in this Part of this Act, any easement over or right restrictive of the user of any land, being an easement or right which he requires for that purpose.
- (2) It is hereby declared that any power of any Minister to acquire under the Defence Acts, otherwise than by virtue of Part II of this Act, land for any purpose is not affected by the fact that his office is a temporary one or that, after the expiration of a certain period, some other Minister may be the Minister concerned, or that he can obtain or has obtained possession apart from those Acts.

34 Power to acquire particular levels only and reversionary interests.

- (1) Where the notice to treat is given before the expiration of two years from the end of the war period or the acquisition is by virtue of Part II of this Act, the surface of any land may be acquired under the Defence Acts without the minerals or subjacent strata or any part thereof and (subject to the provisions of subsection (1) of section seventeen of the Coal Act, 1938) the minerals or subjacent strata or any part thereof may be acquired under those Acts without the surface.
- (2) Without prejudice to any power in that behalf exercisable under the Defence Acts apart from this section, where a Minister or any person on behalf of a Minister is in possession of any land under a lease or tenancy and either the notice to treat is given before the expiration of two years from the end of the war period or the acquisition is by virtue of Part II of this Act, any interest reversionary thereon may be acquired under the Defence Acts.

35 Amendments as to procedure.

- (1) Where the notice to treat is given before the expiration of two years from the end of the war period or the acquisition is by virtue of Part II of this Act, land may be compulsorily acquired under the Defence Acts notwithstanding that it has not been surveyed and marked out in accordance with section sixteen of the Defence Act, 1842, and references in the Defence Acts to land surveyed and marked out under that section shall be construed as including references to land described in a notice to treat for the acquisition thereof.
- (2) Where the notice to treat is given before the expiration of two years from the end of the war period or the acquisition is by virtue of Part II of this Act, section twenty-three of the Defence Act, 1842 (which requires the consent of the Lord Lieutenant and a warrant from the Treasury before the exercise of compulsory powers under that Act), and so much of the proviso to section seven of the Lands Clauses Consolidation Acts Amendment Act, 1860, as requires compliance with the said section twenty-three, shall not have effect.

36 Notice to treat to' acquire easements or other rights.

- (1) Where, under the Defence Acts, a Minister has power to acquire an easement over or right restrictive of the user of any land, he may, with a view to the creation by grant to him, or covenant with him, of the easement or right, serve a notice to treat for the

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acquisition of the easement or right on the persons who would, under the said Acts or otherwise, be entitled to sell the land to be adversely affected by the easement or right, or otherwise have any interest in the land.

- (2) Any power of any persons under the Defence Acts to sell or convey land shall be deemed to include power to create by grant to, or covenant with, a Minister any easement or right which that Minister has power to acquire under those Acts.
- (3) A notice to treat for the acquisition under the Defence Acts of an easement relating to water may be addressed generally to all persons interested in any land which will be adversely affected by the easement, and, if so addressed, shall, without prejudice to any other mode for the service thereof, be deemed to be duly served on all the persons to whom it is addressed if it is published in the London Gazette and in such other manner (whether in newspapers or otherwise) as is, in the opinion of the Minister, best adapted for informing persons affected.

37 Method of compulsory acquisition of easements and rights.

- (1) If, in the opinion of the Minister, he will be unable, or unable without undue delay, to acquire any such easement or right as aforesaid by agreement, he may, at any time after two months from the service of the notice to treat, execute a deed poll conferring on himself and, except so far as otherwise expressed, his successors in title, the easement or right in question.
- (2) A deed poll so executed shall have the like effect as, and shall for the purposes of the Land Registration Act, 1925, and the Land Charges Act, 1925, be deemed to be, a deed of grant or covenant entered into with the Minister by all necessary parties.
- (3) Where any of the land adversely, affected by an easement or right conferred as aforesaid is registered land, then, notwithstanding anything in section sixty-four of the Land Registration Act, 1925, the grant of the easement may be registered and notice thereof entered in the register, or, as the case may be, notice of the right may be so entered, without the production of any land certificate outstanding in respect of that land, without prejudice, however, to the power of the registrar to compel the production of the certificate for the purposes mentioned in that section.
- (4) A statement in a deed poll executed under this section that the requirements of subsection (3) of the last preceding section have been complied with shall, except for the purposes of proceedings commenced not later than two years after the execution thereof, be conclusive evidence that those requirements have been complied with.
- (5) Where the Minister executes a deed poll under this section, he shall give notice of the effect thereof in such manner as is in his opinion best adapted for informing persons affected.

38 Miscellaneous provisions as to easements and rights acquired under Defence Acts.

- (1) Where—
 - (a) a right restrictive of the user of any land has been acquired by a Minister under the Defence Acts, whether by the execution of a deed poll or otherwise; and
 - (b) between the date of the notice to treat and the acquisition of that right, any works have been constructed on, over or below the surface of the land adversely affected by the right; and

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- (c) the construction of the works would have been an infringement of the right if it had taken place after the acquisition thereof,
the Minister shall be entitled to remove the works and to recover the costs reasonably incurred by him in so doing from the person by whom the works were constructed.
- (2) A Minister may, with or without consideration, release either wholly or partly an easement or restrictive right acquired under the Defence Acts.
- (3) Section eighty-four of the Law of Property Act, 1925 (which relates to the discharge or modification of restrictive covenants) shall not apply to any covenant obtained under the Defence Acts so long as the covenant is enforceable by a Minister against the persons for the time being entitled to the land adversely affected thereby; but nothing in this subsection shall affect the operation of subsection (II) of the said section eighty-four (which excepts from the operation of that section, inter alia, restrictions created for naval, military or air force purposes).

39 Compensation for acquisition of easements and rights.

Where an easement over or right restrictive of the user of any land is acquired under the Defence Acts, any person having an interest in that land shall, if the value of his interest is diminished by the acquisition of the easement or right, be entitled to receive from the Minister acquiring the easement or right compensation in respect of the diminution.