



# Transport Act (Northern Ireland) 1967

## 1967 CHAPTER 37

### [<sup>F1</sup>PART VA

#### CONSTRUCTION OF RAILWAYS

F1 1984 NI 15

#### **67A Construction of railways.**

- (1) The railway undertaking may—
  - (a) construct a new railway;
  - (b) carry out any work for the improvement of an existing railway,where it appears to the railway undertaking expedient to do so for the purpose of providing railway services.
- (2) The Department may, on application to it by the railway undertaking, make an order authorising the railway undertaking to construct, as part of a new railway or as part of an existing railway—
  - (a) a bridge over any navigable waters specified in the order (whether sea, river or other navigable waters); or
  - (b) a tunnel under any such waters.
- (3) An order under subsection (2)—
  - (a) shall include such information as may be necessary to indicate the position and minimum dimensions of the bridge or tunnel, (including, for a bridge, its minimum spans, headways and waterways and, for a tunnel, its minimum depth below the bed of the navigable waters); and
  - (b) shall, if it relates to the construction of a swing bridge, contain such provisions as the Department considers expedient for regulating the operation of the bridge.

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- (4) Before making an order under subsection (2) the Department shall take into consideration the reasonable requirements of navigation over the waters affected by the order.
- (5) In this section —
- “improvement” includes (without prejudice to the generality of that expression) the widening, realigning and reshaping of a railway;
  - “navigable waters” means waters over which a public right of navigation exists;
  - “swing bridge” includes a bridge which opens by any mechanical means.

### **67B Acquisition of land by Holding Company.**

- (1) The Holding Company may acquire land, by agreement or compulsorily, to facilitate the construction of railways and the provision of railway services by the railway undertaking.
- (2) Where the Holding Company, in exercise of the powers conferred by subsection (1), wishes to acquire land otherwise than by agreement, the Holding Company may apply to the Department for an order (in this section referred to as a “vesting order”) vesting the land in the Holding Company, and the Department may make a vesting order.
- (3) Section 97 of, and Schedule 6 to, the Local Government Act (Northern Ireland) 1972 shall apply for the purposes of the acquisition of land by means of a vesting order made under this section in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act subject to the following modifications—
- (a) for section 97(1) and (2) of that Act there shall be substituted the following subsection—
    - “(1) A vesting order shall vest land to which it relates in the Holding Company in accordance with, and subject to, Schedule 6.”; and
  - (b) in Schedule 6 to that Act—
    - (i) any reference to a council or the council shall be construed as a reference to the Holding Company and any reference to the clerk of the council shall be construed as a reference to the secretary of the Holding Company;
    - (ii) any reference to that Act shall be construed as a reference to this Act;
    - (iii) any reference to the Department shall be construed as a reference to the Department within the meaning of this Act;
    - (iv) any reference to the Compensation Fund shall be construed as a reference to the revenues of the Holding Company;
    - (v) paragraph 20(2) shall be omitted.

### **67C Information as to ownership of premises.**

- (1) The Holding Company may, in connection with the exercise of its functions under this Part, by notice in writing require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his own interest therein and the name and address of any other person known to him as having an interest therein, whether as freeholder, mortgagee, lessee or otherwise.

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- (2) Any person required to give information in pursuance of this section who without reasonable excuse fails to give, or knowingly mis-states, that information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **67D Power to enter land.**

- (1) Subject to section 67E, a person authorised in writing by the Holding Company may, on production if required of his credentials, at any reasonable time enter any land to ascertain whether the Holding Company ought to acquire that land for the purposes of this Part.
- (2) A person who enters land under subsection (1) may survey, value or examine it.
- (3) The power conferred by subsection (2) to survey land shall be construed as including power to ascertain or fix boundaries, or to search and bore for the purpose of ascertaining the course of any sewers or drains or of ascertaining the nature of the subsoil, and to take and carry away, for the purpose of examination, specimens of subsoil.
- (4) Nothing in this section shall authorise entry into a building.

#### **67E Supplementary provisions relating to section 67D.**

- (1) Subject to paragraphs (2) to (9), no person shall be entitled to exercise the power of entry conferred by section 67D(1) unless—
- (a) the requisite notice of the intended entry has been served by the Holding Company; and
  - (b) the occupier, and where notice has been served on the owner, the owner, has given his consent to the proposed entry.
- (2) In subsection (1) “the requisite notice” means—
- (a) where entry is required solely for the purpose of examination, at least 24 hours' notice served on the occupier of the land; or
  - (b) where entry is sought for any other purpose, at least 6 days' notice served on the occupier and on the owner if the owner is known.
- (3) If, upon complaint to a court of summary jurisdiction under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981, it is shown—
- (a) that there are reasonable grounds for the person on whose behalf the application is made to enter the land in question for the purpose for which entry is permitted under section 67D; and
  - (b) that—
    - (i) the requisite notice has been served and admission to the land has been refused to that person or he has reasonable grounds to believe that it will be refused, or
    - (ii) the land is unoccupied or the occupier is temporarily absent,the court may make an order authorising that person to enter the land.
- (4) Where the court is satisfied that it may be necessary to use force to enter land under section 67D, the court may authorise the use of such force as is reasonable in the circumstances.

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- (5) Any person entering any land by virtue of the power of entry conferred by section 67D or by virtue of an order made by a court of summary jurisdiction under subsection (3) —
- (a) may take with him such other persons and such equipment as may be necessary; and
  - (b) on leaving any unoccupied land which he has entered by virtue of such a power of entry or such an order shall leave it as effectually secured against trespassers as he found it.
- (6) A person who intentionally obstructs any person who enters, or is attempting to enter, land by virtue of an order made by a court of summary jurisdiction under subsection (3), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where work has been carried out on land in pursuance of section 67D, the Holding Company shall reinstate the land as soon as possible.
- (8) Where—
- (a) in the exercise of the power conferred by section 67D or in carrying out the order of a court of summary jurisdiction under subsection (3), any damage is caused to land or chattels, any person interested in the land or chattels may recover compensation in respect of that damage from the Holding Company,
  - (b) in consequence of the exercise of any such power or the carrying out of any such order, any person is disturbed in his enjoyment of land or chattels, he may recover compensation in respect of that disturbance from the Holding Company.
- (9) Any question of disputed compensation under subsection (8) shall be referred to and determined by the Lands Tribunal.

#### **67F Extinguishment of public rights of way.**

- (1) Subject to this section, the Holding Company may, with the approval of the Department, make an order extinguishing any public right of way over land acquired by the Holding Company for the purposes of this Part.
- (2) Before making an order under subsection (1), the Holding Company shall publish in one or more than one newspaper circulating in the area a notice, in such form as the Department may specify, stating that—
  - (a) it proposes to make an order under subsection (1), and
  - (b) objections to the making of the order may be made to the Department before the expiration of 6 weeks from the publication of the notice.
- (3) The Department may at any time after the expiration of the said period of six weeks—
  - (a) approve the order with or without modification, or
  - (b) refuse to approve the order;
 but shall not, until a local inquiry is held into the matter, approve an order to which any objection is made in accordance with subsection (2)(b) and is not withdrawn.
- (4) An order under this section shall take effect on the date on which the land is acquired or on such later date as the Department in approving the order may direct.

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- (5) An order made under this section may contain any such provision as, by virtue of<sup>F2</sup> Article 68(5) of the Roads (Northern Ireland) Order 1993] (retention or removal of cables, etc.), may be contained in an order made under that Article on the stopping-up or abandonment of a road; and<sup>F2</sup> paragraphs 1 to 3 of Schedule 9 to that Order (savings for telecommunications apparatus) shall apply to an order made under this section as they apply to an order made under Article 68 of that Order.]
- (6) Where, by virtue of subsection (5), by an order made under this section—
- (a) any person is required to carry out any works; or
  - (b) any right such as is described in<sup>F2</sup> Article 68(5) of the Roads (Northern Ireland) Order 1993] is extinguished or modified,
- the Holding Company shall pay compensation to that person or, as the case may be, in respect of the extinction or modification of that right; and if any question of disputed compensation arises that question shall be referred to and determined by the Lands Tribunal.
- (7) If any person who is required by an order made under this section to carry out any works refuses or, within any reasonable period of time specified in a notice served upon him by the Holding Company for the purposes of this subsection, fails to do so, the Holding Company may carry out those works and the expenses incurred in so doing shall, without prejudice to any other remedy but subject always to subsection (6), be recoverable by it from that person summarily as a debt.
- (8) The powers conferred by this section shall be in addition to and not in derogation of any powers for the stopping-up or abandonment of roads under<sup>F2</sup> Article 68 of the Roads (Northern Ireland) Order 1993].
- (9) For the purposes of this section the expression “public right of way” shall be deemed to include a customary right of way, but does not include a public right of navigation.

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## **67G Diversion of navigable watercourses.**

- (1) The Department may, on application to it by the railway undertaking, make an order authorising the railway undertaking to divert such part of a navigable watercourse as is specified in the order if the Department considers the diversion necessary or desirable in connection with—
- (a) the construction or improvement of a railway; or
  - (b) the construction, as part of a railway, of a bridge over or tunnel under navigable waters.
- (2) Where a navigable watercourse is to be diverted in pursuance of an order made under subsection (1), any new length of watercourse provided in pursuance of that order shall be such as will or, but for any bridge or tunnel constructed over or under it in pursuance of section 67A(2), would be navigable in a reasonably convenient manner by vessels of a kind which immediately before the commencement of the order were accustomed to use that part of the watercourse which is to be replaced by the new length.
- (3) Where by virtue of an order made under subsection (1) the railway undertaking is authorised to divert any part of a navigable watercourse it may also divert any towing path or way adjacent to that part.

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- (4) Subsection (5) shall have effect where—
- (a) works for the diversion of a navigable watercourse have been carried out by the railway undertaking in accordance with an order made under subsection (1); and
  - (b) any person has suffered damage in consequence of the works mentioned in paragraph (a)—
    - (i) by the depreciation of any estate in any land to which he is entitled, or
    - (ii) by reason of the fact that his right of access to a navigable watercourse has been interfered with or extinguished.
- (5) A person shall be entitled to receive compensation from the Holding Company under this subsection in respect of the damage where works of the type mentioned in subsection (4) are carried out unless the works were carried out on land, or in exercise of rights, vested in the Holding Company under section 67B, or otherwise in the Department or any of its predecessors in title under section 34 of the Roads Act (Northern Ireland) 1948 or any statutory provision repealed by that Act.
- (6) Any question of disputed compensation arising under subsection (5) shall be referred to and determined by the Lands Tribunal.
- (7) In this section “navigable watercourse” means a watercourse over which a public right of navigation exists.

**67H Extinction of certain public rights over navigable waters and foreshore.**

- (1) If the Department considers it necessary or desirable to do so in connection with any matter mentioned in subsection (1)(a) or (b) of section 67G, the Department may, on application to it by the railway undertaking, make an order extinguishing—
- (a) any public rights over or in relation to such part of the foreshore as is specified in the order;
  - (b) any public rights of navigation over such part of any navigable waters (whether the sea, a river or other navigable waters) as is specified in the order.
- (2) In this section “navigable waters” has the meaning given in section 67A(5).

**67I Orders under sections 67A(2), 67G(1) and 67H.**

[<sup>F3</sup>Article 133(2) and (4) of, and Schedule 8 to, the Roads (Northern Ireland) Order 1993] shall, subject to the modifications thereof specified in Schedule 1A, apply in relation to the making of orders under section 67A(2), 67G(1) or 67H in like manner as they apply in relation to the making of orders under any of the Articles mentioned in [<sup>F3</sup> Article 133(1) of that Order].

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**67J Incorporation of Railways Clauses Consolidation Act, 1845 and Railways Clauses Act, 1863.**

The following provisions of the Railways Clauses Consolidation Act, 1845 and the Railways Clauses Act, 1863, so far as they are applicable for the purposes of and are

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not inconsistent with this Part, are incorporated with and form part of this Part, and this Part shall be deemed to be the special Act for the purposes of those Acts—

- (a) the Railways Clause Consolidation Act, 1845, except sections 7 to 15, 46 to 62, 65, 66, 112, 113, 162 and 163;
- (b) sections 1 to 3, 13, 15, 16, 18 and 19 of the Railways Clauses Act, 1863.]

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