



# Roads (Scotland) Act 1984

## 1984 CHAPTER 54

### PART IX

#### ACQUISITION, TRANSFER, VESTING AND COMPENSATION

##### *Acquisition*

#### **103 General provision as to acquisition of land**

Subject to any express provision to the contrary, any power under this Act to acquire land may be exercised compulsorily or by agreement.

#### **104 Acquisition of land for construction, improvement or protection of public roads etc.**

- (1) Subject to section 109 of this Act, a roads authority may acquire land required—
- (a) in connection with the construction, improvement or protection of a public road under or by virtue of this Act; or
  - (b) for the purpose—
    - (i) of providing or improving a road which is to be provided or improved in pursuance of an order under section 198, 198A or 201 of the Town and Country Planning (Scotland) Act 1972 ; or
    - (ii) of providing a public right of way which is to be provided as an alternative to a right of way extinguished under section 203(1)(a) or (b) of that Act,or for any other purpose for which land is required in connection with such an order as is mentioned in sub-paragraph (i) above.
- (2) Subject to section 109 of this Act, the Secretary of State may acquire land which is required in connection with—
- (a) the carrying out of any works authorised by an order relating to a trunk road under section 12 of this Act; or

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- (b) the provision of buildings or facilities for the purposes of constructing, improving, maintaining or servicing a trunk road other than a special road.
- (3) Subject to section 109 of this Act, the special road authority may acquire land which is required—
- (a) in connection with the improvement of a road which is included in the route of a special road but has not been transferred to the authority by means of an order under section 9 of this Act,
  - (b) for the purpose of any order made in relation to a special road under the said section 9, or
  - (c) in connection with the provision of service stations or other buildings or facilities to be used in connection with a special road.
- (4) Where, in the exercise of any of the powers conferred by subsections (1) to (3) above or section 106 of this Act, a roads 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 as if it were land required by them in connection with the construction or improvement of a public road ; and nothing in section 109 of this Act applies to an acquisition by virtue of this subsection.
- (5) In the foregoing provisions of this section any reference to—
- (a) a public road shall be construed as including a reference to a proposed public road ;
  - (b) a trunk road shall be construed as including a reference to a proposed public road which is to be a trunk road ; and
  - (c) a special road shall be construed as including a reference to a proposed public road which is to be a special road.

**105 Further provision as regards acquisition of land for construction, improvement etc. of public roads**

- (1) The roads authority may acquire, but, under this subsection, only by agreement, any land in the neighbourhood of a public road (or proposed public road) being land which they consider it desirable to acquire for preserving or improving the amenity of the road.
- (2) Subject to section 109 of this Act, the roads authority may acquire land wherever situated which in their opinion is required in connection with the carrying out of works authorised by section 12, 69 or 70 of this Act.
- (3) The local roads authority may acquire land wherever situated which in their opinion is required for the provision of any buildings or facilities needed for the purpose of constructing, improving, maintaining or servicing a public road (or proposed public road).
- (4) The foregoing provisions of this section are without prejudice to section 104 of this Act.
- (5) Any power of a roads authority under section 104 of this Act or subsection (1) or (3) above to acquire land by agreement for the purpose mentioned in the provision in question shall be exercisable in respect of any land which, in the opinion of the roads authority, may be required for that purpose, notwithstanding that the land is not immediately required for that purpose.

## **106 Acquisition of land for mitigating adverse effects of construction of road**

- (1) Subject to subsection (3) below, the roads authority may acquire land for the purpose of mitigating any adverse effect which the existence or use of a road constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the road.
- (2) Subject to subsection (3) below, the roads authority may acquire, but only 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 road ;
  - (b) land the enjoyment of which is seriously affected by the use of a road which the authority have constructed or improved,if the interest of the seller 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 subsections (1) and (2) (a) above shall not be exercisable unless the acquisition is begun before the date on which the road or, as the case may be, the improved road is opened to public traffic; 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 that date.
- (4) For the purposes of subsection (3) above the acquisition of land is begun—
  - (a) if it is compulsory, on the date on which the notice required by paragraph 3(1)(a) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 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 land under subsection (1) above is begun in accordance with subsection (3) above but is not proceeded with, any subsequent compulsory acquisition of that land under the said subsection (1) shall be treated for the purposes of this section as begun in accordance with the said subsection (3).
- (5) For the purpose of assessing the compensation payable on the compulsory acquisition of land under this section the land shall be treated as if it were being acquired for the construction of the road or, as the case may be, the improvement in question.
- (6) In this section references to the construction or improvement of a road include references to the construction or improvement of a road under an order under section 9 or 12 of this Act.
- (7) In section 181(1)(e) of the Town and Country Planning (Scotland) Act 1972—
  - (a) the reference to a power of compulsory acquisition there mentioned shall include a reference to the power of compulsory acquisition conferred by subsection (1) above; and
  - (b) the reference to land acquired for purposes of construction, improvement or alteration as indicated in an order or scheme there mentioned shall include a reference to land required for the purposes of subsection (1) above.
- (8) The said section 181(1) shall have effect as if the land specified therein included land which—

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- (a) is land shown in plans approved by a resolution of a local roads authority as land proposed to be acquired by them for the purposes of subsection (1) above ; or
- (b) is land shown in a written notice given by the Secretary of State to the local planning authority as land proposed to be acquired in connection with a trunk road or special road which he proposes to provide.

**107 Acquisition of land in connection with cattle-grids**

A roads authority may acquire land for the purpose of providing, altering or improving a cattle-grid (or a by-pass in relation to a cattle-grid) in the exercise of powers conferred by this Act; and where they so acquire land by agreement the acquisition may be by way of purchase, lease or otherwise.

**108 Acquisition of land for provision of picnic site**

Subject to section 109 of this Act, the Secretary of State may acquire land required in connection with the provision under section 55 of this Act of a picnic site.

**109 Distance limits for purposes of compulsory acquisition**

- (1) Subject to subsection (3) below, a roads authority shall not, in the exercise of a power to acquire land under any of the provisions of this Act specified in column 1 of Part I of Schedule 5 to this Act, acquire compulsorily land lying beyond the limit specified in relation to that power in column 2 of that Part of that Schedule.
- (2) Part II of that Schedule shall have effect with respect to limits specified in Part I of that Schedule.
- (3) Nothing in this section applies to land required for purposes connected with the drainage or protection of a public road.
- (4) In subsection (3) above and in Schedule 5 to this Act, references to a road and to a public road shall be construed, respectively, as including references to a proposed road and to a proposed public road.

**110 General provisions as to acquisition of land**

- (1) Any power to acquire land compulsorily conferred by sections 104 to 107 of this Act on a local roads authority shall be exercisable in any particular case on their being authorised to do so by the Secretary of State.
- (2) Any power to acquire land compulsorily conferred by any of the said sections shall include power to acquire a servitude or other right in or over land by the creation of a new right.
- (3) In relation to the compulsory acquisition of land under any of sections 104 to 108 of this Act by a roads authority, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall have effect as if this Act had been in force immediately before the commencement of that Act and, in a case where the compulsory acquisition is by the Secretary of State, as if the said sections were included among the enactments specified in section 1(1)(b) of that Act.

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- (4) In assessing the compensation payable in respect of the compulsory acquisition of land by a roads authority under powers conferred by section 104 or sections 106 to 108 of this Act, the Lands Tribunal for Scotland—
- (a) shall have regard to the extent to which the remaining contiguous land belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired;
  - (b) without prejudice to the generality of paragraph (a) above shall, in the case of land authorised to be acquired for widening a public road, set off against the value of the land to be acquired any increase in the value of other land belonging to the same person which will accrue to him by reason of the creation of a frontage to the road as widened ;
  - (c) shall take into account, and embody in its award, any undertaking given by the authority as to the use to which the land, or any part of it, will be put;
- and the Land Compensation (Scotland) Act 1963 shall, in its application to a compulsory acquisition by a roads authority under any of the said sections, have effect subject to the provisions of this subsection.
- (5) Where under any of sections 104 to 108 of this Act a roads authority are authorised to acquire land by agreement, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 of the Railways Clauses Consolidation (Scotland) Act 1845, and sections 71 to 78 of that Act, as originally enacted and not as amended for certain purposes by section 15 of the Mines (Working Facilities and Support) Act 1923, shall be incorporated with this Act; and in construing those Acts for the purposes of this subsection this Act shall be deemed to be a special Act, and the roads authority to be the promoters of the undertaking or company, as the case may require, and the word " land " shall have the meaning assigned to it by Schedule 1 to the Interpretation Act 1978.

## **111 Concurrent proceedings for special and trunk roads schemes and orders**

- (1) Proceedings required by Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken in respect of the compulsory acquisition of land for purposes connected with a special road or trunk road may be taken concurrently with proceedings required to be taken for the purposes of a scheme under section 7, or an order under section 9, of this Act relating to the special road, or, as the case may be, an order under section 5 or 12 of this Act relating to the trunk road.
- (2) An order under section 9 or 12 of this Act or an order for the compulsory acquisition of land for purposes connected with a special road or trunk road may be made to come into operation on the same day as a scheme under section 7 of this Act authorising the provision of a special road or, as the case may be, an order under section 5 of this Act directing that a road shall become a trunk road.
- (3) In the foregoing provisions of this section, references to special roads or to trunk roads shall be construed as including references to proposed public roads which are to be special roads or as the case may be are to be trunk roads.

*Vesting and transfer*

**112 Transfer of property and liabilities upon road becoming or ceasing to be a trunk road**

- (1) Where a road becomes a trunk road, then, subject to the provisions of this section, as from the date on which it does so (" the operative date "), there shall, by this section, be transferred to and shall vest in the Secretary of State for the purposes of his functions as roads authority—
- (a) the road in so far as it was, immediately before the operative date, vested in the former roads authority ;
  - (b) all property in so far as it was, immediately before the operative date, vested in the former roads authority for the purposes of their functions in relation to the road ;
  - (c) all liabilities which have been incurred by the authority for the purposes mentioned in paragraph (b) above and have not been discharged before the operative date, other than loans and loan charges.
- (2) In subsection (1) above, " property "—
- (a) includes the unexpended balances of any grants paid by the Secretary of State to any such authority for the purposes of their functions in relation to the road but not of any loans raised by any such authority for those purposes; and
  - (b) does not include—
    - (i) land vested in the authority for the storage of materials required wholly or partly for the maintenance, repair or improvement of other roads ;
    - (ii) land acquired for the improvement or development of frontages or of land abutting on or adjacent to the road ; and
    - (iii) materials for maintenance, repair or improvement of the road.
- (3) Such vesting as is mentioned in subsection (1) above shall not confer on the Secretary of State any heritable right in relation to a road.
- (4) There shall not be transferred to the Secretary of State by this section any right or liability in respect of—
- (a) work done, services rendered, goods delivered, or money due for payment, before the operative date;
  - (b) damages or compensation for any act or omission before that date; or
  - (c) the price of, or compensation for, any land purchased, or for which a contract to purchase has been made, before that date.
- (5) Anything vested in the Secretary of State by this section shall be held by him subject to all covenants, conditions and restrictions subject to which it was held by the former roads authority and to all liabilities affecting it (except a liability referred to in subsection (4) above).
- (6) The Secretary of State may enter into an agreement with the former roads authority—
- (a) that any property or liabilities (except loans and loan charges) acquired or incurred by the authority for the purposes of their functions in relation to a road which has become a trunk road, other than properties or liabilities transferred to the Secretary of State by this section, shall be transferred to him, or

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- (b) that any property or liabilities transferred to the Secretary of State by this section shall be transferred back to the authority.
- (7) Any dispute between the Secretary of State and any authority or person as to the property or liabilities transferred by this section shall be determined by arbitration by a single arbiter appointed in default of agreement by the Court of Session, or the sheriff, on the application of either party.
- (8) The foregoing provisions of this section shall apply where a road ceases to be a trunk road in like manner as they apply where a road becomes a trunk road, with the substitution—
  - (a) for references to the former roads authority of references to the Secretary of State, and
  - (b) for references to the Secretary of State of references to the local roads authority who become the roads authority for the road.
- (9) The former roads authority for a road which becomes a trunk road shall produce to the Secretary of State such documents and other information as he may require relating to their functions, property and liabilities in respect of the road.
- (10) Schedule 6 to this Act shall have effect for the purpose of providing for transitional matters arising where a road becomes or ceases to be a trunk road and for making certain other transitional provisions.
- (11) In the foregoing provisions of this section—
  - " former roads authority " means, in relation to a road which has become a trunk road, the roads authority in whom the road was vested immediately before it became a trunk road; and
  - " property ", subject to subsections (2) and (3) above, includes property, rights and powers of every description.

### **113 Transfer of property and liabilities in connection with special roads etc.**

- (1) where provision is made by an order under section 9 or, as the case may be, 12 of this Act—
  - (a) for transferring a road from one roads authority to another;
  - (b) for enabling a roads authority to alter a road vested in another; or
  - (c) for authorising or requiring any functions of a regional council to be exercised by a roads authority,the order may transfer to the roads authority to whom the road is transferred or, as the case may be, in whom it is vested, or by whom those functions are to be exercised, any property, rights or liabilities (other than loans or loan charges) vested in or incurred by the other authority in connection with the road, or the alteration, or for the purposes of those functions.
- (2) An order transferring property, rights or liabilities under section 9 or 12 of this Act may for that purpose (whether or not the road in question is a trunk road) apply any of the provisions of section 112 of this Act or any of the transitional provisions contained in Schedule 6 to this Act, subject to such modifications as may be specified in the order.
- (3) No order under section 9 or 12 of this Act shall provide for transferring to any authority (except by agreement with that authority) any bridge over or tunnel under the road as distinct from any approaches to the bridge or tunnel.

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**114 Transfers of officers and property in connection with lighting and bus shelters, etc.**

- (1) This section applies where, by virtue of section 35 or 49 of this Act, a function which was, before the commencement of this Act, exercisable by a district council (whether or not concurrently with another local authority) is exercisable by a local roads authority.
- (2) An officer of a district council who, in the period immediately before the coming into force of this Act, was wholly or mainly employed in duties pertaining, irrespective of how his office or employment was formally described, to a function referred to in subsection (1) above, shall be transferred into the employment of the local roads authority ; but such transfer shall not affect any legal right or entitlement of the officer.
- (3) Subject to any such agreement as is provided for in subsection (4) below, any heritable or moveable property of a district council which is wholly or mainly used, or held, by the council in relation to the discharge of a function referred to in subsection (1) above shall transfer to and vest in the local roads authority.
- (4) If or in so far as the district council and the local roads authority agree that property shall not be transferred by subsection (3) above, that subsection shall have no effect as regards the property; but the property shall no longer be used or held by the district council in relation to the discharge of a function referred to in subsection (1) above.
- (5) Any dispute between a district council and a local roads authority as to whether or when a transfer falls to take place under subsection (2) or (3) above or as to any other matter concerning such a transfer shall be determined by arbitration by a single arbiter appointed in default of agreement by the Court of Session, or the sheriff, on the application of either party.

**115 Vesting of solum of stopped up road**

- (1) Where a road is stopped up under this Act or any other enactment and has ceased to be used as a road, the solum of the road shall, subject to any prior claim of any person by reason of title, vest in the owner or owners of the land which adjoins the road.
- (2) Any dispute arising under this section as to the vesting of the solum may be referred on summary application by any interested party to the sheriff, and the decision of the sheriff on the matter shall be final.

*Compensation*

**116 Right to compensation for damage from works**

- (1) Without prejudice to any right of compensation enjoyed apart from this section, a person who sustains damage by reason of the execution of works authorised by section 24, 28, 30, 31(1) or (2), 50(1), 74(1), 78(1), 94 or 124(1) of this Act, or subject to section 35(6) thereof, by section 35(1) or (3) thereof, shall be entitled to recover compensation for that damage from the person executing the works.
- (2) For the purposes of the application of subsection (1) above—
  - (a) to section 50 of this Act, in that subsection " works " includes such planting as is mentioned in subsection (1) of that section ; and



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- (b) to section 124 of this Act, in that subsection " works " includes experiments or trials conducted under that section.

#### **117 Determination of disputes as to compensation**

- (1) Any question of disputed compensation under section 71, 72, 83(8), 88(2), 106, 116, 121 or 140 or disputed expenditure under section 134(3) or 135(3) of this Act shall be determined in the same manner as compensation for the acquisition of land falls to be determined under the Land Compensation (Scotland) Act 1963, and sections 8, 9 and 11 of that Act shall have effect accordingly subject to any necessary modifications.
- (2) Section 167(1) and (2) of the Town and Country Planning (Scotland) Act 1972 (assessment of compensation for the purposes of Part VIII of that Act) shall apply in relation to the assessment of the disputed compensation mentioned in subsection (1) above, being compensation in respect of the depreciation in value of any interest in land, as that section applies in relation to the assessment of compensation payable under the said Part VIII.

#### **118 Compensation where interest in land subject to heritable security**

Subsection (4) of section 167 of the Town and Country Planning (Scotland) Act 1972 (provisions as to compensation where an interest in land is subject to a heritable security) shall apply in relation to such compensation as is mentioned in section 71(6), 72(1), 83(8) or 88(2), or as may be provided for in an agreement under section 53(2), of this Act as the said subsection (4) applies in relation to compensation to which the said section 167 applies.

#### **119 Compensation for land acquired as service area for special road**

- (1) Where land is compulsorily acquired—
  - (a) under section 104(3)(c) of this Act in a case where the acquisition is authorised by a compulsory purchase order which does not also authorise the acquisition of land required for the provision of the adjacent length of special road;
  - (b) in pursuance of a notice under section 169, 177 or 178 of the Town and Country Planning (Scotland) Act 1972 (protection of owners of land affected by certain planning decisions) in a case where the Lands Tribunal for Scotland is satisfied that there are proposals for using the whole or part of the relevant land for such purposes in connection with a special road as are mentioned in the said section 104(3)(c) and that the amount of the compensation would apart from this section be affected by the provision or proposed provision of the special road ; or
  - (c) in pursuance of a notice under section 182 of the said Act of 1972 or section 73 of the Land Compensation (Scotland) Act 1973 (protection of owner-occupiers of land affected by planning proposals) in a case where the appropriate enactment for the purposes of section 185 of the said Act of 1972 is or includes the said section 104(3)(c),

then, for the purpose of assessing compensation in respect of the compulsory acquisition, the value of the relevant interest shall be ascertained—

- (i) so far as it is attributable to any relevant planning permission, on the assumption that traffic carried by the special road will not have direct or indirect access to the relevant land ; and

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(ii) so far as it is not attributable to any such planning permission, on the assumption that traffic carried by the special road will not have direct access to the relevant land.

(2) In this section—

" direct access " means access by means of a special road or private road and " indirect access " means access by means of a public road which is not a special road ;

" relevant planning permission " means any planning permission for service area development which is in force on the date of service of the notice to treat, or as to the grant of which any assumption is required to be made by virtue of section 23 or 24 of the Land Compensation (Scotland) Act 1963, or the possibility of the grant of which is taken into account in assessing the compensation ;

" service area development" means development of the relevant land, or of any part thereof, for the purpose of providing such service stations or other buildings or facilities as are mentioned in the said section 104(3)(c) or of providing any other buildings or facilities designed to cater to a significant extent for traffic carried or to be carried by the special road ;

and any expression which is also used in the said Act of 1963 has the same meaning as in that Act.