



Civil Aviation Act 1949

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PART III

AERODROMES AND OTHER LAND

Ministers' power over land in connection with civil aviation

28 Power of Minister of Transport to stop up and divert highways, etc., in the interests of civil aviation

- (1) The Minister of Transport may, if he is satisfied that it is necessary so to do in order to secure the safe and efficient use for civil aviation purposes, including the testing of aircraft designed for civil aviation, of any land vested in the Minister of Civil Aviation or the Minister of Supply, or of any land which the Minister of Civil Aviation or the Minister of Supply proposes to acquire, by order authorise the stopping up or diversion of any highway.
- (2) An order under subsection (1) of this section may provide for all or any of the following matters, that is to say—
 - (a) for securing the provision or improvement of any highway so far as the Minister of Transport thinks such provision or improvement necessary or desirable in consequence of any such stopping up or diversion as aforesaid ;
 - (b) for directing that any highway to be provided or improved in pursuance of the order shall be repairable by the inhabitants at large, and for specifying the authority which is to be the highway authority therefor;
 - (c) for directing that any highway to be provided or improved in consequence of the stopping up or diversion of a trunk road under the order shall itself be a trunk road for all or any of the purposes of the enactments relating to trunk roads ;
 - (d) for the retention or removal of any cables, mains, pipes, wires or similar apparatus placed along, across, over or under any highway stopped up or diverted under the order, and for the extinguishment, modification or preservation of any rights as to the use or maintenance of that apparatus;

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- (e) if any highway is to be provided or improved under the order, for authorising or requiring the provision of any such apparatus as aforesaid along, across, over or under that highway, in lieu of any apparatus removed from a highway in pursuance of the order, and for conferring rights as to the use or maintenance of apparatus so provided;
 - (f) for requiring the Minister of Transport or any other specified authority or person—
 - (i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is ascribable to the doing of any such work ; or
 - (ii) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section one or section two of the Restriction of Ribbon Development Act, 1935, as respects any highway stopped up or diverted under the order.
- (3) An order under subsection (1) of this section may contain such consequential, incidental and supplemental provisions as appear to the Minister of Transport to be necessary or expedient for the purposes of the order.
- (4) Any such order shall be subject to special parliamentary procedure.

The First Schedule to the Statutory Orders (Special Procedure) Act, 1945 (which sets out the notices to be given and the other requirements to be complied with before an order is made) shall apply in relation to orders made under this section, but shall, as it applies in relation to those orders, have effect as if paragraph 1 of the said Schedule included provisions:—

- (a) requiring notice of the order as proposed to be made to be displayed in a prominent position at the ends of so much of any highway as is proposed to be stopped up or diverted under the order ;
- (b) requiring notice of the order as proposed to be made to be sent to every local authority in whose area any highway to be stopped up or diverted under the order, or any highway to be provided or improved under the order, is or will be situated ; and
- (c) requiring notice of the order as proposed to be made to be served upon any water, gas or electricity undertakers having any cables, mains, pipes or wires laid along, across, under-or over any highway to be stopped up or diverted under the order.

In this subsection the expression " local authority " includes a parish council and the parish meeting of a rural parish not having a separate parish council.

- (5) The powers of the Minister of Transport under subsection (1) of this section shall include power to make an order authorising the stopping up or diversion of any highway which is temporarily stopped up or diverted under any other enactment; and the provisions of this section shall not prejudice any power conferred upon the Minister of Transport by any other enactment to authorise the stopping up or diversion of a highway.
- (6) The Minister of Transport may be authorised to purchase land compulsorily for the purpose of providing or improving any highway which, is to be provided or improved in pursuance of an order under subsection (1) of this section, or for any other purpose for which land is required in connection with such an order; and, in relation to land in England or Wales, the provisions of the Acquisition of Land (Authorisation Procedure)

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Act, 1946, except section two thereof, shall have effect as if, at the end of paragraph (b) of subsection (1) of section one thereof, there were inserted the words " or under section twenty-eight of the Civil Aviation Act, 1949 ".

- (7) In the application of this section to Scotland—
- (a) for paragraph (b) of subsection (2) there shall be substituted the following paragraph—
 - “(b) for directing that any highway to be provided or improved in pursuance of the order shall be maintained and managed by a county or town council and for specifying the council which is to be responsible for such maintenance and management;”
 - (b) in subsection (4) for the references to the First Schedule to the Statutory Orders (Special Procedure) Act, 1945, and paragraph 1 thereof there shall be substituted respectively references to section two of that Act as it applies to Scotland and to subsection (1) of that section, and the words from " In this subsection " to the end of the subsection shall be omitted.
- (8) The powers exercisable by the Minister of Transport under this section shall, as regards land in Northern Ireland, be exercisable by the Ministry of Commerce for Northern Ireland; and accordingly the references to the Minister of Transport in this section, shall, in relation to land in Northern Ireland, be construed as references to the Ministry of Commerce for Northern Ireland:

Provided that this section shall, in its application to Northern Ireland as aforesaid, have effect as if—

- (a) for the words " repairable by the inhabitants at large " in paragraph (b) of subsection (2) there were substituted, the words " maintainable at the cost of a county or county district as the case may be " ;
- (b) sub-paragraph (ii) of paragraph (f) of subsection (2) were omitted;
- (c) subsection (4) were omitted;
- (d) the following subsection were substituted for subsection (6)—
 - “(6) The powers of compulsory acquisition of land exercisable by the Ministry of Commerce for Northern Ireland under subsection (3) of section thirty-four of the Roads Act (Northern Ireland), 1948, shall include the power to acquire lands compulsorily in accordance with the provisions of the said subsection, for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order under subsection (1) of this section or for any other purpose for which land is required in connection with such an order, and the said Act shall have effect accordingly.

The powers conferred on the said Ministry by this subsection shall be exercisable in relation to any land notwithstanding that such land is the property of a statutory undertaker or is declared by any other enactment to be inalienable”.