



Edinburgh Tram (Line Two) Act 2006

2006 asp 6

PART 2

LAND

Supplemental powers

34 Acquisition of part of certain properties

- (1) This section shall apply instead of section 90 (Parties not to be required to sell part of a house) of the 1845 Act in any case where—
 - (a) a notice to treat is served on a person (“the owner”) under that Act (as incorporated with this Act by section 80 (Incorporation of enactments)) in respect of—
 - (i) land forming only part of a house, building or factory, or
 - (ii) land consisting of a house with a park or garden,
 - (b) a copy of this section is served on the owner with the notice to treat.
- (2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the authorised undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).
- (3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.
- (4) If such a counter-notice is served within that period, the question of whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the authorised undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.
- (5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—
 - (a) without material detriment to the remainder of the land subject to the counter-notice, or

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- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.
- (6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—
 - (a) without material detriment to the remainder of the land subject to the counter-notice, or
 - (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.
- (7) If on such a reference the tribunal determine that—
 - (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
 - (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (8) If the authorised undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—
 - (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
 - (b) that the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (9) In any case where by virtue of a determination by the tribunal under this section a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the authorised undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay to the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in the case of dispute by the tribunal.
- (10) Where the owner is required under this section to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the authorised undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

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35 Persons under a disability may grant servitudes, etc.

Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and this Act, grant to the authorised undertaker any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for any of the purposes of this Act in, over or affecting any such lands.

36 Extinction or suspension of private rights of way

- (1) Subject to the provisions of this section, all private rights of way over land subject to compulsory acquisition under this Act shall be extinguished—
 - (a) as from the acquisition of the land by the authorised undertaker, whether compulsorily or by agreement, or
 - (b) on the entry on the land by the authorised undertaker under section 37 (Power of entry on lands compulsorily acquired),whichever is sooner.
- (2) Subject to the provisions of this section, all private rights of way over land owned by the authorised undertaker which is within the limits of land to be acquired or used shown on the Parliamentary plans and is required for the purposes of this Act, shall be extinguished on the appropriation of the land for any of those purposes by the authorised undertaker.
- (3) Subject to the provisions of this section, all private rights of way over land of which the authorised undertaker takes temporary possession under this Act shall be suspended and unenforceable for as long as the authorised undertaker remains in lawful possession of the land.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this section shall be entitled to compensation to be determined, in case of dispute, under the 1963 Act.
- (5) This section does not apply in relation to any right of way to which section 224 or 225 (Extinguishment of rights of statutory undertakers, etc.) of the 1997 Act or paragraph 2 of schedule 9 applies.
- (6) Subsections (1), (2) and (3) shall have effect subject to—
 - (a) any notice given by the authorised undertaker before the completion of the acquisition of the land, the authorised undertaker's appropriation of it, the authorised undertaker's entry onto it, or the authorised undertaker's taking temporary possession of it, as the case may be, that any or all of those subsections shall not apply to any right of way specified in the notice; and
 - (b) any agreement made (whether before or after any of the events mentioned in paragraph (a) and before or after the coming into force of this Act) between the authorised undertaker and the person in or to whom the right of way in question is vested or belongs.

37 Power of entry on lands compulsorily acquired

Subject to the provisions of this Act, where the authorised undertaker is authorised to purchase land compulsorily then at any time after notice to treat has been served, it may, after giving the owner and occupier of the land not less than three months' notice in writing, enter on and take possession of the land or such part thereof as is specified

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in the notice without previous consent or compliance with the provisions of sections 83 to 89 of the 1845 Act, but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

38 Correction of errors in Parliamentary plans and book of reference

- (1) If the Parliamentary plans or the book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the authorised undertaker, after giving not less than 10 days' notice to the owner, lessee or occupier of the land in question, may apply to the sheriff for the correction of such inaccuracy.
- (2) Any person to whom a notice has been given under subsection (1) may, within the period of 10 days from the giving of the notice, give to the sheriff and the authorised undertaker a counter-notice in writing that the person disputes that there is an inaccuracy which may be amended under this section.
- (3) If in relation to any application under this section which has not been the subject of a counter-notice it appears to the sheriff that the inaccuracy arose from mistake, the sheriff shall certify the fact accordingly and shall in such certificate state in what respect any matter is misstated or wrongly described.
- (4) If any counter-notice is given under subsection (2), the sheriff shall before making any decision on the application cause a hearing to be held.
- (5) The certificate shall be deposited in the office of the Clerk of the Parliament, and a copy with the sheriff clerk, with the Partner Libraries with whom the book of reference has been deposited and with the solicitor to the authorised undertaker, from which time the Parliamentary plans and the book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the authorised undertaker to take the land or, as the case may be, a right over the land and execute the works in accordance with the certificate.
- (6) A person with whom a copy of a certificate is deposited under this section shall keep it with the other documents to which it relates.
- (7) An application under subsection (1) may only be made in respect of land identified in the book of reference and on the Parliamentary plans.
- (8) In this section “Partner Libraries” means the following public libraries: Edinburgh Central Library, Portobello Library, Leith Library, Wester Hailes Library, Morningside Library and Blackhall Library.

39 No double recovery

Compensation shall not be payable in respect of the same matter both under this Act and under any other enactment, any contract or any rule of law.

40 Time limit for exercise of powers of acquisition

- (1) The powers of land acquisition in sections 23 (Power to acquire land) and 24 (Powers to acquire new rights) shall cease at the end of the period of five years beginning on the day of the coming into force of this Act.

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- (2) Subsection (1) shall not prevent the authorised undertaker remaining in possession of land under section 26 (Temporary use of land for construction of works) after that date, if the land was entered and possession of it was taken on or before that date.

Modifications etc. (not altering text)

- C1** S. 40(1) extended (1.4.2011) by [The Edinburgh Tram \(Line Two\) Act 2006 \(Extension of Time for Land Acquisition\) Order 2011 \(S.S.I. 2011/127\)](#), arts. 1, 2

41 Extension of time

On the application of the authorised undertaker, Scottish Ministers may, by order, extend, or further extend, the period referred to in section 40 (Time limit for exercise of powers of acquisition) provided that—

- (a) such application is made prior to the expiry of said period or any extension of that said period; and
- (b) the period referred to in section 40, and any extension to the said period, cannot exceed fifteen years in total.

42 General vesting declarations

- (1) Section 195 (General vesting declarations) and Schedule 15 of the 1997 Act shall apply to this Act as if it were a compulsory purchase order.
- (2) The notice required by paragraph 2 of that Schedule (as so applied) shall be a notice—
- (a) that this Act has received Royal Assent;
 - (b) containing the particulars specified in sub-paragraph (1) of that paragraph;
 - (c) published and served in accordance with the requirements of paragraph 6 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42); and
 - (d) given at any time after this Act comes into force.

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