



# Lands Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 19 8 and 9 Vict

## *Entry on lands*

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows.

### **83 Payment of price to be made previous to entry, except to survey, &c.**

The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

#### **Modifications etc. (not altering text)**

- C1** S. 83 excluded by [Camps Act 1939 \(c. 22\), ss. 2\(4\), 7\(a\), and \(S.\) Housing \(Temporary Accommodation\) Act 1944 \(c. 36\), ss. 6\(5\), 7 and Housing \(Scotland\) Act 1966 \(c. 49\), s. 144](#); modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\), Sch. 4 paras. 4, 5](#)
- C2** S. 83 excluded by [Offshore Petroleum Development \(Scotland\) Act 1975 \(c. 8, SIF 86\), s. 1, Sch. 2 para. 2\(2\)](#)
- C3** S. 83 excluded by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), s. 11\(2\)](#)

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#### **84 Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.**

Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as herein-after mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a valuator appointed by the sheriff in the manner herein-before provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also, if required so to do, to give to such a party a bond, under the hand of the secretary or proper officer of person authorized, if the promoters be a company or corporation, or if they be not a company or corporation under the hand of the promoters, or any two of them, if more than one, with two sufficient securities, to be approved of by the sheriff in case the parties differ, for a sum equal to the sum so to be deposited, for payment to such party, or for making a deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner herein-before provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until, such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

##### **Modifications etc. (not altering text)**

- C4** S. 84 excluded by Camps Act 1939 (c. 22), ss. 2(4), 7(a), and (S.) Housing (Temporary Accommodation) Act 1944 (c. 36), ss. 6(5), 7 and Housing (Scotland) Act 1966 (c. 49), s. 144; amended by Land Compensation (Scotland) Act 1963 (c. 51), s. 40(1); modified by Agriculture (Miscellaneous Provisions) Act 1968 (c. 34), S. 14(3) paras. 4, 5
- C5** S. 84 excluded by Land Compensation (Scotland) Act 1973 (c. 56, SIF 28:2), s. 48(9)(b)
- C6** S. 84 modified by Land Compensation (Scotland) Act 1973 (c. 56, SIF 28:2), s. 53(1)
- C7** S. 84 excluded by Housing (Scotland) Act 1987 (c. 26, SIF 61), s. 11(2)

#### **85 Deposit to be paid into Bank, and cashier to give a receipt.**

The money so to be deposited as last aforesaid shall be paid into the Bank, to be placed to an account to be opened in the name of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the Court of Session; and upon such deposit being made the cashier or other proper officer of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction,

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a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

**Modifications etc. (not altering text)**

- C8 S. 85 excluded by [Camps Act 1939 \(c. 22\)](#), [ss. 2\(4\)](#), 7(a), and (S.) [Housing \(Temporary Accommodation\) Act 1944 \(c. 36\)](#), [ss. 6\(5\)](#), 7 and [Housing \(Scotland\) Act 1966 \(c. 49\)](#), [s. 144](#); modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), [s. 14\(3\)](#), [Sch. 4 paras. 4, 5](#)
- C9 S.107 excluded by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), [s. 11\(2\)](#)

**86 Deposit to remain as a security, and to be applied under the direction of the court.**

The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the bond to be given by the promoters of the undertaking, as herein-before mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in the public funds or upon heritable securities, and accumulated; and upon the conditions of such bond being fully performed it shall be lawful for the Court of Session, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such conditions shall not be fully performed it shall be lawful for the said court to order the same to be applied, in such manner as it shall think fit, for the benefit of the parties for whose security the same shall so have been deposited.

**Modifications etc. (not altering text)**

- C10 S. 86 excluded by [Camps Act 1939 \(c. 22\)](#), [ss. 2\(4\)](#), 7(a), and (S.) [Housing \(Temporary Accommodation\) Act 1944 \(c. 36\)](#), [ss. 6\(5\)](#), 7 and [Housing \(Scotland\) Act 1966 \(c. 49\)](#), [s. 144](#); modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\)](#), [s. 14\(3\)](#), [Sch. 4 paras. 4, 5](#)
- C11 S.86 excluded by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), [s. 11\(2\)](#)

**87 Penalty on the promoters of the undertaking entering upon lands without consent, before payment of the purchase money.**

If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before the sheriff; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with expenses, by action in any competent court: Provided always, that nothing herein contained shall be held to subject the promoters of the

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undertaking to the payment of any such penalties as aforesaid, if they shall bona fide and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

**Modifications etc. (not altering text)**

- C12** S. 87 excluded by [Camps Act 1939 \(c. 22\), ss. 2\(4\), 7\(a\)](#), and (S.) [Housing \(Temporary Accommodation\) Act 1944 \(c. 36\), ss. 6\(5\), 7](#) and [Housing \(Scotland\) Act 1966 \(c. 49\), s. 144](#); modified by [Agriculture \(Miscellaneous Provisions\) Act 1968 \(c. 34\), s. 14\(3\) Sch. 4 paras. 4, 5](#)
- C13** S.87 excluded by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), s. 11\(2\)](#)

**88 Decision of sheriff not conclusive, &c.**

On the trial of any action for any such penalty as aforesaid the decision of the sheriff under the provision herein-before contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

**Modifications etc. (not altering text)**

- C14** S. 88 excluded by [Camps Act 1939 \(c. 22\), ss. 2\(4\), 7\(a\)](#), and (S.) [Housing \(Temporary Accommodation\) Act 1944 \(c. 36\), ss. 6\(5\), 7](#) and [Housing \(Scotland\) Act 1966 \(c. 49\), s. 144](#)
- C15** S.88 excluded by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\), s. 11\(2\)](#)  
S. 88 excluded (23.12.1999) by [S.S.I. 1999/203, art. 17](#) (with art. 30)

**89 Proceedings in case of refusal to deliver possession of lands.**

If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person, refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to apply by petition to the sheriff for possession of the same, and upon such application the sheriff may authorize and order possession of any such lands accordingly; and the expences accruing by reason of such application, to be settled and decerned for by the sheriff, shall be paid by the person wrongfully refusing to give or hindering possession; and the amount of such expences shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such expences, then such expences, or the excess thereof beyond such compensation, if not paid on demand, may be levied by pouncing and sale, and the sheriff may issue his warrant accordingly.

**Modifications etc. (not altering text)**

- C16** S. 89 saved by [Rent Act 1965 \(c. 75\), s. 35\(4\)](#)

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**C17** S. 89 excluded by Offshore Petroleum Development (Scotland) Act 1975 (c. 8, SIF 86), s. 1, **Sch. 1 para. 2(3)**

## **90 Parties not to be required to sell part of a house.**

And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

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### **Modifications etc. (not altering text)**

- C18** S. 90 saved by Town and Country Planning (Scotland) Act 1969 (c. 30), s. 36(7)
- C19** S. 90 excluded (24.3.1994) by 1994 c. i, s. 1, **Sch. Pt. III**, s. 22(1) (with Sch. s. 29)
- S. 90 excluded (24.3.1994) by 1994 c. ii, s. 1, **Sch. Pt. III**, s. 13(3) (with Sch. s. 25)
- S. 90 excluded (24.3.1994) by 1994 c. ii, s. 1, **Sch. Pt. III**, s. 18(1) (with Sch. s. 25)
- S. 90 excluded (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. III**, s. 14(3) (with Sch. s. 27)
- S. 90 excluded (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. III**, s. 20(1) (with Sch. s. 27)

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