

**ACT 186**  
**LANDS (STATUTORY WAYLEAVES) ACT, 1963**

ARRANGEMENT OF SECTIONS

SECTION

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**ACT 186**

**LANDS (STATUTORY WAYLEAVES) ACT, 1963<sup>1</sup>**

**AN ACT to provide for entry on land for the purpose of the construction, installation and maintenance of works of public utility, and for the creation of rights of way and any other similar rights in respect of those works and for related matters.**

**1. Creation of statutory wayleaves**

(1) Where the President is of the opinion that it is in the public interest that a right of way or any other similar right over a land be created in respect of the whole or a part of any of the works specified in section 2, the President may, subject to this Act, by executive instrument, declare the land specified in the instrument to be subject to the statutory wayleave specified in the instrument.

(2) On the publication of a wayleave instrument and without further assurance the land shall be deemed to be subject to that wayleave which shall, in accordance with the terms of the instrument, enure to the benefit of the Republic, a statutory corporation specified in the instrument, or the public generally.

(3) A wayleave instrument shall contain

- (a) a description, with measurements, of the land affected by the statutory wayleave together with a plan showing the position of the works constructed on the land,
- (b) particulars of the person or body for whose benefit the wayleave is to enure, and

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1. This Act was assented to on 16th July, 1963.

- (c) any other particulars of the works that the President thinks necessary or expedient to include in the instrument.

(4) A copy of a wayleave instrument shall be served on the owner or occupier of the land affected by the statutory wayleave.

(5) Where the owner or occupier cannot be found the wayleave instrument shall be posted in a conspicuous place on the land and published in a newspaper circulating in the locality.

(6) A land subject to a statutory wayleave shall, despite a rule of law, continue to be subject to the wayleave until the wayleave is terminated in accordance with Regulations made under this Act.

## 2. Works for which statutory wayleaves may be created

(1) A statutory wayleave may be created in respect of

- (a) a highway, and  
(b) any other structure or works for the purpose of, or in connection with, a public utility service.

(2) A statutory wayleave created for the purposes specified in paragraph (a) of subsection (1) shall, unless the contrary intention appears in the instrument creating the wayleave, be deemed to include the purposes specified in paragraph (b) of that subsection.

(3) In this section the expression “**public utility service**” means a service provided by the Republic, a local authority or statutory corporation, for supplying electricity, water for any purpose or gas, or for supplying sewerage, transport or telecommunication facilities or facilities connected with the operation of a port, railway, tramway or an airport.

## 3. Rights of entry for survey

(1) With a view to determining whether a land is suitable for the construction of specified works, a public officer or any other person acting on behalf of the Republic, a local authority or statutory corporation may, if authorised by or on behalf of the Minister with the agreement of the appropriate Minister and subject to subsection (2) of this section, enter on a land for the purpose of surveying that land.

(2) Before entering on a land in pursuance of subsection (1), the authorised person shall give to a person in occupation of that land not less than twenty-four hours notice of the proposed entry; and the notice shall contain particulars of the land to be surveyed, the purpose of the survey and of the works proposed to be constructed on the land.

(3) A Minister having functions under this section may delegate those functions.

## 4. Rights of entry for construction

(1) Subject to this section an authorised person may enter on a land for the purpose of carrying out a specified work if

- (a) the authorised person has given not less than one week's notice in writing to the owner or occupier of the land of the proposed entry; or  
(b) where neither the owner nor occupier of the land can be found, has posted a notice indicating the date of the proposed entry, being a date not less than one week after the posting of the notice in some conspicuous place on the land.

(2) A notice given to an owner or occupier or posted on a land in pursuance of subsection (1) shall contain particulars of the land to be affected by the proposed works and particulars of those works, including their position by reference to a plan.

(3) A person who wilfully obstructs an authorised person in the exercise of rights under this section or section 3, commits an offence and is liable on conviction to a fine not exceeding one hundred and fifty penalty units or to a term of imprisonment not exceeding three months or to both the fine and the imprisonment.

## **5. Rights of entry for inspection, maintenance**

An authorised person may at any time enter on a land for the purpose of inspecting, maintaining, replacing or removing a specified work.

## **6. Compensation**

(1) Where a person suffers a loss or damages as a result of the carrying out of a survey under this Act or as a result of the installation, construction, inspection, maintenance, replacement or removal of a specified work that person is entitled, except where the loss or damage resulted from or arose out of the acts of that person, the servants or the agents, of that person and subject to this section, to compensation of an amount assessed by the Minister in respect of the loss or damage.

(2) In assessing the compensation the Minister may take into account a reduction of an amount by which a person's land has increased in value as a result of the installation or construction of the work.

(3) A claim for compensation under subsection (1) shall be made to the Minister in the prescribed form not more than three months, or a longer period that the Minister may generally or in any particular case direct, after the date of the declaration made by the President under section 1.

(4) A person is not entitled to compensation under this section for a loss or damage if

- (a) in the opinion of the Minister,
  - (i) where the alleged damage is to land, that land has been sufficiently reinstated; or
  - (ii) where the alleged loss arises out of the deprivation of the use of a land, the person alleging the loss has been offered other land of equivalent value;
  - (iii) where the alleged damage is to movable property, that property has been replaced or sufficiently restored; or
  - (iv) the work constructed does not substantially interfere with the enjoyment of the land;
- (b) where the alleged loss arises out of the construction of a highway, that construction does not deprive the owner of the parcel of land affected thereby of more than one-fifth of the parcel and the remainder of that parcel continues to be suitable for use for the purposes for which it was being used before the highway was constructed.

(5) Where a person is dissatisfied with the amount of compensation assessed by the Minister under this section, but in no other case, the matter may be referred by the Minister to a tribunal established under subsection (6).

(6) The tribunal shall consist of three persons appointed by the President, following consultation with the Chief Justice, and one of those persons shall be a Justice of the High Court as the chairman of the tribunal.

## 7. Regulations

(1) The Minister may, by legislative instrument, make Regulations

- (a) providing for the matters relating to the procedure and functions of the tribunal established under this Act; and
- (b) generally for giving effect to the provisions of this Act.

(2) The Regulations may impose charges on a person or make provision for the payment of fees to the Minister or to a person appointed by the Minister, and may make provision for the termination of a statutory wayleave and for related matters.

## 8. Interpretation

In this Act, unless the context otherwise requires,

“**appropriate Minister**” means the Minister responsible for the work concerned;

“**authorised person**” means a person authorised in terms of subsection (1) of section 3;

“**highway**” includes a road, street, path, pavement or square and a bridge and any other structure associated with any of them;

“**Minister**” means the Minister responsible for lands;

“**Regulations**” means the Regulations made under this Act;

“**specified work**” means any of the works specified in subsection (1) of section 2;

“**statutory wayleave**” has the meaning assigned to it by section 1;

“**transport**” includes transport by canal, by overhead cable, conveyor or rail, or by pneumatic dispatch tube or by pipe line;

“**wayleave instrument**” means an executive instrument made under section 1 for the declaration of a statutory wayleave.

## 9. Other enactments relating to entry on, and acquisition of, land

This Act shall not be construed as in any way being prejudiced by any other enactment relating to the entry on, or the acquisition of, any land for any purpose.

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