

## PUBLIC LANDS.

### Ordinance No. 1 of 1902.

[23rd January, 1902.]

*An Ordinance to provide for the acquisition of land  
required for public purposes.*

Be it enacted by the Governor of the Colony of the Falkland Islands, with the advice and consent of the Legislative Council thereof, as follows :—

Enacting  
clause.

1. This Ordinance may be cited as "The Public Lands Ordinance, 1902."

Short title.

2. In this Ordinance unless the context otherwise requires—

Interpretation  
clause.

"Land" includes all land whether covered with water or otherwise, together with all buildings and erections (if any) thereon and where such meaning may be inferred any right to the same.

Land.

"Public purpose" includes any military or naval purpose to be carried out at the expense of the Imperial Government, and any purpose which the Governor in Council resolves is in the interest or for the benefit of the public or the Colony.

Public purpose.

### ACQUISITION OF LANDS.

3. (1) Whenever the Governor in Council resolves that any land is required for any public purpose the Governor may, from time to time by writing under his hand, authorise any person together with his agents, servants or workmen to enter as often as may be necessary upon such land there to survey and take levels and to do any such other acts as may be necessary with a view to the taking or appropriating of any such land.

Power to enter  
to survey.

(2) The report of any such person, together with a plan of such land, shall be laid before the Governor and Legislative Council.

Warrant to be  
issued for  
acquiring land.

4. Whenever the Governor with the advice and consent of the Legislative Council shall by resolution declare that any land shall be acquired for any public purpose, it shall be lawful for the Governor by warrant under his hand and the public seal of the Colony to direct that such lands shall be acquired for the service of the Colony.

Every such warrant may be in the Form A in the Schedule hereto and shall be published in the *Gazette*.

Notice on  
owners to be  
served.

5. Whenever by any such warrant as in the last section mentioned it is directed that any land shall be acquired for the service of the Colony the Colonial Secretary shall cause to be served personally on the person or persons entitled to sell or interested in any lands specified in such warrant, or if he or they are absent from the Colony without having appointed a duly authorised attorney to represent them, or cannot be found, shall cause to be left at his or their last usual place or places of abode or business with some inmate thereof to be given to such person or persons, and in case no such person can be ascertained or found shall cause to be left with the occupier of such lands, or if there be no such occupier shall cause to be affixed on some conspicuous part of such lands within eight days from the date of such warrant a notice in the Form B in the Schedule hereto or as near thereto as possible.

Parties under  
disability  
enabled to sell  
and convey.

6. It shall be lawful for all parties being seized or possessed of or entitled to any lands that may be required for any public purpose or any estate or interests therein to sell and convey or release the same to the Governor; and particularly it shall be lawful for all or any of the following parties so to sell, convey or release (that is to say) all corporations, tenants in tail or for life, married women seized in their own right or entitled to dower, guardians, committees of lunatics or idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower or to any lease for life or for

lives and years and for years or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or for lives and years or for any less interest not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them or in defeasance of the estates of such parties; and as to such married women, whether they be of full age or not, as if they were sole and of full age; and as to such guardians on behalf of their wards and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this Ordinance if they had respectively been under no disability; and as to such trustees, executors and administrators, on behalf of their *cestuis que trust*, whether infants, issue unborn, lunatics, *femes covertes* or other persons, and that to the same extent as such *cestuis que trust* respectively could have exercised the same power under the authority of this Ordinance if they had respectively been under no disability:

Provided that all moneys paid under this section shall be paid into Court to the credit of whomsoever may be entitled thereto.

7. After the lapse of twenty-one days from the publication of any such warrant in the *Gazette*, it shall be lawful for the Colonial Secretary with all necessary workmen and other servants to enter upon such land, and also to set out, appropriate and take so much of such land as is specified in the said warrant.

Power to enter  
and take land.

8. When the Colonial Secretary shall set out, appropriate and take the land specified in any such warrant, he shall cause such land to be marked out and a notice to be posted in some conspicuous part of such land and such notice shall be in these words, viz.: "Taken for the service of the Colony" and

Land to be  
marked out.

shall be signed by the Colonial Secretary. According as such land is acquired for the purposes of the Colony or for the military and naval purposes of the Imperial Government, it shall, when so set out, appropriated or taken, in pursuance of an order to be made by the Governor at any time in that behalf and published in the *Gazette*, be conveyed to and be vested in the Colonial Secretary and his successors in office or in the Secretary of State for War or in the Lords Commissioners of the Admiralty respectively, as the case may be, in trust for His Majesty the King, his heirs and successors for the public service.

Plan and  
certificate to  
be registered.

9. Within eight days after any such appropriation the Colonial Secretary shall cause a plan of the land so set out, appropriated and taken as aforesaid together with a certificate under his hand to the effect that the same has been taken and appropriated for the service of the Colony to be registered in the office of the Registrar-General.

Registration to  
be conclusive.

10. When any land has been taken and appropriated for the service of the Colony, whether under the provisions of this or any other Ordinance, the registration of a plan of such land together with the certificate in the office of the Registrar-General as in the last section mentioned shall be conclusive evidence that such land has been set out, appropriated and taken for the service of the Colony under the provisions of this Ordinance.

Land  
injuriously  
affected.

11. If any land be so cut through and divided by the taking and appropriation of part of such land for the service of the Colony as to leave a portion thereof practically useless to the owner for the purpose for which he had been accustomed to use the land it shall be lawful for the owner of such land by notice in writing to be served on the Colonial Secretary at any time before an agreement is come to for the purchase of the land taken as aforesaid or before the assessment of the price to be paid for such land under the provisions of this Ordinance to require the Governor on behalf of His Majesty the King to pur-



chase not only the land actually taken as aforesaid, but also the land rendered useless as aforesaid by reason of the severance aforesaid, and thereupon it shall be lawful for the Governor to purchase the land rendered useless as aforesaid or if he refuse to do so it shall be lawful for the arbitrators or umpires to be appointed as hereinafter mentioned if they shall find as a fact that any portion of the said land has been by the severance rendered useless as aforesaid to adjudge that the Governor shall purchase the same and to determine the price to be paid for the same in the same way as if such land was actually taken for the service of the Colony.

12. Nothing in this Ordinance shall be deemed to authorise the Governor to take a part only of any house, building or manufactory, but where a part of the land on which any house, building or manufactory stands is required for the service of the Colony it shall be lawful for the owner of such house, building or manufactory to require the Governor to take the whole house, building or manufactory.

Part of house,  
etc., not to be  
taken.

13. If in any case in which according to the provisions of this Ordinance the Colonial Secretary is authorised to enter upon and take any land the owner or occupier of any such land or any other person refuses to give up possession thereof or hinders the Colonial Secretary, his workmen or servants from entering upon or taking possession of the same, it shall be lawful for the Governor to issue his warrant in the Form C in the Schedule hereto, or as near thereto as possible, directed to the Sheriff ordering him to deliver possession of the same to the Colonial Secretary, and upon receipt of such warrant the Sheriff shall deliver possession of any such land accordingly; and the costs accruing by reason of the execution of such warrant shall be paid by the person refusing to give possession or hindering the Colonial Secretary, his workmen or servants as aforesaid, and the amount of such costs shall be deducted from the compensation (if any) payable to such person, and if no compensation be payable to such person, or if the same be less than the amount of such costs, then such

Cases in which  
the owner, etc.,  
refuses to give  
up possession,  
etc.

costs or the excess thereof beyond such compensation if not paid on demand shall be recovered in the same manner as costs in an action.

#### COMPENSATION.

Compensation  
to be allowed.

14. The owners and occupiers of and all other persons interested in any land which may be appropriated and taken or entered upon as aforesaid shall be entitled to and shall receive compensation for the value of the land so taken and appropriated, and for all damages sustained by such owners, occupiers and other persons by reason of the exercise as regards such land of the powers granted by this Ordinance, the amount of such compensation to be ascertained and determined as hereinafter provided.

Compensation  
may be  
agreed on.

15. It shall be lawful for the Governor for and on behalf of His Majesty to contract and agree with the owner or occupier or any other person interested in any land which may be appropriated and taken for the service of the Colony or be injuriously affected by the exercise of any of the powers as regards such land granted by this Ordinance for the compensation to be allowed either in respect of the actual value of the land or in respect of damages incurred by reason of the exercise of any of the said powers and any sum or sums so agreed on as last aforesaid or which shall be awarded under the provisions of this Ordinance shall be paid by the Colonial Treasurer.

Cases of  
disputed  
compensation,  
etc.

16. In all cases in which any land has been appropriated, taken or entered upon under the provisions of this Ordinance or has been injuriously affected by the exercise of any of the powers granted by this Ordinance, if within twenty-one days after the publication of the warrant in the *Gazette* directing that such land shall be acquired for the service of the Colony as hereinbefore provided no claim shall have been lodged with the Colonial Secretary in respect of such lands, or if the person who may have lodged any claim and the Governor shall not have agreed as to the amount of compensation to be paid for the interest of any such person, or if any such

person shall not have given satisfactory evidence of his alleged interest, or if separate and conflicting claims are made in respect of the same land the amount of compensation due (if any) and every such disputed or conflicting interest or title shall be settled in accordance with the following provisions :—

17. (i) The owner of any lands so taken and appropriated as aforesaid who shall refuse to accept a sum of money as may be offered for the purchase thereof may claim to have the compensation referred to the decision of two arbitrators, one arbitrator to be appointed by either party, and such compensation shall thereupon be so decided :

Disputed compensation to be settled by arbitration.

Provided that the arbitrators may, in the event of their not agreeing upon the amount of compensation to be awarded, appoint an umpire at any time within the period during which they have power to make an award.

(ii) In any such proceedings the arbitrators or umpire shall decide upon all separate and conflicting claims that may be made in respect of any such lands so taken and appropriated as aforesaid and upon the amount of compensation to be paid in respect thereof, and in the event of there being any mortgage or other charge affecting such land or any part thereof, shall direct the amount of compensation which ought to be paid to the several persons interested therein, what and in what manner notices shall be given or served to enable all persons interested to protect their rights, and shall further appoint the time and place at which they or he will sit to hear and determine the matter.

18. The arbitrators shall make their award in writing within three months after entering on the reference, or within such further period to which they may by writing under their hand have enlarged the time for making the award.

Time for arbitrators' award.

19. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or within such further period to which he may by writing under his hand have enlarged the time for making his award.

Time for umpire's award.

Proceedings  
on arbitration.

20. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

False evidence  
to be perjury.

21. Any person who upon examination on oath or affirmation under the provisions of this Ordinance shall wilfully and corruptly give false evidence, shall be liable to the penalties of perjury.

Costs to be  
allowed to  
claimant unless  
in case of  
misconduct.

22. The amount of costs and all questions relating thereto shall be determined by the arbitrators or umpire, as the case may be, but the claimant shall be held entitled to his costs of all proceedings reasonably and properly taken, unless it shall appear that his conduct has been unreasonable and vexatious or his claims grossly excessive, or that he has been party to some deceit or fraud in respect of his claim:

Provided that in case the claimant shall not be awarded as compensation a sum exceeding in amount that offered by the Governor, he shall not be entitled to any such costs incurred by him.

Items of  
compensation  
to be taken into  
consideration.

23. In determining claims for compensation for lands acquired under this Ordinance, the arbitrators or umpire may take into consideration—

(1) The market value of the land at the time of awarding compensation.

(2) Any damage sustained by the person interested at the time of awarding compensation by reason of severance.

(3) The damage (if any) sustained by the person interested at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property or his earnings.

(4) If in consequence of the acquisition he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

But shall not take into consideration the following :—

(5) The degree of urgency or necessity which has led to the acquisition.

(6) Any *pretium dilectionis* or disinclination of the person interested to part with the land acquired.

(7) Any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action.

(8) Any damage not being in the nature of deprivation of or interference with an easement or legal right which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put.

(9) Any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put.

(10) Any outlay or improvements on such land which shall appear to have been made, commenced or affected with the intention of enhancing the compensation to be awarded therefor in the event or with the view of such land being required for the public purpose for which the same has been required.

24. Every award made under this Ordinance shall be in writing, signed by the arbitrators or umpire, shall be published in the *Gazette*, and shall specify the amount awarded under the several heads of claim, as hereinbefore provided.

Award to be in writing, and to be published.

25. Nothing in this Ordinance contained shall be construed or deemed to confer upon any person any right to compensation in respect of any land resumed in the name of His Majesty, his heirs or successors as required for roads, railways or other public works in pursuance of any condition, reserva-

Resumption of land under Crown grants not to give claim for compensation.

tion, or power of resumption contained in any other Ordinance, or in any grant or lease of Crown or waste lands.

Postponement  
of payment.

26. The decision of the arbitrators or umpire respecting compensation, or in the case of disputed or conflicting interests or title as aforesaid, shall be final and conclusive as respects all persons who have appeared and claimed or on whose behalf any person having authority to that effect has claimed any land or interest therein; but it shall be lawful for persons who have not appeared or claimed, or on whose behalf no claim has been made as aforesaid, to do so at any time within one year from the final decision. And in all cases where compensation has been awarded (except where a valid title has been shown to the satisfaction of the arbitrators or umpire) payment thereof shall be postponed until the said period of one year shall have elapsed from the date of the final decision, and shall then, upon application by petition of any person making claim to the same, be paid over to the person or persons who shall then appear by the decision of the arbitrators or umpire to have the best right thereto, and such payment shall, as concerns the Colonial Government, operate as a complete discharge and acquittance of such compensation and of all claims in respect of such land or any interest therein, but shall not hinder any subsequent proceedings at the instance of any person having or alleging better right thereto as against the person to whom such payment may have been made.

Protection of  
persons acting  
under  
Ordinance.

27. For the protection of persons acting in execution of this Ordinance, all actions and prosecutions to be commenced against the Colonial Secretary or person authorised by him, or his workmen, servants or agents for anything done by him or them in pursuance of this Ordinance, shall be commenced within six calendar months after the act committed and not otherwise.

Notice in writing of such action and of the cause or causes thereof shall be given to the defendant one calendar month at least before the commencement of the action.

In any such action the defendant may plead the general issue and give this Ordinance and the special matter in evidence in any trial to be had thereupon.

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court by or on behalf of the defendant after such action brought, and notice of such payment has been given to the plaintiff or his solicitor.

If a judgment shall pass for the defendant, or the plaintiff shall become nonsuit or discontinue any such action, the defendant shall be entitled to his full costs of suit to be taxed as between solicitor and client, and have the like remedy for the same as any defendant hath by law in other cases.

---

SCHEDULE.

FORM A. (Under Section 4.)

*Warrant that land shall be acquired for the service of the Colony:  
Falkland Islands.*

(L. S.)

By His Excellency

*Governor.*

Whereas on the                      day of                      , 19                      , the Governor in Council by resolution declared that the land hereinafter described, that is to say [*insert description of land*] should be acquired for a public purpose.

Therefore, I do hereby, under the provisions of "The Public Lands Ordinance, 1902," by this my warrant under my hand and the Public Seal of the Colony, direct that the said land shall be acquired for the service of the Colony.

Dated this                      day of                      , 19                      .

By command,

*Colonial Secretary.*

## NOTICE.

Form B. (Under *Section 5.*)

Notice is hereby given that the following land [*describe land, denoting the boundaries by physical marks wherever practicable*] is to be acquired for the service of the Colony.

Any person claiming to be possessed of or to have any right, title or interest in the said land, or to be injuriously affected by any such acquisition, is required on or before the day of [twenty-one days after the date of publication of warrant in the *Gazette*] to forward to the Colonial Secretary a statement of his right or interest and the evidence thereof and of any claim made by him in respect of the value of such land or of his interest therein.

The Governor is willing to treat for the purchase of the said land.

Date

*Colonial Secretary.*

---

WARRANT TO THE SHERIFF.Form C. (Under *Section 13.*)

To the Sheriff of the Colony of the Falkland Islands.

Whereas by a warrant dated the                      day of                      , 19                      , under the hand of the Governor and the Public Seal of the Colony, it was directed that the following land [*describe land*] should be acquired for the service of the Colony.

And whereas twenty-one days have elapsed since the publication of the said Warrant in the *Gazette*.

These are therefore to command you to put the Colonial Secretary or any person authorised by him in that behalf in possession of the said land and premises.

Dated the                      day of                      , 19                      .

By command,

*Colonial Secretary.*