



# Waverley Railway (Scotland) Act 2006

## 2006 asp 13

### PART 2

#### LAND

##### *Powers of acquisition*

#### **13 Authority to acquire land**

- (1) Subject to subsection (2) and sections 27, 29 and 30(4) below, the authorised undertaker is hereby authorised to acquire compulsorily—
  - (a) such of the land shown on the Parliamentary plans within the limits of deviation for the authorised works as—
    - (i) is described in the book of reference; and
    - (ii) may be required by the authorised undertaker for the purposes of the authorised works; and
  - (b) such of the land so shown within the limits of land to be acquired or used and so described as—
    - (i) is specified in columns (1), (2) and (3) of Part 1 of schedule 6 to this Act; and
    - (ii) may be required for the purposes specified in relation to that land in column (4) of that Part.
- (2) Notwithstanding subsection (1) above, the authorised undertaker does not have power to acquire compulsorily the land in Scottish Borders shown numbered 31 and 32 on sheet 33 of the Parliamentary plans.

#### **14 Acquisition of subsoil or rights**

- (1) In exercise of the powers conferred by section 13 above the authorised undertaker may, as regards any land authorised to be acquired under that section, compulsorily acquire—
  - (a) so much of the subsoil of the land; or
  - (b) such servitudes or other rights over the land,

as may be required for any purpose for which that land may be acquired under that section.

- (2) Rights acquired under subsection (1) above may be heritable or moveable, and may be created as new rights for the purpose of acquisition under this section.
- (3) Where the authorised undertaker acquires subsoil or a right over land under subsection (1) above, the authorised undertaker shall not be required to acquire an interest in the land which is greater than that right.
- (4) Accordingly section 90 of the 1845 Lands Act (which provides that the owner of a house, building or manufactory who is willing to sell the whole property cannot be required to sell only part) shall not apply to any compulsory acquisition under this section or under section 15 below.
- (5) Subject to subsections (6) and (7) below, the Lands Clauses Acts, as incorporated with this Act, shall have effect with the modifications necessary to make them apply to the compulsory acquisition of new rights under this section or under section 15 below as they apply to the compulsory acquisition of land.
- (6) As so having effect, references in those Acts to land shall be treated as, or as including, references to new rights or to the land over which new rights are to be exercisable.
- (7) Section 61 of the 1845 Lands Act (estimation of purchase money and compensation) shall apply to the compulsory acquisition of such a right as if for the words from “value” to “undertaking” there were substituted the words “extent (if any) to which the value of the land in or over which the right is to be acquired is depreciated by the acquisition of the right”.

## **15 Purchase of specific new rights over land**

- (1) Subject to section 27 below, the authorised undertaker may acquire compulsorily in or over any of the land shown on the Parliamentary plans within any limits of land to be acquired or used and specified in columns (1), (2) and (3) of Part 2 of schedule 6 to this Act, such servitudes or other new rights as it requires for the purposes mentioned in column (4) of that Part.
- (2) The powers conferred by this section are additional to the powers conferred by section 14 above.

## **16 Rights in roads or public places**

- (1) The authorised undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any road or public place that is authorised to be compulsorily acquired under section 13 above as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes.
- (2) The powers conferred by subsection (1) above may be exercised in relation to a road or place without the authorised undertaker being required to acquire any part of the road or place or any servitude or right in relation to it.
- (3) For the purposes of section 28 of the Land Registration (Scotland) Act 1979 (c. 33), the powers conferred by this section shall constitute a real right and shall be an overriding interest.

- (4) Any person, who is an owner or occupier of land in respect of which the power of appropriation conferred by subsection (1) above is exercised without the authorised undertaker acquiring any part of that person's interest in the land, and who suffers loss by reason of the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under the 1963 Act.
- (5) Subsection (2) above shall not apply in relation to—
  - (a) any subway or underground building; or
  - (b) any cellar, vault, arch or other construction in or on a road which forms part of a building fronting onto the road or place.

## **17 Temporary use of land for construction of works**

- (1) The authorised undertaker may, in connection with the carrying out of the authorised works—
  - (a) enter upon and take temporary possession of any of the land specified in columns (1), (2) and (3) of schedule 7 to this Act for the purpose specified in relation to that land in column (4) of that schedule relating to the authorised works specified in column (5) of that schedule;
  - (b) remove any buildings and vegetation from that land; and
  - (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) Not less than 28 days before entering upon and taking temporary possession of land under this section the authorised undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The authorised undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this section after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (5) of schedule 7 to this Act.
- (4) Before giving up possession of land of which temporary possession has been taken under this section, the authorised undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the authorised undertaker shall not be required to replace a building removed under this section.
- (5) The authorised undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this section for any loss or damage arising from the exercise in relation to the land of the powers conferred by this section.
- (6) Any dispute as to a person's entitlement to compensation under subsection (5) above, or as to the amount of the compensation, shall be determined under the 1963 Act.
- (7) Without prejudice to section 20 below, nothing in this section shall affect any liability to pay compensation under section 6 or 36 of the 1845 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under subsection (5) above.
- (8) The powers of compulsory acquisition of land conferred by this Act shall not apply in relation to any land of which temporary possession has been taken under subsection (1) above, except that the authorised undertaker shall not be precluded from acquiring—
  - (a) interests in subsoil;

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*Status: This is the original version (as it was originally enacted).*

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- (b) new rights; or
  - (c) land within the limits of land to be acquired or used for any purpose specified in relation to that land in schedule 6 to this Act.
- (9) Where the authorised undertaker takes possession of land under this section, it shall not be required to acquire the land or any interest in it.
- (10) In this section “building” includes any structure or erection.