



# Edinburgh Tram (Line Two) Act 2006

## 2006 asp 6

### PART 1

#### WORKS

##### *Supplemental powers*

#### **7 Temporary stopping up of roads**

- (1) The authorised undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any road and may for any reasonable time—
  - (a) divert the traffic from the road, and
  - (b) subject to subsection (3), prevent all persons from passing along the road.
- (2) Without prejudice to the generality of subsection (1), the authorised undertaker may use any road stopped up under the powers conferred by this section as a temporary working site.
- (3) The authorised undertaker shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the exercise of the powers conferred by this section if there would otherwise be no such access.
- (4) Without prejudice to the generality of subsection (1), the authorised undertaker may exercise the powers conferred by this section in relation to the roads specified in columns (1) and (2) of schedule 4 to the extent specified, by reference to the letters and numbers shown on the Parliamentary plans, in column (3) of that schedule.
- (5) The authorised undertaker shall not exercise the powers conferred by this section—
  - (a) in relation to any road specified as mentioned in subsection (4) without first consulting the road works authority, and
  - (b) in relation to any other road without the consent of the road works authority, but such consent shall not be unreasonably withheld.
- (6) The provisions of the 1991 Act mentioned in subsection (7) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a

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road by the authorised undertaker under the powers conferred by this section even where no road works are executed in that road.

- (7) The provisions of the 1991 Act referred to in subsection (6) are—
- (a) section 113 (Advance notice of certain works);
  - (b) section 114 (Notice of starting of works);
  - (c) section 118 (General duty of road works authority to co-ordinate works);
  - (d) section 128 (Works likely to affect other apparatus in the road);
  - (e) section 135 (Liability for cost of temporary traffic regulation);
  - (f) section 136 (Liability for cost of use of alternative route); and
  - (g) all other such provisions as apply for the purposes of the provisions mentioned above.
- (8) Any person who suffers loss by the suspension of any private right of way under this section shall be entitled to compensation to be determined, in the case of dispute, under the 1963 Act.

## **8 Access to works**

The authorised undertaker may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such location or locations within the limits of deviation for those works shown on the Parliamentary plans as may be approved by the roads authority, but such approval shall not be unreasonably withheld.

## **9 Construction and maintenance of new or altered roads**

- (1) Any public road to be constructed under this Act shall be completed to the reasonable satisfaction of the roads authority and shall, unless otherwise agreed, be maintained by and at the expense of the authorised undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the roads authority.
- (2) Where a road is altered or diverted under this Act, the altered or diverted part of the road shall when completed to the reasonable satisfaction of the roads authority, unless otherwise agreed, be maintained by and at the expense of the authorised undertaker for a period of 24 months from its completion and at the expiry of that period by and at the expense of the road works authority.
- (3) Subsections (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a road over or under any tramroad of the authorised undertaker.
- (4) Nothing in this section shall prejudice the operation of section 146 (Prospective public roads) of the 1991 Act; and the authorised undertaker shall not, by reason of any duty under this section to maintain a road, be taken to be the road works authority in relation to that road for the purposes of Part IV of that Act.
- (5) Nothing in this section shall have effect in relation to road works as respects which the provisions of Part IV of the 1991 Act apply.

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## **10 Construction of bridges and tunnels**

Any bridge or tunnel to be constructed under this Act for carrying a road over or under a tramroad shall be constructed in accordance with plans and specifications approved by the roads authority, but such approval shall not be unreasonably withheld.

## **11 Restoration of roads if tramway discontinued**

If the authorised undertaker permanently ceases to operate any of the authorised road tramways (“the discontinued tramway”), it shall as soon as reasonably practicable and unless otherwise agreed with the road works authority—

- (a) remove from the road in which the discontinued tramway is laid the rails and any other works, equipment and apparatus that have become redundant, and
- (b) restore, to the reasonable satisfaction of the road works authority, the portion of the road along which the discontinued tramway was laid.

## **12 Agreements with roads and road works authorities**

- (1) An authorised undertaker may enter into agreements with the roads authority or the road works authority with respect to—
  - (a) the construction of any new road (including any structure carrying the road over or under a tramroad) under the powers conferred by this Act,
  - (b) the maintenance of the structure of any bridge or tunnel carrying a road over or under a tramroad,
  - (c) any stopping up, alteration or diversion of a road under the powers conferred by this Act, or
  - (d) the execution in the road of any of the works referred to in section 5(1) (Power to execute road works).
- (2) Such an agreement may, without prejudice to the generality of subsection (1)—
  - (a) delegate to the roads authority or the road works authority any function under this Act which relates to the road in question, and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

## **13 Agreements with Network Rail and BRB (Residuary) Limited**

- (1) The authorised undertaker may enter into agreements with Network Rail or BRB [<sup>F1</sup>the Secretary of State] for the transfer to the authorised undertaker of any or any part of the disused railways within or adjoining the limits of deviation of the authorised works, together with all lands, works and other property held in connection with those railways and all rights and obligations of Network Rail or BRB [<sup>F1</sup>the Secretary of State] in relation to those railways.
- (2) Where an agreement is made for the transfer to the authorised undertaker of any disused railway belonging to Network Rail or BRB [<sup>F1</sup>the Secretary of State] under subsection (1), or the authorised undertaker otherwise purchases any such railway or sufficient rights therein, the authorised undertaker may adapt for use (including, where required, duplication of existing rails), maintain, use and work that railway as part of the tram system.

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**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 13 substituted (30.9.2013) by [The Public Bodies \(Abolition of BRB \(Residuary\) Limited\) Order 2013 \(S.I. 2013/2314\)](#), arts. 1(2), 6(2)

**14 Transfer of obligations arising from previous enactments**

- (1) Except as may be otherwise provided in this Act, as from the coming into force of this Act, the authorised undertaker shall—
- (a) be subject to all statutory provisions applicable to the former railway (but only insofar as the same are still subsisting and capable of having effect);
  - (b) to the exclusion of all other parties be entitled to the benefit of and to exercise all rights, powers and privileges relating to the former railway insofar as the same are still subsisting and capable of taking effect; and
  - (c) be subject to all statutory obligations relating to the former railway insofar as the same are still subsisting and capable of taking effect, with the intent that all other parties shall be released from all such obligations.
- (2) In this section “former railway” means so much of any former railway as is situated within the limits of deviation and is in existence on the date of the coming into force of this Act.

**15 Level crossings**

- (1) The authorised undertaker may construct the authorised tramways so as to carry them on the level across the roads specified in schedule 5.
- (2) The authorised undertaker may provide, maintain and operate at or near any new level crossing such barriers or other protective equipment as Scottish Ministers may in writing approve.
- (3) Any traffic sign placed pursuant to this section on or near a road to which the public has access shall be treated for the purposes of section 64(4) (General provisions as to traffic signs) of the 1984 Act as having been placed as provided by that Act.
- (4) Without prejudice to the generality of section 3 (Power to alter the layout of roads), the authorised undertaker may in the exercise of the powers conferred by this section alter the level of any road specified in schedule 5.
- (5) The roads authority may enter into agreements with the authorised undertaker with respect to the construction and maintenance of any new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.
- (6) In this section—
  - “barrier” includes gate;
  - “new level crossing” means the place at which an authorised tramroad crosses a road on the level under the powers conferred by this section; and
  - “protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

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## **16 Attachment of equipment to buildings for purposes of works**

- (1) Subject to the provisions of section 72 (Listed buildings and conservation areas) and the following provisions of this section, the authorised undertaker may affix to any building any brackets, cables, wires, insulators and other apparatus required in connection with the authorised works.
- (2) The authorised undertaker shall not affix any apparatus to a building without the written consent of the owner; and such consent may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) But where—
  - (a) the authorised undertaker serves on the owner a notice requesting the owner's consent to the affixing of specified apparatus to the building, and
  - (b) the owner does not within a period of 28 days beginning with the date upon which the notice is served give consent unconditionally or give it subject to conditions or refuse it,consent shall be deemed to have been given without any conditions.
- (4) Where, in the opinion of the authorised undertaker, consent required under this section for the affixing of specified apparatus is unreasonably withheld or given subject to unreasonable conditions, it may refer the matter by summary application to the sheriff and the decision of the sheriff on the matter shall be final.
- (5) Where apparatus is affixed to a building under this section—
  - (a) the owner shall be entitled, where the removal of the apparatus is reasonably necessary during any reconstruction or repair of the building, on giving the authorised undertaker no less than 28 days' notice, to require the authorised undertaker, at the authorised undertaker's cost, to temporarily remove the apparatus,
  - (b) the authorised undertaker shall have the right as against any person having an interest in the building to maintain the apparatus.
- (6) The authorised undertaker shall pay compensation to the owners and occupiers of the building for any loss or damage sustained by them by reason of the exercise of the powers conferred by subsections (1) and (5)(b); and any dispute as to a person's entitlement to compensation, or as to the amount of the compensation, shall be determined according to the 1963 Act.
- (7) In this section—

“building” includes any structure and a bridge or aqueduct; and

“owner” means the heritable proprietor of the building.

## **17 Discharge of water**

- (1) The authorised undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may—
  - (a) lay down, take up and alter pipes, or
  - (b) make openings into, and connections with, the watercourse, sewer or drain, on any land within the limits of deviation or limits of land to be acquired or used.

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- (2) The authorised undertaker shall not discharge any water into any public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as the person may reasonably impose but shall not be unreasonably withheld.
- (3) The authorised undertaker shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld.
- (4) The authorised undertaker shall take such steps as are reasonably practicable to secure that any water discharged under the powers conferred by this section is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.
- (5) In this section—
  - “public sewer or drain” means a sewer or drain which belongs to Scottish Water or a private provider who has made an agreement with Scottish Water under section 1(2)(b) (Duty of local authority to provide sewerage for their area) of the Sewerage (Scotland) Act 1968 (c. 47), and
  - “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

## **18 Safeguarding works to buildings**

- (1) Subject to the following provisions of this section the authorised undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within the limits of deviation as the authorised undertaker considers to be necessary or expedient.
- (2) Safeguarding works may be carried out—
  - (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works, or
  - (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.
- (3) For the purpose of determining how the functions under this section are to be exercised, the authorised undertaker may enter and survey any building falling within subsection (1) and any land belonging to it.
- (4) For the purpose of carrying out safeguarding works under this section to a building the authorised undertaker may (subject to subsections (5) and (6))—
  - (a) enter the building and any land belonging to it, and
  - (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).
- (5) Before exercising—
  - (a) a right under subsection (1) to carry out safeguarding works to a building,
  - (b) a right under subsection (3) to enter a building,
  - (c) a right under subsection (4)(a) to enter a building or land, or
  - (d) a right under subsection (4)(b) to enter land,

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the authorised undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and in a case falling within paragraph (a) or (c), specifying the safeguarding works proposed to be carried out.

- (6) Where notice is served under subsection (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under section 79 (Arbitration).
- (7) The authorised undertaker shall compensate the owners and occupiers of any building or land in relation to which the powers conferred by this section have been exercised for any loss or damage arising to them by reason of the exercise of those powers.
- (8) Where—
- (a) safeguarding works are carried out under this section to a building, and
  - (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use, it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,
- the authorised undertaker shall compensate the owners and occupiers of the building for any damage sustained by them.
- (9) Nothing in this section shall relieve the authorised undertaker from any liability to pay compensation under Schedule 3 to the 1963 Act.
- (10) Any compensation payable under subsection (7) or (8) shall be determined, in case of dispute, under Part II of the 1963 Act.
- (11) In this section—
- “building” includes any structure or erection or any part of a building, structure or erection, and
  - “safeguarding works”, in relation to a building, means—
    - (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
    - (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

## **19 Power to construct temporary tramways**

- (1) The authorised undertaker may, if it considers it necessary in consequence of any road works executed or proposed to be executed in a road along which an authorised road tramway is constructed—
- (a) remove or discontinue the operation of the authorised road tramway, and
  - (b) lay, maintain and operate in or near to that road a temporary tramway instead of the authorised road tramway.
- (2) The powers conferred by this section may only be exercised with the consent of the roads authority but such consent shall not be unreasonably withheld.

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- (3) The provisions of section 58 (Traffic signs and priority) shall apply in relation to temporary tramways laid under this section as they apply in relation to authorised road tramways.
- (4) In this section “road works” has the same meaning as in Part IV of the 1991 Act.

## **20 Power to survey and investigate land**

- (1) The authorised undertaker may for the purposes of this Act—
- (a) survey or investigate any land within the limits of deviation or within the limits of land to be acquired or used;
  - (b) without prejudice to the generality of paragraph (a), make trial holes in such positions as the authorised undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without prejudice to the generality of paragraph (a), carry out archaeological investigations on the land;
  - (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the works;
  - (e) place on, leave on and remove from the land apparatus for use in connection with exercise of any of the powers conferred by paragraphs (a) to (c); and
  - (f) enter on the land for the purpose of exercising the powers conferred by paragraphs (a) to (e).
- (2) No land may be entered, or equipment placed or left on or removed from the land under subsection (1), unless—
- (a) on the first occasion at least 7 days' notice, and
  - (b) on subsequent occasions at least 3 days' notice,
- has been served on every owner and occupier of the land.
- (3) Any person entering land under this section on behalf of the authorised undertaker—
- (a) shall, if so required, before or after entering the land produce written evidence of the authority to do so, and
  - (b) may bring such vehicles and equipment as are necessary to carry out the survey or investigation or to make trial holes.
- (4) No trial holes shall be made under this section in a carriageway or footway without the consent of the road works authority, but such consent shall not be unreasonably withheld.
- (5) The authorised undertaker shall make compensation for any damage occasioned by the exercise of the powers conferred by this section to the owners and occupiers of the land, in case of dispute such compensation to be determined under the 1963 Act.

## **21 Mode of construction and operation of tramway**

- (1) The authorised tramway shall be operated by electricity or, in an emergency or for the purposes of maintenance, by diesel power or other means.
- (2) The authorised road tramway and authorised tramroad shall be constructed on a nominal gauge of 1435 millimetres.



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## **22      Obstruction of construction of tramway**

Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Changes to legislation:**

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