

GLASGOW AIRPORT RAIL LINK ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Works

19. The meaning of “the scheduled works” and “the ancillary works” is explained **in paragraphs 22 to 25** below. They are collectively described as “the authorised works” (defined in **section 51**).

Section 1 – Authority to construct works

20. **Section 1** gives the specific statutory authority for the works which are required¹. In the absence of this section the activities permitted by the Act would potentially be liable to challenge in the courts e.g. on the ground that the railway constituted a legal nuisance. Such an action could potentially result in an order preventing the nuisance by stopping the works (called an interdict). The protection of statutory authority is therefore important to the viability of the scheme because it allows the works to be constructed without the threat of legal challenge.
21. **Section 2** refers to the scheduled works as being within the limits of deviation shown on the Parliamentary plans. However, the precise position of the works may move (“deviate”) within those limits, in accordance with **section 4**.

Section 2 – The scheduled works

22. **Section 2** gives effect to **schedule 1**, which contains the detailed descriptions of the works authorised by the Act described **in paragraph 4** above.

Section 3 – The ancillary works

23. **Section 3** gives effect to **schedule 2**, which describes the types of works which may be provided in connection with the scheduled works. Works of this nature will only be authorised by the Act if they are necessary or expedient² in connection with the construction of the scheduled works, or are required as a consequence of those works being constructed.
24. **Schedule 2** catalogues types of works and operations that are normally necessary for the operation of a railway and also mitigation works and works for the protection of neighbouring landowners. The “railway” itself is only the railway track as laid along the route³. The ancillary items accordingly range from the provision of stations and platforms to operations such as discharging water during construction⁴ and moving utility apparatus⁵. They also cover the provision of recreational facilities at St James’

¹ *The need for such authority is explained in paragraph 12 of the Promoter’s Memorandum.*

² *i.e. advantageous; suitable, appropriate (Concise Oxford English Dictionary).*

³ *See, by virtue of section 81(3) of the Railways Act 1993 (c.43), the definition of “railway” in section 67(1) of the Transport and Works Act 1992 (c.42).*

⁴ *e.g. when pumping away water from a site so as to be able to lay track on dry ground.*

⁵ *e.g. water mains and power supply cables.*

Park and replacement fuel farm facilities at Glasgow Airport. The ancillary works will form an essential part of the authorised works (the term “authorised works” is explained in [paragraph 19](#)).

25. At this stage the nature of the ancillary works is known but not the precise ancillary works or, in some cases, their positions. However by virtue of [sections 3\(2\) and 3\(3\)](#) they can only be constructed within “the Act limits” i.e. the limits shown on the plans in which the powers of the Act can be exercised. This term is defined in [section 51](#) of the Act.

Section 4 – Permitted deviation within limits

26. [Section 4](#) allows for a degree of flexibility within the defined limits. It permits movement or variance from the precise lines and sections shown on the Parliamentary plans and sections. In the Act this is described as “deviation”.
27. The Parliamentary plans show the centre lines of the works and also show limits of deviation around those centre lines. [Section 2](#) specifically states that the authorised works are situated within the limits of deviation. The Act will not accordingly permit the construction of those works outside these lateral limits.
28. The Parliamentary sections show the vertical dimensions and situation of the proposed works. The Act authorises the works in accordance with those dimensions and levels, subject to the flexibility permitted by [section 4](#).
29. [Section 4](#) provides that every work as constructed or maintained may deviate laterally within the limits of deviation, and vertically by up to 3 metres upwards and to any extent downwards. This reflects the outline nature of the authorisation being given by the Act. The works are not being authorised in the fine detail which will be formulated at a later stage when the railway is finally designed. The permission to deviate therefore allows for the normal design process.
30. The ability to deviate vertically to any extent downwards that may be necessary or expedient enables the authorised undertaker to construct the works at whatever depth is needed to achieve stability. It also allows for e.g. the undertaking of ground stabilisation works in the event of mine workings or other geological conditions.

Section 5 – Access to works

31. It will be necessary for the authorised undertaker to provide access from existing roads to land to be used for the authorised works. [Section 5](#) will enable the authorised undertaker to facilitate such access by constructing drop kerbs and similar works both at the points shown on the Parliamentary plans and at other points approved by the roads authority. In the absence of this section such works, amounting to an interference with the road, could not be carried out by the authorised undertaker without first obtaining the consent of the roads authority under section 56 of the [Roads \(Scotland\) Act 1984](#) (c.54).

Section 6 – Construction and maintenance of altered roads

32. In accordance with standard arrangements when a new road is built, [section 6](#) provides for alterations of roads authorised by the Act to be completed to the reasonable satisfaction of the roads authority, and to become maintainable by the roads authority after an initial 12 month maintenance period during which the authorised undertaker remains liable for any maintenance. This is normal practice to allow any defects that emerge once the roads are first commissioned after construction to be remedied at the expense of the authorised undertaker.

Section 7 – Works treated as major works for road purposes

33. **Section 7** is intended to ensure that the regime under Part IV of the **New Roads and Street Works Act 1991 (c.22)** (in the Act referred to as the 1991 Act) for dealing with apparatus of utilities affected by road works will apply to the authorised works. Part IV of the 1991 Act together with the Road Works (Sharing of Costs of Works) (Scotland) Regulations 2003 and the Codes of Practice issued under the 1991 Act provide a regime dealing with the measures (and the costs of these measures) in relation to utilities' apparatus in streets as a result of types of road works described in the 1991 Act as "major works for road purposes". This regime includes a process for identifying and agreeing work required, including any necessary diversions of apparatus, and also deals with the costs of these works. It provides for a contribution to be payable by the utilities in respect of work carried out in relation to their apparatus.
34. "Major works for road purposes" under the 1991 Act cover various categories of road works such as reconstruction or widening of roads, or substantial alterations in the level of roads but only if those works are carried out by the roads authority. Since the authorised undertaker will not be the roads authority, the regime under the 1991 Act would not apply to road works carried out under the powers of the Act. **Section 7** accordingly provides for such works carried out by the authorised undertaker to be treated as "major works for road purposes" for the purpose of the 1991 Act. It puts the authorised undertaker in the same position as the roads authority would be if it was carrying out these works and ensures that the same regime will apply.
35. Similar provision relating to the equivalent provisions of the 1991 Act in England was included in the Channel Tunnel Rail Link Act 1996 and is commonly included in Orders under the Transport and Works Act 1992.

Section 8 – Agreements with roads authorities

36. **Section 8** permits the authorised undertaker to enter into agreements with the roads authorities to carry out any works to existing roads authorised by the Act. The authorised undertaker is also authorised to delegate by agreement its powers to alter or maintain such altered roads. It is necessary to refer to maintenance because under section 6 the authorised undertaker is required to maintain a road which has been altered under the powers of the Act for a period of 12 months, before the roads authority resumes its maintenance responsibilities.

Section 9 – Temporary stopping up, alteration or diversion of roads

37. It will be necessary for the authorised undertaker during construction temporarily to stop up, alter, or divert roads. Precise details of the roads, timing and duration of closures will be developed as the scheme is designed. Subsection (1) will enable such temporary stoppings up by the authorised undertaker provided consent is obtained from the road works authority⁶ under subsection (4). By subsection (5) consent could not be unreasonably withheld but could be given subject to conditions. Under subsection (6) disputes as to the reasonableness of any condition would be determined by arbitration unless the parties agree on an alternative form of disputes procedure. (**Section 35** provides for the way in which any arbiter is appointed.)
38. In addition to any condition imposed by the road works authority, the authorised undertaker will be obliged by subsection (2) to provide continued pedestrian access to premises⁷ abutting on the temporarily stopped up road.

⁶ *i.e. in the case of a public road, the roads authority for the road, and in the case of any other road the road managers (New Roads and Street Works Act 1991 (c.22), s.108(i)).*

⁷ *"Premises" is used in its ordinary meaning i.e. places, landholdings (including buildings). Except where it is especially defined, as in some legislation, it is not a technical term. "Premises" is an ordinary word of the English language which takes colour and content from the context in which it is raised ... it has, in my opinion, no recognised and established primary meaning." Maunsell v Olins [1975] 1 All ER 16 at 19, HL, per Viscount Dilhorne.*

39. Five necessary temporary stoppings up have been identified at this stage as being required at the locations and for the purposes specified in [schedule 3](#). For this reason subsection (3) authorises these temporary closures and, unlike the unspecified closures, subsection (4)(a) requires consultation with the road works authority but not consent.
40. If there is any suspension of a private right of way under this section compensation would be payable under the compensation code applied by the Act (see [paragraph 62](#)).

Section 10 – Discharge of water

41. **Section 10** ensures that the authorised undertaker can effectively drain its works, both during construction and thereafter. Subsection (1) enables the authorised undertaker to use any available watercourse or any public sewer or drain for drainage purposes. It provides that within the limits of deviation or the limits of land to be acquired or used⁸ the authorised undertaker may lay down, take up or alter pipes or make openings into or connections with the watercourse, public sewer or drain.
42. Under subsection (2) water may not be discharged into an artificial watercourse or a public sewer or drain without the consent of the person to whom it belongs (who in the case of a public sewer or drain will be Scottish Water, a private provider who has made an agreement with Scottish Water under section 1(2)(b) of the [Sewerage \(Scotland\) Act 1968 \(c.47\)](#) (duty of Scottish Water to provide sewerage for their area) or the roads authority), but although consent may be given subject to reasonable terms and conditions, it cannot be unreasonably withheld.
43. Under subsection (3) an opening into a sewer or drain will have to be made in accordance with plans approved by the person to whom the sewer or drain belongs and subject to such supervision as he provides, but plan approval cannot be unreasonably withheld
44. Subsection (4) requires the authorised undertaker to take such steps as are reasonably practicable to secure that water is free from gravel, soil or other solid substances or from oil or matter in suspension. This might include installation of gullies, filter drains or settlement ponds⁹ to separate out such matter from clean water before the water is discharged into a stream, watercourse or public sewer or drain. The precise means of separating such matter from clean water will be determined during the design process in consultation with all appropriate people and bodies, including the roads authority and the Scottish Environment Protection Agency, “SEPA”.
45. Subsection (5) provides that any disagreement between the authorised undertaker and a person owning an artificial watercourse or a public drain or sewer shall be resolved by arbitration. ([Section 35](#) provides for the way in which any arbiter is appointed.)
46. Subsection (6) provides for the continued operation of both Part IV of the [New Roads and Street Works Act 1991 \(c.22\)](#) and the [Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005 \(S.S.I.2005/348\)](#) in tandem with this section. Part IV of the New Roads and Street Works Act 1991 contains a detailed code regulating the carrying out of works in roads by utilities and others. As a result of subsection (6), the authorised undertaker will have to comply with all the requirements of Part IV as to the giving of notice of the works, the compliance with directions given by the road works authority, the duty to co-operate with the road works authority and other undertakers, safety measures, and the provisions for the avoidance of danger, delay or obstruction. The Water Environment (Controlled Activities) (Scotland) Regulations 2005 provide the regulatory framework whereby the authorised undertaker’s activities which impact on the water environment will be controlled and under which compliance

⁸ For explanation of this expression see paragraph 65 below.

⁹ A “gully” is a concrete box with a pipe and a metal grid on top: solid materials settle on the bottom of the box and water to be discharged continues along the pipe. A “filter drain” (also known as a “French drain”) is a ditch filled with stones which act to remove large solid particles from the water before the water is discharged into the ground or a drainage system. A “settlement pond” is a large pond that allows water to sit while slow settlement of particles takes place.

with the regulatory requirements will be enforced. SEPA is responsible for authorising 'controlled activities' under these Regulations.

47. In the absence of **section 10** effective drainage of the works would be subject to the risk of legal action for nuisance in respect of discharges, and subject also to successful private negotiation as regards the use of public sewers or drains. The section is intended to ensure that works authorised by the Parliament can be drained without the risk of legal action or failed private negotiations and will also ensure that drainage from these works is subject to the same pollution controls as other railway and road works.

Section 11 – Safeguarding works to buildings

48. The ground conditions along the route may give rise to a need to prevent or remedy damage to buildings caused by the construction, operation or maintenance of the authorised works or conversely to carry out remedial works to a building which might otherwise affect the safe construction or operation of the authorised works. This will call for underpinning, strengthening or other works for the same purposes (all in the Act called "safeguarding works"). The area where there is a possibility of such works being required is the land within the limits of the Act which are shown on the Parliamentary plans.
49. Subsection (1) accordingly enables the authorised undertaker at its own expense to carry out such safeguarding works to any building within the Act limits as the authorised undertaker considers to be necessary or expedient. Safeguarding works may be carried out during construction or at any time during the five years after any part of the authorised works is first opened for public use.
50. The detailed procedure that must be adopted is set out in **schedule 4**. This allows for the carrying out of preliminary surveys and (except in an emergency) the service of 14 days' notice prior to entry and carrying out the safeguarding works. A landowner may question the necessity for safeguarding works and require the issue to be referred to arbitration. However there is no right to question the initial entry to carry out preliminary surveys. Without such preliminary survey it would be very difficult to identify whether and to what extent safeguarding works are required, or to determine the extent of any damage which is caused and for which compensation would be payable. A compulsory power of entry is required in order to make the operation of this provision effective.
51. Where damage is caused by safeguarding works, or where safeguarding works prove to be inadequate within five years after the opening of the relevant authorised works, the authorised undertaker must pay compensation.