

GLASGOW AIRPORT RAIL LINK ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Land

Compensation

Section 21 – Acquisition of part of certain properties

96. **Section 21** lays down special procedures in place of section 90 of the 1845 Lands Act, which would otherwise be applicable where an acquiring authority wishes to acquire part only of certain types of property required for the works. Section 90 provides that the owner of a house, building or factory cannot be compelled to sell only part of his or her property if he or she is willing to sell the whole. This would enable a landowner to insist on the acquisition of the whole of his or her property, however large, even where the purchase of the part proposed for compulsory acquisition is insignificant in relation to the whole. The replacement procedures allow the authorised undertaker to acquire only part of a property where this can be done without material detriment¹ to the rest of the property and, in the case of a house with a park or garden, without also seriously affecting the amenity or convenience of the house². These replacement provisions reflect the modernised state of the law in England and Wales (under section 8 of the [Compulsory Purchase Act 1965 \(c.56\)](#)). Their application in legislation of this sort is standard³.
97. Subsection (1) applies this section to any case where a notice to treat⁴ relates to land forming part of a house, building or factory or to land consisting of a house with a park or garden. For the section to apply a copy of the section must also be served with the notice to treat.
98. Subsection (2) provides that where a notice to treat is served under subsection (1), the owner may serve a counter-notice on the authorised undertaker within 21 days, objecting to the sale of part of the land and stating that the owner is willing to sell the whole of the land.
99. Subsection (3) provides that if the owner does not serve a counter-notice within 21 days, he or she is obliged to sell the land the authorised undertaker wishes to acquire.
100. Subsection (4) provides that where the authorised undertaker agrees to take the land the subject of the counter notice, the notice to treat is deemed to apply to that land, in addition to the land it originally applied to.

1 *“Material detriment” to the remainder of the property: the test is whether the remainder, after the part is compulsorily acquired, is less useful or less valuable in some significant degree compared with the property as existing before the acquisition took place (McMillan v Strathclyde Regional Council 1984 S.L.T. Lands Tr. (Scot)) 25.*

2 *“Seriously affecting the amenity and convenience of the house”: the test is whether after the part has been compulsorily acquired the house has less amenity and less convenience in some significant degree compared with the property as existing before the acquisition took place (see McMillan v Strathclyde Regional Council).*

3 *See e.g. City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s.6.*

4 *For an explanation of this expression see paragraph 58 above.*

*These notes relate to the Glasgow Airport Rail Link Act 2007
(asp 1) which received Royal Assent on 15 January 2007*

101. Subsection (5) provides that where the authorised undertaker does not agree to take the land the subject of the counter notice, the question as to what land the owner shall be required to sell is referred to the Lands Tribunal for Scotland.
102. Subsection (6) provides that if the Tribunal decides that the part subject to the notice to treat can be taken without material detriment to the land specified in the counter notice, or in the case of a house with a park or a garden, without seriously affecting the amenity of the house, the owner is obliged to sell the land that the authorised undertaker wishes to acquire.
103. Under subsection (7) the Tribunal may make a similar decision in relation to part of the land subject to the notice to treat. In that case the notice is deemed to apply only to that part, which can then be acquired.
104. Subsection (8) provides for the case where the Tribunal finds that there is material detriment or serious effect on amenity or convenience, but limited to part of the land subject to the counter-notice. The notice to treat is then deemed to apply to both the land referred to in that original notice and, in addition, the land affected by the material detriment.
105. Under subsection (9), where the Tribunal determines that there will be material detriment or an adverse effect on amenity or convenience, and also determines that any material detriment extends to all⁵ the land subject to the counter-notice, the notice to treat is deemed to apply to all the land included in the counter-notice.
106. Under subsection (4), (8) or (9) a notice to treat can be deemed to include other land whether or not that land is subject to compulsory acquisition under the Act.
107. Subsections (11) and (12) cover the situation where the Tribunal determines that the authorised undertaker should acquire either more or less land than was included in the original notice. Either of these circumstances could have serious implications for the design or operation of the authorised works. The authorised undertaker is allowed 6 weeks within which to withdraw the notice to treat rather than proceed with the acquisition of the land determined by the Lands Tribunal. If the authorised undertaker withdraws the notice to treat it is obliged to pay the owner compensation for any expense caused by the giving and withdrawal of the notice to treat. This enables the authorised undertaker to take any available alternative options. This might for example involve re-designing works or methods of construction so that none of the land is required.
108. By subsection (13), where this section results in an owner being required to sell only part of—
 - a house, building or factory; or
 - land with a house and a park or garden,the authorised undertaker is not required to buy the whole property. However, the authorised undertaker must in addition to paying compensation for the value of the interest acquired, pay compensation for any loss resulting from severance of the land⁶.

⁵ Where material detriment extends to only part of the land subject to the counter-notice subsection (7) applies.

⁶ i.e. diminution in value of the remaining land due to the loss of the compulsorily acquired land.