

GLASGOW AIRPORT RAIL LINK ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Land

Compensation

Section 15 – Rights in roads

75. **Section 15** applies to any road that is included in the land that may be compulsorily acquired under **section 12**. In relation to such land, the section allows subsoil or airspace to be used for the works without the need for compulsory purchase.
76. Subsection (1) enables the authorised undertaker to enter and use the subsoil of or airspace over such land for the purposes of the authorised works. The subsection permits the authorised undertaker to do this without serving notice on the roads authority or other owner of the land involved.
77. By subsection (2), the authorised undertaker may exercise these powers without being obliged to acquire the road or place or any servitude or right in relation to it.
78. Subsection (3) is a technical provision to safeguard the authorised undertaker's exercise of the powers in this section. The subsection provides that the powers in subsection (1) are taken to create a real right, even though it is not a right that is registered. An unregistered real right is an overriding interest¹. An overriding interest takes effect as against the registered owner of land even though it is not registered². Thus the effect of subsection (3) is to ensure that the powers in subsection (1) will be binding on anyone who owns land to which this section applies. The ability to create such rights is unaffected by the Title Conditions (Scotland) Act 2003.
79. The section enables the public works authorised by the Act to occupy the public space under and over roads on the same basis as the usual public use of those places, that is without the authorised undertaker having any owning interest. The section recognises that there may also be private interests in this land (for example, the subsoil under roads is often owned by the owners of land adjoining the road). Subsection (4) accordingly provides for the payment of compensation to any private owner of land to which the section applies who suffers loss as the result of the use of his or her land under subsection (1). Under subsection (5) any dispute as to compensation will be determined by the Lands Tribunal for Scotland in accordance with the Land Compensation (Scotland) Act 1963.
80. Subsection (6) provides that subsection (2) shall not apply where subsoil to which the section applies is occupied by an underground subway or building or by an underground part of an adjoining building. This recognises that in these cases the authorised undertaker will be occupying an integral part of a larger structure. Where

¹ See *Land Registration (Scotland) Act 1979 (c.33) s.28(1)*, definition of "overriding interest" paragraph (h).

² *Land Registration (Scotland) Act 1979 (c.33) s.3(1)(a)*.

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

what is occupied is a part of a structure the authorised undertaker ought not to be able to avoid the obligation to acquire the relevant land or obtain appropriate rights. There may well need to be obligations included in the legal transfer or grant of rights concerning the use by the authorised undertaker of part of the structure. Accordingly, subsection (6) obliges the authorised undertaker to acquire the relevant land, or an appropriate servitude or right, before using it for the authorised works.