



Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004

2004 asp 10

PART 1

WORKS ETC.

Works

1 Authority to construct works

- (1) The authorised undertaker is hereby authorised to construct the authorised works, namely—
- (a) the railway works referred to in section 2 below (“the railway works”);
 - (b) the major road works referred to in section 3 below (“the major road works”); and
 - (c) the ancillary works referred to in section 4 below (“the ancillary works”).
- (2) The extent of the works for which authority given by this section is subject to section 5 below (which permits deviation within limits from the lines and levels shown on the Parliamentary plans and sections).

2 The railway works

The railway works are the works situated within the lateral limits of deviation shown on the Parliamentary plans, at the levels shown on the Parliamentary sections and specifically described in schedule 1 to this Act.

3 The major road works

The major road works are the works situated within the lateral limits of deviation shown on the Parliamentary plans, at the levels shown on the Parliamentary sections and specifically described in schedule 2 to this Act.

4 The ancillary works

- (1) The ancillary works are such works of the nature described in schedule 3 to this Act as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the railway works or the major road works.
- (2) Where the authorised undertaker lays down works for the accommodation of cables or other apparatus for the purposes of the authorised works, the ancillary works may include, in or in connection with such works, accommodation for the apparatus of any other person and facilities for access to such accommodation, and may do so notwithstanding that such conduits and facilities may be for the exclusive use of that other person.

5 Permitted deviation within limits

In constructing or maintaining any of the authorised works the authorised undertaker may—

- (a) deviate laterally from the lines or situations shown on the Parliamentary plans within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the Parliamentary sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.

6 Access to works

- (1) The authorised undertaker may, for or in connection with the authorised works, form and lay out means of access, or improve existing means of access—
 - (a) at the points shown on the Parliamentary plans, or
 - (b) in such location or locations within the limits of deviation or the limits of land to be acquired or used as may be approved by the roads authority.
- (2) Approval of the roads authority under subsection (1)(b) above shall not be unreasonably withheld.

7 Construction and maintenance of new or altered roads

- (1) Works Nos. 1A, 1B, 1C, 1D, 1F, 1G, 2, 2A and 2D shall be completed to the reasonable satisfaction of the roads authority and shall, unless otherwise agreed, be maintained—
 - (a) for a period of 12 months from their completion, by and at the expense of the authorised undertaker; and
 - (b) 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—
 - (a) for a period of 12 months from their completion, by and at the expense of the authorised undertaker; and
 - (b) at the expiry of that period, by and at the expense of the roads authority.

8 Level crossings

- (1) The authorised undertaker may—

- (a) construct or refurbish; and
 - (b) maintain,the level crossings described in Part 1 of schedule 4 to this Act (“the continuing level crossings”).
- (2) In the exercise of the powers conferred by subsection (1) above the authorised undertaker may alter or interfere with the level of any road mentioned in Part 1 of schedule 4 to this Act.
- (3) Subject to subsection (4) below, the authorised undertaker may at or near the continuing level crossings provide, maintain and operate such automatic or other barriers, lights and automatic or other equipment or devices as may be necessary for the maintenance of railway safety.
- (4) Nothing in subsection (3) above enables the authorised undertaker to provide any equipment otherwise than in accordance with any requirement of the Secretary of State made under any enactment.
- (5) The authorised undertaker shall stop up and discontinue the level crossings or former level crossings described in Part 2 of schedule 4 to this Act and on such stopping up and discontinuance all rights of way across and on the level of those crossings shall be extinguished.
- (6) The authorised undertaker shall not exercise the powers conferred by subsection (5) above—
 - (a) in relation to the crossing at Grange Road, Abbey Craig, until Work No. 1B is open to the public and the authorised undertaker has completed the refurbishment of Waterside level crossing;
 - (b) in relation to the level crossing at Grange Road, Alloa, until Work No. 1C is open to pedestrians; and
 - (c) in relation to the level crossing at Hilton Road, Alloa, until such time as the authorised undertaker requires possession of the crossing for the purpose of constructing Work No. 1G.
- (7) Any person who suffers loss by the extinguishment of any private right of way over any of the level crossings described in Part 2 of schedule 4 to this Act shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under the 1963 Act.
- (8) On a level crossing to which this section applies being—
 - (a) constructed or refurbished under subsection (1) above; or
 - (b) stopped up and discontinued under subsection (5) above,the enactments mentioned in Part 3 of schedule 4 to this Act shall cease to apply to that crossing.

9 Private crossings

- (1) If the authorised undertaker proceeds with Work No. 1 it shall make and maintain the private crossings described in columns (1), (2) and (3) of Part 1 of schedule 5 to this Act (“the continuing private crossings”).
- (2) The continuing private crossings shall be provided for the use of the persons entitled under the existing enactments to use the existing private crossings at those points, and

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those persons shall be entitled to use the continuing private crossings on the same basis in all respects as they are entitled to use the existing private crossings.

- (3) The authorised undertaker shall provide and maintain at each of the continuing private crossings such equipment as may from time to time be required for compliance with any requirement of the Secretary of State, and, subject to such compliance, as may be agreed in relation to any crossing between the authorised undertaker and the person entitled to use the crossing and approved by the Secretary of State.
- (4) Nothing in section 60 of the 1845 Act, as incorporated with this Act, shall require the authorised undertaker to provide any other private crossing for the purpose of making good any interruption caused by Work No. 1 to the use of any lands to which there attaches an entitlement to use any of the continuing private crossings.
- (5) The authorised undertaker shall stop up and discontinue the private crossings described in Part 2 of schedule 5 to this Act and on such stopping up and discontinuance all rights of way across and on the level of those crossings shall be extinguished.
- (6) Any person who suffers loss by the extinguishment of any right of way over any of the private crossings described in Part 2 of schedule 5 to this Act shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under the 1963 Act.

10 Permanent stopping up of roads

- (1) Subject to the provisions of this section, the authorised undertaker may, in connection with the construction of the authorised works, stop up each of the roads mentioned in columns (1), (2) and (3) of schedule 6 to this Act to the extent specified (by reference to the letters shown on the relevant Parliamentary plans) in column (4) of that schedule.
- (2) The authorised undertaker shall not exercise the powers conferred by subsection (1) above in relation to Grange Road, Alloa, until Work No. 1D is open to the public.
- (3) No part of a road specified in schedule 6 to this Act shall be stopped up under this section unless all the land which abuts it falls within one or more of the following categories, namely—
 - (a) land to which there is no right of access directly from the road or part to be stopped up;
 - (b) land to which there is reasonably convenient access otherwise than directly from the road or part to be stopped up;
 - (c) land as respects which the owners and occupiers have agreed to the stopping up of the road or part; and
 - (d) land of which the authorised undertaker has taken possession under section 24(1) below.
- (4) Where any part of a road has been stopped up under this section—
 - (a) all rights of way over or along the stopped up part of the road shall be extinguished; and
 - (b) the authorised undertaker may, without making any payment, appropriate and use for the purposes of the authorised works so much of the site of the road as is bounded on both sides by land within the limits of deviation of the authorised works.

- (5) Any person who suffers loss by the extinguishment or suspension of any private right of way under this section shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under the 1963 Act.

Supplemental powers

11 Temporary stopping up, alteration or diversion of roads

- (1) During and for the purposes of the execution of the authorised works the authorised undertaker 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 (2) below, prevent all persons from passing along the road.
- (2) 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.
- (3) Without prejudice to the generality of subsection (1) above, the authorised undertaker may temporarily stop up, alter or divert Dirleton Gardens, Alloa between points B and C shown on sheet 15 of the Parliamentary plans and may for any reasonable time—
- (a) divert the traffic from the road; and
 - (b) subject to subsection (2) above, prevent all persons from passing along the road.
- (4) The authorised undertaker shall not exercise the powers conferred by this section—
- (a) in relation to any road specified as mentioned in subsection (3) above, without first consulting the road works authority; and
 - (b) in relation to any other road, without the consent of the road works authority.
- (5) Consent under subsection (4)(b) above shall not be unreasonably withheld but may be given subject to such reasonable conditions as the road works authority may require.
- (6) Any question whether—
- (a) consent under subsection (4)(b) above has been unreasonably withheld; or
 - (b) a condition imposed under subsection (5) above is unreasonable,
- shall be determined by arbitration.

12 Discharge of water

- (1) The authorised undertaker may use any available stream or watercourse or any public sewer or drain for the drainage of water, and for that purpose may—
- (a) lay down, take up and alter pipes; or
 - (b) make openings into, and connections with the stream, watercourse, public sewer or drain,
- on any land within the limits of deviation or the limits of land to be acquired or used.
- (2) The authorised undertaker shall not discharge any water into any public sewer or drain except with the consent of the authority to which it belongs; and such consent may

be given subject to such terms and conditions as the authority 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 authority to which 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 article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.
- (5) Any difference under this section arising between the authorised undertaker and an authority which owns a public sewer or drain shall be determined by arbitration.
- (6) Section 30F of the Control of Pollution Act 1974 (c. 40) (which makes it an offence to pollute rivers and other waters) shall apply to, or to the consequence of, a discharge under the powers conferred by this section into any controlled waters as if this section were not a provision of a local Act or a statutory order for the purposes of section 30I(1) (f) of that Act.
- (7) Nothing in this section shall affect the operation of Part IV of the 1991 Act.
- (8) In this section “public sewer or drain” means a sewer or drain which belongs to Scottish Water or a roads authority.

PART 2

LAND

Powers of acquisition

13 Authority to acquire land

Subject to section 26 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 7 to this Act; and
 - (ii) may be required for the purposes specified in relation to that land in column (4) of that Part.

14 Acquisition of subsoil or rights

- (1) In exercise of the powers of 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 applied by 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 26 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 7 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), subsection (1) above shall be taken to create a real right over the land referred to in

that section without any necessity to record a deed in the Register of Sasines or to register the right.

- (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, the amount of such 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 8 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 8 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 new rights over any part of that land under section 14 or 15 above.

- (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.

Compensation

18 Disregard of certain interests and improvements

- (1) In assessing the compensation (if any) payable on the acquisition from any person of any land under this Act, the tribunal shall not take into account—
- (a) any interest in land; or
 - (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land, if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.
- (2) In subsection (1) above “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

19 Set-off of betterment against compensation

In determining the amount of compensation or purchase money payable to any person in respect of an interest in land acquired under this Act in a case where—

- (a) the person has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of the person’s interest in any such contiguous or adjacent land is enhanced by reason of the works authorised by this Act or any of them,

the amount of the enhancement in value shall be set off against the compensation or purchase money.

20 No double recovery

Compensation shall not be payable in respect of the same matter both under this Act and under any other enactment, any contract or any rule of law.

Supplementary

21 Acquisition of part of certain properties

- (1) This section shall apply instead of section 90 of the 1845 Lands Act in any case where—
- (a) a notice to treat is served on a person (“the owner”) under that Act (as so applied) in respect of land forming only part of a house, building or factory

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or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

- (b) a copy of this section is served on the owner with the notice to treat.
- (2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the authorised undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).
- (3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.
- (4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the authorised undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.
- (5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—
- (a) without material detriment to the remainder of the land subject to the counter-notice; or
 - (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity or convenience of the house,
- the owner shall be required to sell the land subject to the notice to treat.
- (6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—
- (a) without material detriment to the remainder of the land subject to the counter-notice; or
 - (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity or convenience of the house,
- the notice to treat shall be deemed to be a notice to treat for that part.
- (7) If on such a reference the tribunal determines that—
- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
 - (b) the material detriment is confined to a part of the land subject to the counter-notice,
- the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (8) If the authorised undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity or convenience of the house; and

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- (b) that the material detriment is not confined to a part of the land subject to the counter-notice,
the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (9) In any case where by virtue of a determination by the tribunal under this section a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the authorised undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so it shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, the amount of such compensation to be determined in case of dispute by the tribunal.
- (10) Where the owner is required under this section to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the authorised undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

22 Extinguishment or suspension of rights of way

- (1) Subject to subsection (6) below, all private rights of way over land subject to compulsory acquisition under this Act shall be extinguished—
- (a) as from the acquisition of the land by the authorised undertaker, whether compulsorily or by agreement; or
- (b) on the entry on the land by the authorised undertaker under section 24 below, whichever is sooner.
- (2) Subject to subsection (7) below, all private rights of way over land of which the authorised undertaker takes temporary possession under this Act shall be suspended and unenforceable for as long as the authorised undertaker remains in lawful possession of the land.
- (3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this section shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under the 1963 Act.
- (4) This section does not apply in relation to any right of way to which section 224 or 225 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (extinguishment of rights of statutory undertakers etc.) applies.
- (5) Subsections (1) and (2) above shall have effect subject to any agreement made (whether before or after this Act comes into force) between the authorised undertaker and the person entitled to the private right of way.
- (6) The authorised undertaker may, before whichever is the sooner of the events specified in paragraphs (a) and (b) of subsection (1) above, determine that any right of way specified in the determination is capable of being exercised compatibly with the construction and maintenance of the relevant part of the authorised works, and that subsection (1) above shall not apply to that right.
- (7) The authorised undertaker may, at any time before or after temporary possession of any land is taken, determine that any right of way specified in the determination is capable of being exercised, in whole or to such extent as may be specified in the determination,

compatibly with the temporary use of the land under this Act, and that subsection (2) above shall not apply to that right or shall only apply to the extent specified in the determination.

- (8) Notice of a determination under this section shall be posted on the relevant land—
- (a) in the case of a determination under subsection (6) above, for the period of 28 days after the sooner of the events specified in paragraphs (a) and (b) of subsection (1) above; and
 - (b) in the case of a determination under subsection (7) above, throughout the period that the authorised undertaker remains in possession of the land.
- (9) This section does not apply to any of the land specified in columns (1), (2) and (3) of Part 2 of schedule 7 to this Act (land outside the limits of deviation in which rights are to be acquired).

23 Power to enter land for survey, etc.

- (1) The authorised undertaker may, in relation to any land within the limits of deviation or the limits of land to be acquired or used, for the purposes of this Act—
- (a) survey or investigate the land;
 - (b) without prejudice to the generality of paragraph (a) above, 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 water and soil samples;
 - (c) without prejudice to the generality of paragraph (a) above, 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 the exercise of any power conferred by paragraphs (a) to (d) above; and
 - (f) enter on the land for the purpose of exercising any power conferred by paragraphs (a) to (e) above.
- (2) No land may be entered, and no equipment may be placed or left on or removed from land, under subsection (1) above, unless—
- (a) on the first occasion at least seven days'; and
 - (b) on subsequent occasions not less than three 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 authority to do so; and
 - (b) may enter with such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by subsection (1) above.
- (4) No trial hole 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 pay compensation for any damage occasioned, by the exercise of the powers conferred by this subsection, to the owners and occupiers of the land, the amount of such compensation to be determined, in case of dispute, under the 1963 Act.

24 Further powers of entry

- (1) At any time after notice to treat has been served in respect of any land which may be purchased compulsorily under this Act the authorised undertaker may enter on and take possession of the land.
- (2) No land may be entered under subsection (1) above unless at least three months' notice has been given to the owner and occupier of the land specifying the land, or part of the land, of which possession is to be taken.
- (3) The authorised undertaker may exercise the powers conferred by this section without complying with sections 83 to 89 of the 1845 Lands Act before such exercise.
- (4) Compensation for the land of which possession is taken under this section, and interest on the compensation awarded, shall be payable as if sections 83 to 89 of the 1845 Lands Act had been complied with.

25 Persons under disability may grant servitudes, etc.

- (1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may grant to the undertaker a servitude, right or privilege required for any of the purposes of this Act in, over or affecting any such lands.
- (2) A person may not under this section grant a servitude, right or privilege of water in which persons other than the grantor have an interest.
- (3) The provisions of the said Lands Clauses Acts with respect to lands and feu duties or ground annuals shall, so far as applicable, apply to any grant under this section and to the servitudes, rights and privileges granted.

26 Period for compulsory acquisition of land

- (1) The authority given by sections 13 and 15 above for the compulsory acquisition of land and new rights for the purposes of this Act shall cease on 31st December 2009.
- (2) The powers conferred by sections 13, 14 and 15 above for the compulsory acquisition of such land and servitudes or other rights shall, for the purposes of this section, be deemed to have been exercised in relation to any land, servitude or right if before 31st December 2009 notice to treat has been served in respect of that land, servitude or right.

PART 3

MISCELLANEOUS AND GENERAL

27 Power to fell, etc. trees or shrubs

- (1) The authorised undertaker may fell, lop or cut back the roots of any tree or shrub near any part of the authorised works (or land proposed to be used for the authorised works), if it reasonably believes such action to be necessary in order to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used for the purposes of the authorised works; or
 - (b) from constituting a danger to persons using the authorised works.
- (2) In exercising the powers conferred by subsection (1) above, the authorised undertaker shall not do any unnecessary damage to any tree or shrub.
- (3) Any person who suffers loss or damage arising from the exercise of the powers conferred by this section shall be entitled to compensation to be determined, in case of dispute under the 1963 Act.
- (4) The following, namely—
- (a) an order under section 198(1) of the 1997 Act (tree preservation orders); and
 - (b) section 211(1) of that Act (which prohibits the doing in a conservation area of any act which might be prohibited by a tree preservation order),
- shall not apply to any exercise of the powers of subsection (1) above.

28 Powers of disposal, agreements for operation, etc.

- (1) The authorised undertaker may enter into all or any of the agreements described in subsections (2), (3) and (4) below.
- (2) The authorised undertaker may enter into and carry into effect agreements with respect to the transfer to and vesting in that other person of all or any of the functions of the authorised undertaker under this Act, including the powers conferred by this section.
- (3) The authorised undertaker may enter into and carry into effect agreements, on such terms and conditions as it thinks fit, to sell, feu, lease, excamb, charge or otherwise dispose of the whole or any part of the undertaking consisting of the authorised works and any land held for the purposes of, or in connection with, those works.
- (4) The authorised undertaker may enter into agreements with respect to the construction, maintenance and operation of the authorised works and any matter consequential, incidental or ancillary thereto.
- (5) The exercise of any power conferred by this Act by any person pursuant to any transfer agreement shall be subject to the same restrictions, liabilities and obligations as would apply if that power were exercised by the authorised undertaker making the transfer.
- (6) Where the exercise by any transferee of the powers conferred by this Act is subject to any statutory or other obligations or liabilities (including any obligations or liabilities pursuant to any undertaking or agreement given before or after the date on which this Act comes into force by Clackmannanshire Council or after that date by an authorised undertaker), then those obligations and liabilities shall not apply to or bind that authorised undertaker for so long as and to the extent that they apply to the transferee.
- (7) For so long as a transfer agreement remains in force references in this Act to the authorised undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.
- (8) Without prejudice to the powers of the authorised undertaker to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that

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agreement shall cease to have effect before the expiry of any period specified in any such agreement.

- (9) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the authorised undertaker may consider to be necessary or expedient.
- (10) Within 21 days of the completion of any transfer agreement the authorised undertaker making the transfer shall serve notice on the Scottish Ministers stating the name and address of the transferee and the date when the transfer is to take effect.
- (11) If an authorised undertaker fails, without reasonable excuse, to comply with the obligation imposed by subsection (10) above it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (12) On the completion of a transfer agreement the effect of which is to—
- (a) vest the railway works in; or
 - (b) transfer the powers of this Act relating to the railway works to,
- Network Rail as operator of the national railway infrastructure adjoining either end of the railway works, this section shall cease to have effect in relation to the railway works.
- (13) On the completion of a transfer agreement the effect of which is to—
- (a) vest the major road works in; or
 - (b) transfer the powers of this Act relating to the major road works to,
- Clackmannanshire Council as roads authority, this section shall cease to have effect in relation to the major road works.
- (14) In this section, unless the context otherwise requires—
- “functions” includes powers, duties and obligations;
 - “transferee” means a person to whom all or any of the property or functions of the authorised undertaker have been transferred by virtue of a transfer agreement; and
 - “transfer agreement” means an agreement entered into under subsection (2), (3) or (4) above.

29 Statutory undertakers, etc.

The provisions of schedule 9 to this Act shall have effect in relation to the authorised works.

30 Arbitration

- (1) Where under any provision of this Act any difference or dispute (other than a difference or dispute to which the provisions of the Lands Clauses Acts apply) is to be determined by arbitration, then, unless otherwise provided, the difference shall be referred to, and settled by, a single arbiter to be agreed between the parties or, failing agreement, to be appointed, on the application of either party (after giving notice in writing to the other), by the President for the time being of the Institution of Civil Engineers.

- (2) An arbiter appointed under this section shall be entitled to state a case for the opinion of the Court of Session pursuant to section 3 of the Administration of Justice (Scotland) Act 1972 (c. 59).

31 Service of notices, etc.

- (1) A notice or other document required or authorised to be served on a person for the purposes of this Act may be served—
- (a) by delivering it to that person;
 - (b) by leaving it at that person's proper address; or
 - (c) by sending it by post to that person at that address.
- (2) A notice or document is duly served on a body corporate or a firm—
- (a) in the case of a body corporate if it is served on the secretary or clerk of that body; and
 - (b) in the case of a firm, if it is served on a partner of that firm.
- (3) For the purposes of subsection (1) above and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379), a letter is properly addressed to—
- (a) a body corporate, if addressed to the body at its registered or principal office;
 - (b) a firm, if addressed to the firm at its principal office; or
 - (c) any other person, if addressed to the person at that person's last known address.
- (4) Where for the purposes of this Act a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the person's name or address cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to the person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This section shall not be taken to exclude the employment of any method of service not expressly provided for by it.

32 Listed buildings and conservation areas

Schedule 10 to this Act (which makes provision for the disapplication or modification, in relation to the authorised works, of controls relating to listed buildings, buildings in conservation areas and ancient monuments, etc.) shall have effect.

33 Saving for town and country planning

- (1) The 1997 Act and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development of that land is or may be authorised or regulated by or under this Act.

- (2) In their application to development authorised by this Act, article 3 of, and Class 29 in Part 11 of Schedule 1 to, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ([S.I. 1992/223](#)) (which permit development authorised by (among other enactments) any Act of the Parliament which designates specifically both the nature of the development thereby authorised and the land upon which it may be carried out) shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the date on which this Act comes into force.
- (3) Subsection (2) above shall not apply to the carrying out of any development consisting of the alteration, maintenance or repair of the authorised works or the substitution of new works therefor.

34 Blighted land

- (1) This Act shall be deemed to be a special enactment for the purposes of paragraph 14 of Schedule 14 to the 1997 Act.
- (2) Accordingly, Chapter II of Part V of that Act (which makes provision for the purchase of certain interests in land affected by planning proposals) shall apply to land authorised to be compulsorily acquired under this Act.

35 Environmental mitigation

For the purpose of entering into any management agreement under section 49A of the Countryside (Scotland) Act 1967 ([c. 86](#)) to secure the provision of environmental mitigation measures in respect of the authorised works, the authorised undertaker shall be deemed to have an interest in any land within the limits of deviation or the limits of land to be acquired or used which is required for such measures.

36 Application of existing enactments, etc.

- (1) As from the coming into force of this Act the existing railways, or any part of them, shall continue to be subject to—
 - (a) the existing enactments (so far as relating to railways); and
 - (b) all other statutory and other provisions applicable to the existing railways, or any part of them, at that date (insofar as such provisions are still subsisting and capable of having effect).
- (2) 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 and other provisions applicable to the existing railways (but only insofar as such provisions are still subsisting and capable of having an effect); and
 - (b) to the exclusion of all other parties, be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations (in both cases whether statutory or otherwise) relating to the existing railways insofar as the same are still subsisting and capable of having effect, to the intent that such other parties shall be released from all such obligations.

- (3) Subsection (2) above shall not apply to the exercise by Network Rail otherwise than as the authorised undertaker of any function in relation to the authorised works; and accordingly the existing enactments shall apply to such exercise.
- (4) In subsection (2) above, “other parties” includes (without prejudice to the generality of that expression) the statutory successors to the parties authorised or obligated by virtue of the existing enactments or the enactments incorporated by section 37(1) below.
- (5) The existing enactments shall have effect subject to the provisions of this Act.

PART 4

SUPPLEMENTARY

37 Incorporation of enactments

- (1) The following enactments (so far as applicable for the purposes of and not inconsistent with, or varied by, the provisions of this Act) are incorporated with this Act—
 - (a) the Lands Clauses Acts, except sections 120 to 124 and section 127 of the 1845 Lands Act;
 - (b) the 1845 Act, except sections 1, 7, 8, 9, 17, 19, 20, 22 and 23; and
 - (c) in the Railways Clauses Act 1863 (c. 92), Part I (relating to construction of a railway) except sections 13, 14 and 19.
- (2) This Act shall be deemed to be the special Act for the purposes of the enactments incorporated by subsection (1) above.

38 Interpretation

- (1) In this Act—
 - “the 1845 Act” means the Railways Clauses Consolidation (Scotland) Act 1845 (c. 33);
 - “the 1845 Lands Act” means the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19);
 - “the 1963 Act” means the Land Compensation (Scotland) Act 1963 (c. 51);
 - “the 1991 Act” means the New Roads and Street Works Act 1991 (c. 22);
 - “the 1997 Act” means the Town and Country Planning (Scotland) Act 1997 (c. 8);
 - “the ancillary works” has the meaning given by section 4 above;
 - “the authorised undertaker” means, at any time, Clackmannanshire Council or such other person or persons in whom are vested at that time some or all of the functions conferred by this Act concerning the authorised works;
 - “the authorised works” means the works authorised by this Act;
 - “book of reference” means the book of reference submitted to the Parliament as an accompanying document with the Bill for this Act;
 - “construction” includes execution, placing, alteration and reconstruction and demolition; and “construct” and “constructed” have corresponding meanings;
 - “the continuing level crossings” has the meaning given by section 8(1) above;
 - “the continuing private crossings” has the meaning given by section 9(1) above;

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“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the existing enactments” means any enactment by which any part of the existing railways was authorised;

“the existing railways” means so much of any railway or 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;

“the limits of deviation” means the limits so described on the Parliamentary plans;

“the limits of land to be acquired or used” means the limits so described on the Parliamentary plans;

“the major road works” has the meaning given by section 3 above;

“Network Rail” means Network Rail Infrastructure Ltd (Company No. 2904587 (England)) whose registered office is at 40 Melton Street, London NW1 2EE and any other of the Network Rail group of companies which holds property for railway purposes;

“Parliamentary plans” means the plans submitted to the Parliament as accompanying documents with the Bill for this Act;

“Parliamentary sections” means the sections submitted to the Parliament as accompanying documents with the Bill for this Act;

“the railway works” has the meaning given by section 2 above;

“road” has the meaning given by section 107 of the 1991 Act;

“the road works authority” has the meaning given by section 108 of the 1991 Act;

“the roads authority” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c. 54); and

“the tribunal” means the Lands Tribunal for Scotland.

- (2) Except in relation to section 9 above, all directions, distances and lengths stated in any description of works, powers or lands in this Act shall be construed as if the words “or thereby” were inserted after each such direction, distance and length.

39 Short title

This Act may be cited as the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004.