Waverley Railway (Scotland) Act 2006

2006 asp 13

PART 2

LAND

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 incorporated with this Act by section 52 below) in respect of—

(i) land forming only part of a house, building or factory; or

(ii) 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

(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, 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 Extinction 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 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 land mentioned in subsection (1) or, as the case may be, (2) above—

(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 6 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—

Changes to legislation: *There are currently no known outstanding effects for the Waverley Railway (Scotland) Act 2006, Cross Heading: Supplementary. (See end of Document for details)*

(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, or equipment 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 make compensation for any damage occasioned, by the exercise of the powers conferred by this subsection, to the owners and occupiers of the land, 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 28 days' 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 of 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.

(5) Nothing in this section affects the operation of section 48 of the Land Compensation (Scotland) Act 1973 (c. 56).

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 authorised 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 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 Parliamentary plans and book of reference: adjustments agreed with landowners and correction of errors

(1) Where—

(a) the authorised undertaker has entered into a binding obligation ("the obligation") not to acquire any land within the limits of deviation or the limits of land to be acquired or used; and

(b) either the authorised undertaker or the owner desires to reflect that commitment by way of either amendment of, or addendum to, either or both the Parliamentary plans and the book of reference,

the authorised undertaker or the owner of the land may (after giving the notice required by subsection (3) below) apply summarily to the sheriff under this section.

(2) If the Parliamentary plans or the book of reference are inaccurate in—

(a) their description of any land; or

(b) their statement or description of the ownership or occupation of any land,

the authorised undertaker may (after giving the notice required by subsection (3) below) apply summarily to the sheriff for correction of such inaccuracy.

(3) The notice required by subsections (1) and (2) above is 10 days' prior notice—

(a) in the case of a notice by the authorised undertaker, to the owner, lessee and occupier of the land in question; and

(b) in the case of a notice by an owner, to the authorised undertaker and to any lessee or occupier of the land in question.

(4) Any person to whom a notice has been given under subsection (1) or (2) above may, within the period of 10 days from the giving of the notice, give to the sheriff and the person who gave the notice a counter-notice in writing that the person disputes—

(a) in the case of an application under subsection (1) above, that the proposed amendment accurately reflects the obligation; and

(b) in the case of an application under subsection (2) above, that there is an inaccuracy which may be amended under this section.

(5) In relation to any application under this section which has not been the subject of a counter-notice, if it appears to the sheriff—

(a) that the proposed amendment accurately reflects the obligation; or

(b) that the inaccuracy arose from mistake,

as the case may be, the sheriff shall certify the fact accordingly.

(6) A certificate relating to an application under subsection (2) above shall state in what respect any matter is misstated or wrongly described.

(7) If any counter-notice is given pursuant to subsection (4) above, the sheriff shall, before making any decision on the application, cause a hearing to be held.

(8) The certificate shall be deposited in the office of the Clerk of the Parliament.

(9) On the making of the deposit required by subsection (8) above—

(a) the Parliamentary plans and the book of reference shall be deemed to be corrected according to the certificate; and

(b) it shall be lawful for the authorised undertaker to take the land or, as the case may be, a right over the land and execute the works in accordance with the certificate.

(10) The Clerk of the Parliament shall keep every certificate deposited under this section with the Parliamentary plans or book of reference to which it relates.

(11) An application under subsection (1) or (2) above may only be made in respect of land identified in the book of reference and on the Parliamentary plans.

(12) In this section "the sheriff" means the sheriff principal of, or any sheriff appointed for, the sheriffdom of Lothian and Borders.

27 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 five years from the date on which this Act comes into force.

(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 the expiry of five years from the date on which this Act comes into force notice to treat has been served in respect of that land, servitude or right.

Modifications etc. (not altering text)

C1 S. 27(1) modified (1.3.2011) by The Waverley Railway (Scotland) Act 2006 (Extension of Time for Land Acquisition) Order 2011 (S.S.I. 2011/14), arts. 1, **2**

28 Extension of time

(1) On the application of the authorised undertaker, the Scottish Ministers may, by order, extend, or further extend, the period referred to in subsection (1) of section 27 above provided that—

(a) such application is made prior to the expiry of the period or any extension to it; and

(b) the period referred to in that subsection, taken together with any extension to it, shall not exceed 10 years in total.

(2) If the Scottish Ministers extend, or further extend, the period referred to in subsection (1) of section 27 above, subsection (2) of that section shall have effect as if,

for the period referred to in it, there were substituted the extended, or further extended, period.

(3) The power of the Scottish Ministers to make orders under subsection (1) above shall be exercisable by statutory instrument.

(4) A statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of the Parliament.

29 Acquisition of land for Work No. 1B

The authorised undertaker shall not construct Work No. 1B or acquire any land for that purpose if, before the authorised undertaker serves notice to treat or makes a general vesting declaration in respect of plot no. 40 on the Parliamentary plans in the local government area of Midlothian, there is in existence a private road capable of giving access from Work No. 1C to the CPL Distribution Depot at the former Monkton Hall Colliery, Danderhall.

30 Acquisition of land for Works Nos. 1C and 1E

(1) Subject to subsection (2) below, as soon as may be after the opening for public use of Works Nos. 1C and 1E, the authorised undertaker shall transfer to the owner of the land abutting the northern boundary of the development land so much of the development land as is not permanently required by the authorised undertaker for the purpose of those works.

(2) A transfer under subsection (1) above—
   (a) may be subject to the creation for the benefit of the authorised undertaker of such servitudes or other rights in or over the land transferred as the authorised undertaker may require for the purpose of maintaining or operating the authorised works; and
   (b) shall be for a consideration calculated as if the land were being transferred pursuant to section 120 of the 1845 Lands Act (which relates to the sale of superfluous lands by an acquiring authority) and determined in case of dispute by the tribunal.

(3) Subsection (4) below shall have effect if before the authorised undertaker serves notice to treat or makes a general vesting declaration in respect of the development land there are in existence bridges in the same position as, and satisfying the authorised undertaker's requirements for—
   (a) so much of Work No. 1C as comprises a bridge over the railway (Work No. 1); and
   (b) Work No. 1E.

(4) If this subsection has effect, the authorised undertaker shall not acquire or use so much of the development land or plots nos. 43 and 43a on the Parliamentary plans in the local government area of Midlothian as is required for the construction of Works Nos. 1C and 1E, but nothing in this subsection prevents the authorised undertaker from acquiring in or over the development land such servitudes or rights as the authorised undertaker may require for the purpose of maintaining or operating the authorised works.

(5) In this section "the development land" means plots nos. 46 and 46a on the Parliamentary plans in the local government area of Midlothian.

Changes to legislation:
There are currently no known outstanding effects for the Waverley Railway (Scotland) Act 2006, Cross Heading: Supplementary.