



# Waverley Railway (Scotland) Act 2006

## 2006 asp 13

### PART 2

#### LAND

##### *Powers of acquisition*

#### **13 Authority to acquire land**

- (1) Subject to subsection (2) and sections 27, 29 and 30(4) 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 6 to this Act; and
    - (ii) may be required for the purposes specified in relation to that land in column (4) of that Part.
- (2) Notwithstanding subsection (1) above, the authorised undertaker does not have power to acquire compulsorily the land in Scottish Borders shown numbered 31 and 32 on sheet 33 of the Parliamentary plans.

#### **14 Acquisition of subsoil or rights**

- (1) In exercise of the powers conferred by 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,

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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 incorporated with 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 27 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 6 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.
- [<sup>F1</sup>(3) The powers conferred by this section constitute a real 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

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loss by reason of the exercise of that power, shall be entitled to 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.

#### Textual Amendments

- F1** S. 16(3) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 para. 49](#) (with s. 121, [Sch. 4 paras. 13, 16](#)); S.S.I. 2014/127, art. 2

## 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 7 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 7 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.

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- (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—
- (a) interests in subsoil;
  - (b) new rights; or
  - (c) land within the limits of land to be acquired or used for any purpose specified in relation to that land in schedule 6 to this Act.
- (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 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,

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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.

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- (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—
  - (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

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- (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,



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- 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.

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## 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

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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.

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