

GLASGOW AIRPORT RAIL LINK ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Land

Compensation

Section 13 – Acquisition of subsoil, airspace or rights

67. **Section 13** applies to any land that is authorised to be compulsorily acquired under **section 12**. **Section 12** authorises outright purchase of the land i.e. including the airspace above the surface and the subsoil and bedrock beneath it. The purpose of **section 13** is to ensure that when exercising those powers the authorised undertaker is able to acquire less than that total interest in cases where all that is required is the subsoil under the land, the airspace above it or some right over the land.
68. Subsection (1) accordingly enables the authorised undertaker to acquire only the subsoil beneath or airspace over land or servitudes¹ or other rights in relation to land.
69. Subsection (2) covers the case where the rights required by the authorised undertaker do not already exist. The subsection expressly allows for the creation of new rights, which will then be compulsorily acquired by the authorised undertaker.
70. Subsection (3) is intended to ensure that by exercising the powers of **section 13** the authorised undertaker will not be required to acquire the land itself or any interest in the land greater than the rights acquired under the section. In the absence of this provision the authorised undertaker will or may be required to buy land outright, even though all that is required for the authorised works is the airspace (e.g. because the authorised undertaker will only need to construct a viaduct over the land), or some right of access to the railway.
71. Subsection (3) accordingly provides that section 90 of the 1845 Lands Act and paragraph 20 of Schedule 15 to the Town and Country Planning (Scotland) Act 1997 do not apply to the acquisition of subsoil, airspace or rights under this section. Section 90 of the 1845 Act (which is discussed further in **paragraph 96**) states that landowners cannot be required to sell part of any house, building or factory. Paragraph 20 of Schedule 15 to the 1997 Act, which would apply if land is acquired under a general vesting declaration (see **paragraphs 192 to 196**), entitles a landowner to object to the purchase of part only of property consisting of a house, building or factory, or of a part of garden belonging to a house.
72. Subsection (4) applies the other provisions of the Lands Clauses Acts to the compulsory acquisition of new rights under **section 13** (on the Lands Clauses Acts, see **paragraph**

¹ “Servitudes” are rights created for the benefit of one plot of land (known as the dominant tenement) over another plot of land (known as the servient tenement). A servitude binds the servient tenement itself and so has to be observed by every owner of the servient tenement, not just the owner who agreed to the servitude at the outset. Only certain types of rights are servitudes e.g. the right to have a building supported, a right of way, a right to lay water pipes.

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

18). In subsection (6), the modifications in the 1845 Lands Act reflect similar provision in the [Land Compensation \(Scotland\) Act 1973 \(c.56\)](#).