



# Glasgow Airport Rail Link Act 2007

## 2007 asp 1

### PART 3 **S**

#### MISCELLANEOUS AND GENERAL

#### 32 Power to fell, etc. trees or shrubs **S**

- (1) The authorised undertaker may fell, or 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), 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.
- (4) Any dispute as to a person's entitlement to compensation under subsection (3), or as to the amount of the compensation, shall be determined under the 1963 Act.
- (5) The following, namely—
  - (a) an order under section 160(1) of the 1997 Act (tree preservation orders); and
  - (b) section 172(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 conferred by subsection (1).

#### 33 Powers of disposal, agreements for operation etc. **S**

- (1) In addition to anything the authorised undertaker may do by virtue of any enactment or rule of law, it shall be competent for the authorised undertaker to enter into, and carry into effect, in connection with the authorised works, any agreement that includes provision for the matters described in subsection (2).

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- (2) The matters referred to in subsection (1) are—
- (a) the transfer to and vesting in another person of all or any of the functions of the authorised undertaker under this Act, including the powers conferred by this section;
  - (b) the disposal 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;
  - (c) the creation of any heritable security, charge or other encumbrance secured on the undertaking.
- (3) Any restrictions, liabilities or obligations to which the authorised undertaker is subject—
- (a) under this Act; or
  - (b) under any undertaking or commitment given, by or on behalf of Strathclyde Partnership for Transport or any other authorised undertaker, at any time, whether before or after the passing of this Act,
- shall (notwithstanding any enactment or rule of law) be equally binding on any authorised undertaker.
- (4) Within 21 days of the completion of any agreement providing for any matter described in subsection (2)(a), 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.
- (5) If an authorised undertaker fails, without reasonable excuse, to comply with the obligation imposed by subsection (4) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In subsection (1), an agreement entered into in connection with the authorised works includes any agreement—
- (a) with respect to the funding, construction, maintenance and operation of the authorised works and any matter consequential thereon or incidental or ancillary thereto; or
  - (b) which (whether separately or as part of any other agreement) contains such supplementary, incidental, transitional and consequential provisions as the authorised undertaker may consider to be necessary or expedient.
- (7) In this section, unless the context otherwise requires—
- “disposal” includes sale, lease, excambion and charge; and
- “functions” includes powers, duties and obligations.

### 34 Statutory undertakers, etc. **S**

The provisions of schedule 7 to this Act shall have effect in relation to the authorised works.

### 35 Arbitration **S**

- (1) Where under any provision of this Act any difference (other than a difference 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.

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- (2) Such arbiter is to be agreed between the parties or, failing agreement, to be appointed, on the application of either party (after notice in writing to the other), by the President for the time being of the Institution of Civil Engineers.
- (3) 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).
- (4) Section 108 of the 1996 Act (right to refer disputes to adjudication) and any regulations made under that section shall not apply to any dispute under this Act (whether or not it is a dispute of the sort described in subsection (1)).
- (5) Subsection (4) does not affect the operation of the 1996 Act so far as applicable to any contract under which a contracting party other than the authorised undertaker is responsible for the construction or funding of the authorised works.
- (6) In this section “the 1996 Act” means the Housing Grants, Regeneration and Construction Act 1996 (c. 53).

## **36 Service of notices, etc. S**

- (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) 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; and
  - (b) leaving it—
    - (i) in the hands of a person who is or appears to be resident or employed on the land, or
    - (ii) conspicuously affixed to some building or object on or near the land.
- (5) Nothing in this section excludes using any other method of service.

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### **37 Listed buildings** **S**

Schedule 8 to this Act (which makes provision for the disapplication or modification, in relation to the authorised works, of controls relating to listed buildings) shall have effect.

### **38 Saving for town and country planning** **S**

- (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 1992 Order (which permit, in certain cases, development authorised by an Act of Parliament) shall have effect as if—
  - (a) 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;
  - (b) the powers conferred by this Act to provide facilities for the storage and handling of aviation fuel at Glasgow Airport were limited to the provision of facilities for the handling and storage of up to 3.5 million litres of aviation fuel, consisting of fuel tanks with a maximum height of 9 metres; and
  - (c) the word “viaduct,” were inserted after the word “aqueduct,” in paragraph 2(a) of Class 29 in Part 11 of Schedule 1 to the 1992 Order.
- (3) Subsection (2)(a) 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.

### **39 Blighted land** **S**

This Act shall be deemed to be a special enactment for the purposes of paragraph 14 of Schedule 14 to the 1997 Act.

### **40 Method of vesting land** **S**

- (1) Section 195 of, and Schedule 15 to, the 1997 Act shall apply to the compulsory acquisition of land under this Act as if this Act were a compulsory purchase order so as to enable the authorised undertaker to vest by general vesting declaration any land authorised to be compulsorily acquired under this Act.
- (2) The notice required by paragraph 2 of that Schedule (as so applied) shall be a notice—
  - (a) that this Act has received Royal Assent;
  - (b) containing the particulars specified in sub-paragraph (1) of that paragraph;
  - (c) published and served in accordance with the requirements of paragraph 6 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42); and
  - (d) given at any time after this Act comes into force.

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#### **41 Certification of plans, etc. S**

- (1) The authorised undertaker shall, as soon as practicable after the coming into force of this Act, submit copies of the book of reference, the Parliamentary plans and the Parliamentary sections to the Clerk of the Parliament for certification under this section.
- (2) On being satisfied as to the accuracy of documents submitted under subsection (1), the Clerk shall certify them as being, respectively the book of reference, Parliamentary plans and Parliamentary sections referred to in this Act.
- (3) A document certified under this section shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### **42 Registration of new rights S**

- (1) A servitude or other right acquired by the authorised undertaker under section 13 or 14 shall, unless otherwise expressly stated in the instrument by which it is created, be treated for all purposes as benefiting the land from time to time held by the authorised undertaker for the purposes of the authorised works.
- (2) Notwithstanding section 75 of the Title Conditions (Scotland) Act 2003 (asp 9), where a servitude falls to be treated as mentioned in subsection (1), the deed by which it is created shall be effective whether or not it is registered against the benefited property.

#### **43 Mitigation of environmental impacts S**

- (1) The authorised undertaker shall employ all reasonably practicable means to ensure—
  - (a) that the environmental impacts of the construction and operation of the authorised works are not worse than the residual impacts identified in the environmental statement; and
  - (b) that—
    - (i) the additional environmental mitigation measures identified in the promoter's undertakings are carried out; or
    - (ii) the environmental impacts of the construction or operation of the authorised works are not worse than they would have been had the mitigation measures referred to in sub-paragraph (i) been carried out.
- (2) In this section—

“environmental statement” means the environmental statement submitted to the Parliament as an accompanying document with the Bill for this Act;

“the promoter's undertakings” means all undertakings given by Strathclyde Partnership for Transport as Promoter of the Bill for this Act—

  - (a) to the Committee during the Consideration Stage of the Bill for this Act; or
  - (b) to any person in connection with that Bill;

“residual impacts” means the environmental impacts of the construction or operation of the authorised works after the mitigation measures proposed in the environmental statement have been carried out.

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#### 44 Application of Crichel Downs Rules **S**

- (1) The authorised undertaker shall apply the Crichel Down Rules in relation to surplus land.
- (2) In this section—
  - “the Crichel Down Rules” means the rules set out in the Scottish Development Department Circular 38 of 1992 (“Disposal of Surplus Government Land – the Crichel Down Rules”) as amended or superseded from time to time;
  - “surplus land” means any land acquired compulsorily under section 12 which is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker's requirements for the provision of the authorised works.

#### 45 Compliance with code of construction practice and noise and vibration policy **S**

- (1) The authorised undertaker shall employ all reasonably practicable means to ensure that—
  - (a) the authorised works are carried out in accordance with the code of construction practice as approved by the local planning authority for each area in which the authorised works are located and from time to time amended or replaced in accordance with schedule 9; and
  - (b) the noise and vibration policy, as from time to time amended or replaced, is applied to the use and operation of the authorised works.
- (2) Neither the code of construction practice nor the noise and vibration policy shall be amended or replaced so as to reduce the standards of mitigation and protection provided for in the versions being amended or replaced.
- (3) Schedule 9 has effect in relation to the approval, amendment and replacement of the code of construction practice.
- (4) In this section “noise and vibration policy” means the “Policy Paper on behalf of the Promoter in respect of Noise and Vibration” dated 7 November 2006, a copy of which has been lodged with the Clerk of the Parliament to be held with the accompanying documents relating to the Bill for this Act.

#### 46 Regulation of mitigation measures **S**

- (1) The requirements imposed by or pursuant to the following provisions, that is to say—
  - (a) sections 43 and 45;
  - (b) schedule 9 to this Act,shall be enforceable, and the local planning authority shall have the responsibility to enforce them, as valid planning conditions.
- (2) For the purposes only of such enforcement and any appeal against a decision of the local planning authority under section 47(1)(b) of the 1997 Act, planning permission for the construction of the authorised works shall be deemed to have been granted under section 37 of that Act subject to the imposition of those conditions under section 41 of that Act.
- (3) The local planning authority shall appoint an Environmental Clerk of Works to monitor the compliance by the authorised undertaker with the requirements referred to in subsection (1).

**Changes to legislation:**

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