



# Airdrie-Bathgate Railway and Linked Improvements Act 2007

2007 asp 19

## PART 2

### LAND

#### *Supplementary*

#### **26 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 57) in respect of part only—
    - (i) of a house, building or factory; or
    - (ii) 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 and the authorised undertaker agrees to take 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.
- (5) If such a counter-notice is served within that period and the authorised undertaker does not agree to take the land subject to the counter-notice, the question as to what land the owner shall be required to sell shall be referred to the tribunal.

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- (6) 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.
- (7) 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.
- (8) 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.
- (9) If the tribunal determines that—
- (a) none of the land subject to the notice to treat can be taken—
    - (i) without material detriment to the remainder of the land subject to the counter-notice; or
    - (ii) in the case 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; and
  - (b) 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.
- (10) A notice to treat shall have the effect it is deemed to have under subsection (4), (8) or (9) whether or not the additional land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (11) 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.
- (12) If the authorised undertaker withdraws the notice to treat in accordance with subsection (11), it shall pay the owner compensation for any loss or expense

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occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

- (13) 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.

## **27 Extinction or suspension of private rights of way**

- (1) Subject to subsections (5) and (6), 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 29, whichever is sooner.
- (2) Subject to subsections (5) and (6), all private rights of way over land of which the authorised undertaker takes temporary possession under this section 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.
- (4) Any dispute as to a person's entitlement to compensation under subsection (3), or as to the amount of compensation, shall be determined under the 1963 Act.
- (5) This section does not apply in relation to any right of way to which section 224 or 225 of the 1997 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of schedule 7 to this Act applies.
- (6) Subsections (1) and (2) shall have effect subject to—
- (a) 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;
  - (b) any determination made by the authorised undertaker limiting the application of subsection (1) or (2) to the extent specified in the determination.
- (7) A determination relating to subsection (1) must be made before the date on which the right in question would have been extinguished.
- (8) A determination relating to subsection (2) may be made at any time before or after temporary possession of any land is taken.
- (9) Notice of determination under this section must be given to the person entitled to the right of way to which it relates as soon as practicable after the making of the determination.
- (10) This section does not apply to any of the land specified in columns (1), (2) and (3) of Part 2 of schedule 5 to this Act (land outside the limits of deviation in which rights are to be acquired).
- (11) In this section “private right of way” means a right of way that is vested in a person and is not a public right of way.

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## **28 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), 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), 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 authorised 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); and
  - (f) enter on the land for the purpose of exercising any power conferred by paragraphs (a) to (e).
- (2) No land may be entered, or apparatus placed or left on or removed from land, under subsection (1), 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).
- (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) Any question as to whether consent has been unreasonably withheld under subsection (4) shall, unless the parties otherwise agree, be referred to arbitration.
- (6) The authorised undertaker shall pay compensation for any damage occasioned, by the exercise of the powers conferred by this section, to the owners and occupiers of the land.
- (7) Any dispute as to a person's entitlement to compensation under subsection (6), or as to the amount of compensation, shall be determined under the 1963 Act.

## **29 Further powers of entry**

- (1) At any time after notice to treat has been served in respect of—
  - (a) any land; or
  - (b) any servitudes or other rights in, on or over land,
 which may be purchased compulsorily under this Act, the authorised undertaker may enter on and take possession of or use the land.

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- (2) No land may be entered under subsection (1) 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 or which is to be used.
- (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).

### **30 Persons under disability may grant servitudes, etc.**

- (1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of land 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 land.
- (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.

### **31 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)) 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)) apply summarily to the sheriff for the correction of such inaccuracy.
- (3) The notice required by subsections (1) and (2) 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) 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—

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- (a) in the case of an application under subsection (1), that the proposed amendment or addendum accurately reflects the obligation; and
  - (b) in the case of an application under subsection (2), that there is an inaccuracy which may be amended under this section.
- (5) In relation to any application under this section if it appears to the sheriff—
- (a) that the proposed amendment or addendum 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) shall state in what respect any matter is misstated or wrongly described.
- (7) If any counter-notice is given pursuant to subsection (4), 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)—
- (a) the Parliamentary plans and the book of reference shall be deemed to be corrected or amended 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 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) may only be made in respect of land identified in the book of reference or on the Parliamentary plans.
- (12) In this section “the sheriff” means the sheriff principal of, or any sheriff appointed for, the sheriffdom in which the land is located.

### **32 Period for compulsory acquisition of land**

- (1) The powers conferred by sections 17 and 19 for the compulsory acquisition of land and new rights shall cease after five years beginning on the date on which this Act comes into force.
- (2) The powers conferred by sections 17, 18 and 19 for the compulsory acquisition of such land and servitudes or other rights shall, for the purpose of this section, be deemed to have been exercised in relation to any land, servitude or right if before the expiry of five years beginning on the date on which this Act comes into force—
- (a) notice to treat has been served; or
  - (b) a declaration has been executed under paragraph 1 of Schedule 15 to the 1997 Act in respect of that land, servitude or right.

### **33 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 32 provided that—

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- (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 ten years in total.
- (2) If the Scottish Ministers extend, or further extend, the period referred to in subsection (1) of section 32, 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.

### **34 Time limit on validity of notices to treat**

Section 78 of the Planning and Compensation Act 1991 (c. 34) shall apply in relation to a notice to treat served under section 17 of the 1845 Lands Act as incorporated with this Act.

### **35 General vesting declarations**

- (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.

### **36 Application of Crichel Down Rules**

- (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 17 which is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker's requirements for the provision of the authorised works.

**Changes to legislation:**

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