



# Airdrie-Bathgate Railway and Linked Improvements Act 2007

2007 asp 19

## PART 3

### MISCELLANEOUS AND GENERAL

#### **37 Registration of new rights**

- (1) A servitude or other right acquired by the authorised undertaker under section 18 or 19 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 purpose 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) above, the deed by which it is created shall be effective whether or not it is registered against the benefited property.

#### **38 Power to fell, etc. trees or shrubs**

- (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.

*Status: Point in time view as at 08/05/2007.*

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- (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) 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).

### **39 Powers of disposal, agreements for operation, etc.**

- (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).
- (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 or rights 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 relating to the authorised works given by or on behalf of Network Rail 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 (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.

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- (7) In this section, unless the context otherwise requires “disposal” includes sale, lease, excambion and charge.

#### **40 Statutory undertakers, etc.**

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

#### **41 Historic obligations relating to former railway**

- (1) As from—
- (a) the acquisition of any land by the authorised undertaker, whether compulsorily or by agreement; or
  - (b) the entry on the land by the authorised undertaker under section 29,
- whichever occurs earlier, BRBR shall be discharged from any obligation to which it is subject in relation to that land under any statutory provision in a private Act or provisional order specifically relating to the former railway, including any provision of the 1845 Act or the Railways Clauses Act 1863 (c. 92) that is incorporated in such a private Act or provisional order.
- (2) As from the date of such discharge, all access and other rights (wherever exercisable) in respect of any structure located on land mentioned in subsection (1)(a) and of which, immediately before the discharge, BRBR had the benefit, being rights which arise under a statutory provision of the sort mentioned in subsection (1), shall have effect for the benefit of the authorised undertaker as statutory successor to BRBR in respect of any such structure.
- (3) In this section—
- “BRBR” means BRB (Residuary) Limited (company no. 04146505) and its successors;
  - “the former railway” means any railway which at any time prior to the passing of this Act, was situated within the limits of deviation of Work No. 1, Work No. 1A or Work No. 1AA;
  - “provisional order” means an order made under the Private Legislation Procedure (Scotland) Act 1936 (c. 52) or any earlier Act which that Act replaced.

#### **42 Listed buildings**

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.

#### **43 Saving for town and country planning**

- (1) So far as they are not inconsistent with the provisions of this Act, 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.

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- (2) In their application to development authorised by this Act, article 3 of, and Class 29 in Part 11 of Schedule 1 to, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (S.I. 1992/223) (which permit development authorised by (among other enactments) any Act of the Parliament which designates specifically both the nature of the development thereby authorised and the land upon which it may be carried out) shall have effect as if 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.
- (3) Subsection (2) 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.

#### **44 Assessment of effects on natural habitats**

In the application of the Conservation (Natural Habitats &c.) Regulations 1994 (SI 1994/2716) to the authorised works, the Parliament is the competent authority.

#### **45 Mitigation of environmental impacts**

- (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 as described in the environmental statement are not worse than the residual impacts identified in the environmental statement in relation to those works; 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 as so described 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 Network Rail 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.

#### **46 Compliance with code of construction practice, noise and vibration policy and mitigation commitment documents**

- (1) The authorised undertaker shall employ all reasonably practicable means to ensure that—

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- (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 and any mitigation commitment document, as from time to time amended or replaced, is applied to the use and operation of the authorised works as described in that policy and the environmental statement.
- (2) None of the code of construction practice, the noise and vibration policy or any mitigation commitment document 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 “Airdrie to Bathgate Noise and Vibration Policy” dated 12 March 2007, 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.

#### **47 Regulation of mitigation measures**

- (1) The requirements imposed by or pursuant to the following provisions, that is to say—
- (a) sections 45 and 46; and
  - (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 this Act, planning permission for the construction of the authorised works shall be deemed to have been granted under section 37 of the 1997 Act subject to the imposition of those conditions under section 41 of that Act.
- (3) The authorised undertaker shall maintain a directory containing the code of construction practice, the noise and vibration policy and any mitigation commitment document.
- (4) North Lanarkshire Council, West Lothian Council and City of Edinburgh Council shall appoint a single Planning Monitoring Officer to be responsible for the discharge by each of those councils of its functions under this section.

#### **48 Protection of the water environment**

Nothing in this Act affects the operation of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348) in relation to Works Nos. 1, 1G, 2B, 2C, 2E, 2F, 2J, 2L, 2S, 9, 10, 15, 16A, 18, 20A, 20B and 46, the attachment of overhead line equipment to Birdsmill Viaduct or any ancillary work described in paragraph 7 of schedule 2 to this Act.

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#### **49 Saving for Railways Act 1993**

Section 45 and section 46 do not affect the carrying out of any activity that is—

- (a) subject to regulation under the Railways Act 1993 (c. 43); or
- (b) connected with such an activity and subject to standards, guidance or other measures that form part of the terms of such regulation.

#### **50 Blighted land**

- (1) This Act shall be deemed to be a special enactment for the purposes of paragraph 14 of Schedule 14 to the 1997 Act.
- (2) Chapter II of Part V of that Act (which makes provision for the purchase of certain interests in land affected by planning proposals) shall apply to land authorised to be compulsorily acquired under this Act.

#### **51 Real burdens and servitudes, etc. affecting land acquired**

Any land acquired under or by virtue of this Act shall be treated as if it were acquired by virtue of a compulsory purchase order and the provisions of section 106 of the Title Conditions (Scotland) Act 2003 (asp 9) shall apply to it.

#### **52 Limits of existing railways**

The railways authorised by the enactments listed in schedule 10 to this Act shall for all purposes be deemed to have been constructed within the limits of deviation specified in those Acts.

#### **53 Certification of plans, etc.**

- (1) As soon as practicable after the coming into force of this Act, the authorised undertaker shall 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 subsection (2) shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### **54 Registration of new rights**

- (1) A servitude or other right acquired by the authorised undertaker under section 18 or 19 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.

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## **55 Dispute resolution**

- (1) Except as provided in sections 6(8) and 7(7), where under this Act any dispute (other than a dispute to which the provisions of the Lands Clauses Acts apply) is to be determined by arbitration (in default of other agreed dispute resolution procedure), the dispute shall be referred to, and settled by, a single arbiter 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.
- (2) 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).
- (3) 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)).
- (4) Subsection (3) 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.
- (5) In this section “the 1996 Act” means the Housing Grants, Construction and Regeneration Act 1996 (c. 53).

## **56 Service of notices, etc.**

- (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 (describing it); and

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- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This section shall not be taken to exclude the employment of any method of service not expressly provided for by it.



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