

# Waverley Railway (Scotland) Act 2006

## 2006 asp 13

### PART 1

#### WORKS, ETC.

##### *Works*

#### **1 Authority to construct works**

- (1) The authorised undertaker is hereby authorised to construct the authorised works, namely—
  - (a) the railway works referred to in section 2 below (“the railway works”); and
  - (b) the ancillary works referred to in section 3 below (“the ancillary works”).
- (2) The extent of the works for which authority is given by this section is subject to section 4 below (which permits deviation within limits from the lines and levels shown on the Parliamentary plans and sections).
- (3) If the authorised undertaker commences construction of the authorised works it shall construct the whole of the railway comprising the railway works (including all the stations) referred to in schedule 1 to this Act.

#### **2 The railway works**

The railway works are the works situated within the lateral limits of deviation shown on the Parliamentary plans, at the levels shown on the Parliamentary sections and specifically described in schedule 1 to this Act.

#### **3 The ancillary works**

- (1) The ancillary works are such works of the nature described in schedule 2 to this Act as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the railway works.
- (2) Where the authorised undertaker lays down works for the accommodation of cables or other apparatus for the purposes of the authorised works, the ancillary works may include, in or in connection with such works, accommodation for the apparatus of

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any other person and facilities for access to such accommodation and may do so notwithstanding that such works and facilities may be for the exclusive use of that other person.

#### **4 Permitted deviation within limits**

In constructing or maintaining any of the authorised works the authorised undertaker may—

- (a) deviate laterally from the lines or situations shown on the Parliamentary plans within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the Parliamentary sections—
  - (i) to any extent not exceeding 3 metres upwards; and
  - (ii) to any extent downwards as may be necessary or expedient.

#### **5 Access to works**

- (1) The authorised undertaker may, for or in connection with the authorised works, form and lay out means of access, or improve existing means of access—
  - (a) at the points shown on the Parliamentary plans; or
  - (b) in such location or locations within the limits of deviation or the limits of land to be acquired or used as may be approved by the roads authority.
- (2) Approval of the roads authority under subsection (1)(b) above shall not be unreasonably withheld.

#### **6 Construction and maintenance of new or altered roads**

- (1) Each of Works Nos. 1C, 1D, 1G, 1H, 1J, 1K, 1L, 2B, 2C, 2D, 3E, 5A, 5B, 5D, 5E, 5F, 5G, 7A, 7B, 8A, 10B, 10D, 10E, 10F, 10G, 10H, 10K and 10L shall be completed to the reasonable satisfaction of the roads authority and shall, unless otherwise agreed, be maintained—
  - (a) by and at the expense of the authorised undertaker for a period of 12 months from its completion; and
  - (b) at the expiry of that period by and at the expense of the roads authority.
- (2) Where a road is altered or diverted under this Act, the altered or diverted part of the road shall when completed to the reasonable satisfaction of the roads authority, unless otherwise agreed, be maintained—
  - (a) by and at the expense of the authorised undertaker for a period of 12 months from its completion; and
  - (b) at the expiry of that period by and at the expense of the roads authority.

#### **7 Vesting of private roads**

- (1) Each of the private roads comprising Works Nos. 1B and 7B shall, unless otherwise agreed between the authorised undertaker and—
  - (a) in the case of Work No. 1B the owner of the land abutting the north-west boundary of plot no. 40 on the Parliamentary plans in the local government area of Midlothian; and
  - (b) in the case of Work No. 7B the owner of Allanshaugh Farm, Allanshaugh,

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be maintained by and at the expense of the authorised undertaker for a period of 12 months from its completion.

- (2) At the expiry of the period during which the authorised undertaker is liable to maintain any road under subsection (1) above the road shall by virtue of this section vest in the person referred to in that subsection in relation to the road.

## **8 Private crossings**

- (1) If the authorised undertaker proceeds with the authorised works it shall make and maintain the private crossings described in columns (1), (2) and (3) of Part 1 of schedule 3 to this Act (“the continuing private crossings”).
- (2) The continuing private crossings shall be provided for the use of the persons (if any) entitled under any existing enactment to use the existing private crossings at those points, and those persons shall be entitled to use the continuing private crossings on the same basis in all respects as they are entitled to use the existing private crossings.
- (3) The authorised undertaker shall provide and maintain at each of the continuing private crossings such equipment as may from time to time be required for compliance with any requirement made by the Secretary of State under any enactment and, subject to such compliance, as may be agreed in relation to any crossing between the authorised undertaker and the person entitled to use the crossing.
- (4) Nothing in section 60 of the 1845 Act, as incorporated with this Act, shall require the authorised undertaker to provide any other private crossing for the purpose of making good any interruption caused by the authorised works to the use of any lands to which there attaches an entitlement to use any of the continuing private crossings.
- (5) The authorised undertaker shall stop up and discontinue the private crossings described in Part 2 of schedule 3 to this Act and on such stopping up and discontinuance all rights of way across those crossings shall be extinguished.
- (6) Any person who suffers loss by the extinguishment of any right of way over any of the private crossings described in Part 2 of schedule 3 to this Act shall be entitled to compensation to be determined, in case of dispute, under the 1963 Act.

## **9 Permanent stopping up of roads**

- (1) Subject to the provisions of this section, the authorised undertaker may, in connection with the construction of the authorised works, stop up each of the roads specified in columns (1) and (2) of Part 1 of schedule 4 to this Act to the extent specified (by reference to the letters and numbers shown on the relevant Parliamentary plans) in column (3) of that Part.
- (2) No part of a road specified in Part 1 of schedule 4 to this Act in relation to which a substitute road is specified in column (4) of that Part shall be stopped up under this section until the substitute has been completed to the reasonable satisfaction of the roads authority and is open for public use.
- (3) No part of a road specified in Part 1 of schedule 4 to this Act in relation to which neither a substitute road nor an alternative is specified in column (4) of that Part shall be stopped up under this section unless all the land which abuts it falls within one or more of the following categories, namely—

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- (a) land to which there is no right of access directly from the road or part to be stopped up;
  - (b) land to which there is reasonably convenient access otherwise than directly from the road or part to be stopped up;
  - (c) land as respects which the owners and occupiers have agreed to the stopping up of the road or part; and
  - (d) land of which the authorised undertaker has taken possession under section 24(1) below.
- (4) Where any part of a road has been stopped up under this section—
- (a) all rights of way over or along the stopped up part of the road shall be extinguished; and
  - (b) the authorised undertaker may, without making any payment, appropriate and use for the purposes of the authorised works so much of the site of the road as is bounded on both sides by land within the limits of deviation of the authorised works.
- (5) Any person who suffers loss by the extinguishment 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.

#### *Supplemental powers*

### **10 Temporary stopping up, alteration or diversion of roads**

- (1) During and for the purposes of the execution of the authorised works the authorised undertaker may temporarily stop up, alter or divert any road and may for any reasonable time—
- (a) divert the traffic from the road; and
  - (b) subject to subsection (2) below, prevent all persons from passing along the road.
- (2) The authorised undertaker shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the exercise of the powers conferred by this section if there would otherwise be no such access.
- (3) Without prejudice to the generality of subsection (1) above, the authorised undertaker may temporarily stop up, alter or divert each of the roads specified in columns (1) and (2) of Part 2 of schedule 4 to this Act to the extent specified (by reference to the letters and numbers shown on the relevant Parliamentary plans) in column (3) of that Part, and may for any reasonable time—
- (a) divert the traffic from the road; and
  - (b) subject to subsection (2) above, prevent all persons from passing along the road.
- (4) The authorised undertaker shall not exercise the powers conferred by this section—
- (a) in relation to any road specified as mentioned in subsection (3) above, without first consulting the road works authority; and
  - (b) in relation to any other road, without the consent of the road works authority.
- (5) Consent under subsection (4)(b) above shall not be unreasonably withheld but may be given subject to such reasonable conditions as the road works authority may require.

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- (6) Any question whether—
- (a) consent under subsection (4)(b) above has been unreasonably withheld; or
  - (b) a condition imposed under subsection (5) above is unreasonable,
- shall be determined by arbitration.

## **11 Discharge of water**

- (1) The authorised undertaker may use any available watercourse or any public sewer or drain for the drainage of water, and for that purpose may—
- (a) lay down, take up and alter pipes; or
  - (b) make openings into, and connections with the watercourse, sewer or drain,
- on any land within the limits of deviation or the limits of land to be acquired or used.
- (2) The authorised undertaker shall not discharge any water into any public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as the person may reasonably impose but shall not be unreasonably withheld.
- (3) The authorised undertaker shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld.
- (4) The authorised undertaker shall take such steps as are reasonably practicable to secure that any water discharged under the powers conferred by this section is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.
- (5) Any difference under this section arising between the authorised undertaker and a person who owns a public sewer or drain shall be determined by arbitration.
- (6) Nothing in this section shall affect the operation of Part IV of the 1991 Act.
- (7) In this section—
- “public sewer or drain” means a sewer or drain which belongs to Scottish Water, a private provider who has made an agreement with Scottish Water under section 1(2)(b) of the Sewerage (Scotland) Act 1968 (c. 47) (duty of local authority to provide sewerage for their area) or a roads authority; and
  - “watercourse” includes all rivers, streams, ditches, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

## **12 Safeguarding works to buildings**

- (1) The authorised undertaker may at its own expense and from time to time carry out such safeguarding works to any building any part of which is within 20 metres of any part of the authorised works as the authorised undertaker considers to be necessary or expedient.
- (2) The powers conferred by this section shall be exercised subject to and in accordance with schedule 5 to this Act.
- (3) In this section and that schedule—
- (a) “building” includes any structure or erection or any part of a building, structure or erection;

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- (b) any reference to a building within a specified distance of a work includes—
  - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated; and
  - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “safeguarding works”, in relation to a building, means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

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