Edinburgh Tram (Line Two) Act 2006

2006 asp 6

PART 2

LAND

Principal acquisition powers

23 Power to acquire land

(1) The authorised undertaker may acquire compulsorily—

(a) so much of the land shown on the Parliamentary plans within the limits of deviation for the authorised works shown on those plans and described in the book of reference as may be required for the purposes of the authorised works, and

(b) so much of the land specified in columns (1) and (2) of Parts 1 and 2 of schedule 6 (being land shown on the Parliamentary plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of those Parts of that schedule;

and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its tramway undertaking.

(2) This section is subject to sections 40 (Time limit for exercise of powers of acquisition), 24 (Powers to acquire new rights) and 26 (Temporary use of land for construction of works).

24 Powers to acquire new rights

(1) Subject to section 40 (Time limit for exercise of powers of acquisition), the authorised undertaker may compulsorily acquire such servitudes or other heritable or moveable rights over any land referred to in section 23(1)(a) or (b) (Power to acquire land) as may be required for any purpose for which that land may be acquired under that provision.

(2) Servitudes and other rights may be acquired by creating them as well as by acquiring servitudes and other rights already in existence in accordance with subsection (1).

(3) Where the authorised undertaker acquires any rights over land under this section, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) Section 90 (Parties not to be required to sell part of a house) of the 1845 Act shall not apply to any compulsory acquisition under this section.

(5) The provisions of the Lands Clauses Acts shall apply to rights over land acquired under this section as if they were lands within the meaning of those Acts.

25 Rights under or over roads

(1) The authorised undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any road shown on the Parliamentary plans and described in the book of reference as may be required for the purposes of the authorised works and may use the subsoil and air-space for those purposes or any other purpose connected with or ancillary to its tramway undertaking.

(2) The power under subsection (1) may be exercised in relation to a road without the authorised undertaker being required to acquire any part of the road or any servitude or other right in it.

(3) The authorised undertaker shall not be required to pay compensation for the exercise of the powers conferred by subsection (1) where the road is a public road; but where the road is not a public road, any person suffering loss by the exercise of that power shall be entitled to compensation.

(4) Subsections (2) and (3) shall not apply in relation to—

(a) any subway or underground building, or

(b) any cellar, vault, arch or other construction in or on a road which forms part of a building fronting onto the road.

[[F1](5) The powers conferred by this section constitute a real right.**]**

Textual Amendments

F1 S. 25(5) substituted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **Sch. 5 para. 47** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

26 Temporary use of land for construction of works

(1) The authorised undertaker may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of the land specified in columns (1) and (2) of schedule 7 (Land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that schedule relating to the authorised works specified in column (4) of that schedule,

(b) remove any buildings and vegetation from that land, and

(c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking possession of land under this section, the authorised undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The authorised undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this section after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of schedule 7.

(4) Before giving up possession of land of which temporary possession has been taken under this section, the authorised undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the authorised undertaker shall not be required to replace a building removed under this section.

(5) The authorised undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this section for any loss or damage arising from the exercise in relation to the land of the powers conferred by this section.

(6) Any dispute as to a person's entitlement to compensation under subsection (5), or as to the amount of compensation, shall be determined under the 1963 Act.

(7) Nothing in this section shall affect any liability to pay compensation in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under subsection (5).

(8) Where the authorised undertaker takes possession of land under this section, it shall not be required to acquire the land or any interest in it.

(9) In this section “building” includes any structure or any other erection.

27 Temporary use of land for maintenance of works

(1) The authorised undertaker may—
   (a) enter upon and take temporary possession of any land within 20 metres of any of the authorised works if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it or securing the safe operation of that work,
   (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Subsection (1) shall not authorise the authorised undertaker to take temporary possession of—
   (a) any house or garden belonging to a house, or
   (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this section, the authorised undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The authorised undertaker may only remain in possession of land under this section for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

Changes to legislation: *There are currently no known outstanding effects for the Edinburgh Tram (Line Two) Act 2006, Cross Heading: Principal acquisition powers. (See end of Document for details)*

(5) Before giving up possession of land of which temporary possession has been taken under this section, the authorised undertaker shall remove all works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The authorised undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this section for any loss or damage arising from the exercise in relation to the land of the powers conferred by this section.

(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.

(8) Nothing in this section shall affect any liability to pay compensation in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under subsection (6).

(9) Where the authorised undertaker takes possession of any land under this section, it shall not be required to acquire the land or any interest in it.

(10) In this section—

"building" includes structure or other erection, and

any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

28 Power as to acquisition and use of additional lands

(1) In addition to the lands which the authorised undertaker is authorised to acquire by section 23 (Power to acquire land) of this Act, the authorised undertaker may acquire, by agreement, any lands required for the following purposes—

(a) providing for the relocation of population or industry from any lands within the limits of deviation;

(b) providing recreational land or allotments in substitution for any lands within the limits of deviation;

(c) forming junctions between the works or any part of them and a road or other way; and

(d) executing, improving or maintaining the works.

(2) The authorised undertaker may be authorised by Scottish Ministers to purchase compulsorily any lands for the purposes mentioned in subsection (1) and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) shall apply in relation to any such compulsory purchase as if this section had been contained in a public general Act in force immediately before the commencement of that Act.

(3) The authorised undertaker may use any lands acquired by it in pursuance of the provisions of subsection (1) or (2), or any other land vested in it, for such purposes and for the purposes of section 1(3) (Power to construct works).

29 Power to retain, sell, etc., lands

Notwithstanding anything to the contrary contained in the 1845 Act, the authorised undertaker may retain, hold and use for such time as it thinks fit, or may from time to time sell, lease, excamb or otherwise dispose of any lands vested in or belonging to it for the purpose of the works, or that may be acquired under the provisions of

this Act, on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the authorised undertaker and their successors in title) as the authorised undertaker may see fit.

30 Application of the Crichel Down Rules

In the event that the authorised undertaker compulsorily acquires land as authorised by section 23 (Power to acquire land) and that land is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker's requirements, the authorised undertaker shall apply the rules set out in Scottish Development Department Circular 38 of 1992 ("Disposal of Surplus Government Land – The Crichel Down Rules") as may be amended or superseded from time to time.

Changes to legislation:
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