



# Edinburgh Airport Rail Link Act 2007

## 2007 asp 16

### PART 3

#### MISCELLANEOUS AND GENERAL

#### **37 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.
- (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).

#### **38 Traffic regulation**

- (1) The following provisions of this section shall have effect so as to enable the authorised undertaker, in connection with the construction of the authorised works, to regulate traffic in Burnshot Road for any of the purposes mentioned in section 1(1) of the 1984 Act.

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- (2) Part 1 of the 1984 Act shall have effect in relation to—
  - (a) the road specified in subsection (4); and
  - (b) the restriction and revocation authorised by that subsection,in accordance with the following provisions of this section.
- (3) Accordingly—
  - (a) section 1(1) of the 1984 Act shall apply as if the authorised undertaker as well as the Council were the local traffic authority;
  - (b) the restriction and revocation authorised by subsection (4) are included in the provision that may be made by a traffic regulation order under section 2 of that Act;
  - (c) any restriction or revocation made by the authorised undertaker or the Council under this section shall have effect as if duly made by the Council as a traffic regulation order under section 1(1) of that Act.
- (4) Subject to the provisions of this section, the local traffic authority may, in connection with the construction of the authorised works, at any time prior to the expiry of 12 months from the opening of the authorised works for public use—
  - (a) impose restrictions on the use of the portion of Burnshot Road between its junctions with, respectively, the A90 and Main Street, Kirkliston; and
  - (b) revoke in whole or in part any traffic regulation order in so far as the revocation is consequential on any restriction made under this subsection.
- (5) The local traffic authority shall not exercise the powers conferred by this section unless it has given not less than 12 weeks' notice in writing of its intention so to do to the Chief Constable of <sup>[F1</sup>the Police Service of Scotland]; and the authorised undertaker shall not exercise the powers conferred by this section unless it has in addition obtained the prior consent of the Council.
- (6) The Council shall not exercise the powers conferred by this section unless it has consulted the authorised undertaker.
- (7) The instrument by which any restriction or revocation is effected under this section may specify savings to which the restriction or revocation is subject.
- (8) Any restriction or revocation made under this section may be varied or revoked from time to time by subsequent exercises of the powers conferred by this section (whether or not prior to the expiry of the period of 12 months referred to in subsection (1)), but the authorised undertaker shall not vary or revoke any provision previously made by the Council under this section without the consent of the Council, and the Council shall not vary or revoke any provision previously made by the authorised undertaker under this section without the consent of the authorised undertaker.
- (9) Any restriction or revocation made under this section may also be varied or revoked from time to time by the Council by a traffic regulation order under the 1984 Act, but the Council shall not by such an order vary or revoke any provision previously made by the authorised undertaker under this section without the consent of the authorised undertaker.
- (10) Any consent required under subsection (5), (8) or (9) shall not be unreasonably withheld.

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- (11) Any dispute as to whether consent under subsection (5), (8) or (9) has been unreasonably withheld shall, unless the parties otherwise agree, be determined by arbitration.
- (12) In this section—
- “the 1984 Act” means the Road Traffic Regulation Act 1984 (c. 27);
  - “the Council” means City of Edinburgh Council; and
  - “local traffic authority” had the meaning given by section 121A of the 1984 Act.

#### Textual Amendments

- F1** Words in s. 38(5) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012](#) (asp 8), s. 129(2), [Sch. 7 para. 37](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

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

- (1) In addition to any thing 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 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 **tie** 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) On the completion of an agreement the effect of which is to—

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- (a) vest any of the authorised works in Network Rail; or
- (b) transfer to Network Rail the powers conferred by this Act relating to any of those works,

no further agreement concerning the matters described in subsection (2) may be made under this section in relation to the works so vested or the powers so transferred by that first agreement.

- (7) 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.
- (8) In this section, unless the context otherwise requires—
- “disposal” includes sale, lease, excambion and charge; and
  - “functions” includes powers, duties and obligations.

#### **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 Consolidation Act 1863 that is incorporated in such a private Act or provisional order.
- (2) 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 or Work No. 5;
  - “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 and conservation areas**

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, buildings in conservation areas and ancient monuments, etc.) shall have effect.

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

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

#### **44 Interpretation of sections 45 and 46**

- (1) In sections 45 and 46—
  - “currency”, in relation to a financial support contract, means the period during which—
    - (a) a financial support contract is in force; and
    - (b) financial obligations under the financial support contract relating to the provision of the authorised works remain to be discharged;
  - “developer contribution” means a developer contribution obtained under section 45(3);
  - “financial support contract” means—
    - (a) an agreement under which a party to the agreement makes a commitment to—
      - (i) procure funding for the provision of the authorised works;
      - (ii) approve any of the relevant planning authorities incurring expenditure or entering into any financial obligation for that purpose;
    - (b) a contract under which a party to the contract is obliged to provide money to pay for providing the authorised works and the authorised undertaker is obliged to pay interest or otherwise give monetary consideration for that money; or
    - (c) a contract under which a party to the contract is obliged to provide, or to procure the provision of, all or part of the authorised works for a consideration all or part of which is represented by the transfer or grant to that person of assets or benefits in either case other than money;
  - “provision”, in relation to any part of the authorised works, means the design, construction or financing of those works, and includes maintenance and operation so far as provided in conjunction with design, construction or financing; and

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“section 75 agreement” means an agreement entered into by a planning authority under section 75 of the 1997 Act.

- (2) For the purposes of subsection (1) and of sections 45 and 46 the relevant planning authorities are the City of Edinburgh Council and West Lothian Council.

#### **45 Planning agreements**

- (1) Section 75 of the 1997 Act shall, in its application to the relevant planning authorities, have effect in accordance with the following provisions of this section.
- (2) A relevant planning authority shall not be precluded from entering into a section 75 agreement which includes provision for developer contributions in respect of the authorised works by reason only of the fact that all or some of the authorised works are located outwith the local government area of the planning authority concerned.
- (3) Subject to subsections (4) to (10), in any section 75 agreement made pursuant to this section, financial provisions relating to the authorised works may include the payment of developer contributions towards the cost of providing the authorised works.
- (4) The developer contributions obtained by the relevant planning authorities towards the cost of providing the authorised works shall not in aggregate exceed the total of the sums necessary for the purpose of providing the authorised works.
- (5) No section 75 agreement made pursuant to this section shall—
- (a) have effect; or
  - (b) be made,
- after the expiry of ten years beginning on the date on which this Act comes into force.
- (6) No requirement for payment of a developer contribution under subsection (3) shall be included in any section 75 agreement relating to development (including the erection or alteration of an operational building) on operational land of Edinburgh Airport.
- (7) Where—
- (a) a person with an interest in land has made a contribution towards the cost of providing the authorised works or any development relating to, supporting or otherwise connected with the authorised works;
  - (b) development on that land is or may be the subject of a section 75 agreement; and
  - (c) a requirement for a developer contribution under subsection (3) might be included in the section 75 agreement,
- the value of the developer contribution which might be required shall be reduced by the value of the contribution referred to in paragraph (a).
- (8) Subsection (7)(a) applies to any contribution of the sort described in that subsection, whether made before or after the passing of this Act and whether or not pursuant to a section 75 agreement.
- (9) For the purposes of this section and section 46 the sums necessary for the purpose of providing the authorised works include all sums from time to time payable for that purpose, and (without prejudice to that generality) include interest payments, loan charges and sums payable under or in consequence of any financial support contract.

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- (10) Accordingly, during the period specified in subsection (5) developer contributions may be required at any time during the currency of a loan agreement or a financial support contract.
- (11) A requirement for developer contributions does not amount to the raising of money by making a levy or imposition within the meaning of section 22(7) of the Local Government in Scotland Act 2003 (asp 1).

#### **46 Application of developer contributions**

- (1) A relevant planning authority shall secure that any developer contribution it obtains towards the cost of providing the authorised works is paid to the burdened undertaker within 12 months of its receipt.
- (2) A developer contribution that is not paid to the burdened undertaker within 12 months of its receipt as required by subsection (1) shall on the expiry of that period be repayable to the person from whom it was obtained.
- (3) For the purposes of this section the burdened undertaker is a person or persons to whose account is debited the capital cost of constructing the authorised works, or any debt or other charge or encumbrance in respect of or by way of funding for such cost and who is—
  - (a) notified from time to time by the authorised undertaker to the relevant planning authority as the burdened undertaker to whom developer contributions should be paid, and if more than one in what proportions; or
  - (b) in the absence of such notification, the authorised undertaker.

#### **47 Blighted land**

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

#### **48 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.

#### **49 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

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- (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 **tie** 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.

## **50 Compliance with code of construction practice and noise and vibration policy, etc.**

- (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 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 “Noise and Vibration Policy Paper” dated 12 January 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.

## **51 Regulation of mitigation measures**

- (1) The requirements imposed by or pursuant to the following provisions, that is to say—
- (a) sections 49 and 50; and
  - (b) schedule 9 to this Act,

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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, any local construction plan and any mitigation commitment document.
- (4) The local planning authority shall appoint an Environmental Compliance Officer responsible for the discharge by the local planning authority of its functions under this section.

## **52 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. 3D, 3E, 4B and 4D or any ancillary work described in paragraph 7 of schedule 2 to this Act.

## **53 Saving for Railways Act 1993**

Section 49 and section 50 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.

## **54 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.

## **55 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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## 56 Dispute resolution

- (1) 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) Except as provided in sections 7(6) and 8(6), 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).

## 57 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; and
  - (b) leaving it—

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

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