



# 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.

## PART 2

### LAND

#### *Powers of acquisition*

### 13 Authority to acquire land

- (1) Subject to subsection (2) and sections 27, 29 and 30(4) below, the authorised undertaker is hereby authorised to acquire compulsorily—
  - (a) such of the land shown on the Parliamentary plans within the limits of deviation for the authorised works as—
    - (i) is described in the book of reference; and
    - (ii) may be required by the authorised undertaker for the purposes of the authorised works; and
  - (b) such of the land so shown within the limits of land to be acquired or used and so described as—
    - (i) is specified in columns (1), (2) and (3) of Part 1 of schedule 6 to this Act; and
    - (ii) may be required for the purposes specified in relation to that land in column (4) of that Part.
- (2) Notwithstanding subsection (1) above, the authorised undertaker does not have power to acquire compulsorily the land in Scottish Borders shown numbered 31 and 32 on sheet 33 of the Parliamentary plans.

### 14 Acquisition of subsoil or rights

- (1) In exercise of the powers conferred by section 13 above the authorised undertaker may, as regards any land authorised to be acquired under that section, compulsorily acquire—
  - (a) so much of the subsoil of the land; or
  - (b) such servitudes or other rights over the land,

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as may be required for any purpose for which that land may be acquired under that section.

- (2) Rights acquired under subsection (1) above may be heritable or moveable, and may be created as new rights for the purpose of acquisition under this section.
- (3) Where the authorised undertaker acquires subsoil or a right over land under subsection (1) above, the authorised undertaker shall not be required to acquire an interest in the land which is greater than that right.
- (4) Accordingly section 90 of the 1845 Lands Act (which provides that the owner of a house, building or manufactory who is willing to sell the whole property cannot be required to sell only part) shall not apply to any compulsory acquisition under this section or under section 15 below.
- (5) Subject to subsections (6) and (7) below, the Lands Clauses Acts, as incorporated with this Act, shall have effect with the modifications necessary to make them apply to the compulsory acquisition of new rights under this section or under section 15 below as they apply to the compulsory acquisition of land.
- (6) As so having effect, references in those Acts to land shall be treated as, or as including, references to new rights or to the land over which new rights are to be exercisable.
- (7) Section 61 of the 1845 Lands Act (estimation of purchase money and compensation) shall apply to the compulsory acquisition of such a right as if for the words from “value” to “undertaking” there were substituted the words “ extent (if any) to which the value of the land in or over which the right is to be acquired is depreciated by the acquisition of the right ”.

## **15 Purchase of specific new rights over land**

- (1) Subject to section 27 below, the authorised undertaker may acquire compulsorily in or over any of the land shown on the Parliamentary plans within any limits of land to be acquired or used and specified in columns (1), (2) and (3) of Part 2 of schedule 6 to this Act, such servitudes or other new rights as it requires for the purposes mentioned in column (4) of that Part.
- (2) The powers conferred by this section are additional to the powers conferred by section 14 above.

## **16 Rights in roads or public places**

- (1) The authorised undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any road or public place that is authorised to be compulsorily acquired under section 13 above as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes.
- (2) The powers conferred by subsection (1) above may be exercised in relation to a road or place without the authorised undertaker being required to acquire any part of the road or place or any servitude or right in relation to it.
- [<sup>F1</sup>(3) The powers conferred by this section constitute a real right.]
- (4) Any person, who is an owner or occupier of land in respect of which the power of appropriation conferred by subsection (1) above is exercised without the authorised undertaker acquiring any part of that person's interest in the land, and who suffers

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loss by reason of the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under the 1963 Act.

- (5) Subsection (2) above 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 or place.

#### Textual Amendments

- F1** S. 16(3) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 para. 49](#) (with s. 121, [Sch. 4 paras. 13, 16](#)); S.S.I. 2014/127, art. 2

## 17 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 any of the land specified in columns (1), (2) and (3) of schedule 7 to this Act for the purpose specified in relation to that land in column (4) of that schedule relating to the authorised works specified in column (5) 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 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.
- (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 specified in relation to that land in column (5) of schedule 7 to this Act.
- (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) above, or as to the amount of the compensation, shall be determined under the 1963 Act.
- (7) Without prejudice to section 20 below, nothing in this section shall affect any liability to pay compensation under section 6 or 36 of the 1845 Act or under any other enactment 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) above.



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- (8) The powers of compulsory acquisition of land conferred by this Act shall not apply in relation to any land of which temporary possession has been taken under subsection (1) above, except that the authorised undertaker shall not be precluded from acquiring—
- (a) interests in subsoil;
  - (b) new rights; or
  - (c) land within the limits of land to be acquired or used for any purpose specified in relation to that land in schedule 6 to this Act.
- (9) 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.
- (10) In this section “building” includes any structure or erection.

### *Compensation*

#### **18 Disregard of certain interests and improvements**

- (1) In assessing the compensation (if any) payable on the acquisition from any person of any land under this Act, the tribunal shall not take into account—
- (a) any interest in land; or
  - (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land, if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.
- (2) In subsection (1) above “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### **19 Set-off of betterment against compensation**

In determining the amount of compensation or purchase money payable to any person in respect of an interest in land acquired under this Act in a case where—

- (a) the person has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of the person's interest in any such contiguous or adjacent land is enhanced by reason of the works authorised by this Act or any of them,

the amount of the enhancement in value shall be set off against the compensation or purchase money.

#### **20 No double recovery**

Compensation shall not be payable in respect of the same matter both under this Act and under any other enactment, any contract or any rule of law.

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### Supplementary

## 21 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 52 below) in respect of—
    - (i) land forming only part of a house, building or factory; or
    - (ii) 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, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the authorised undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.
- (5) 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.
- (6) 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.
- (7) 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,

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whether or not the additional land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.

- (8) If the authorised undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, 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) that 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 whether or not the whole of that land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.

- (9) 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; and if it does so it shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.
- (10) 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.

## **22 Extinction or suspension of rights of way**

- (1) Subject to subsection (6) below, 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 24 below, whichever is sooner.
- (2) Subject to subsection (7) below, all private rights of way over land of which the authorised undertaker takes temporary possession under this Act 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 to be determined, in case of dispute, under the 1963 Act.
- (4) This section does not apply in relation to any right of way to which section 224 or 225 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (extinguishment of rights of statutory undertakers etc.) applies.
- (5) Subsections (1) and (2) above shall have effect subject to 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.

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- (6) The authorised undertaker may, before whichever is the sooner of the events specified in paragraphs (a) and (b) of subsection (1) above, determine that any right of way specified in the determination is capable of being exercised compatibly with the construction and maintenance of the relevant part of the authorised works, and that subsection (1) above shall not apply to that right.
- (7) The authorised undertaker may, at any time before or after temporary possession of any land is taken, determine that any right of way specified in the determination is capable of being exercised, in whole or to such extent as may be specified in the determination, compatibly with the temporary use of the land under this Act, and that subsection (2) above shall not apply to that right or shall only apply to the extent specified in the determination.
- (8) Notice of a determination under this section shall be posted on the land mentioned in subsection (1) or, as the case may be, (2) above—
  - (a) in the case of a determination under subsection (6) above, for the period of 28 days after the sooner of the events specified in paragraphs (a) and (b) of subsection (1) above; and
  - (b) in the case of a determination under subsection (7) above, throughout the period that the authorised undertaker remains in possession of the land.
- (9) This section does not apply to any of the land specified in columns (1), (2) and (3) of Part 2 of schedule 6 to this Act (land outside the limits of deviation in which rights are to be acquired).

## **23 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) above, 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) above, 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 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) above; and
  - (f) enter on the land for the purpose of exercising any power conferred by paragraphs (a) to (e) above.
- (2) No land may be entered, or equipment placed or left on or removed from land, under subsection (1) above, 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

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- (b) may enter with such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by subsection (1) above.
- (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) The authorised undertaker shall make compensation for any damage occasioned, by the exercise of the powers conferred by this subsection, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under the 1963 Act.

## **24 Further powers of entry**

- (1) At any time after notice to treat has been served in respect of any land which may be purchased compulsorily under this Act the authorised undertaker may enter on and take possession of the land.
- (2) No land may be entered under subsection (1) above 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.
- (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).

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

- (1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands 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 lands.
- (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.
- (3) The provisions of the Lands Clauses Acts with respect to lands and feu duties or ground annuals shall, so far as applicable, apply to any grant under this section and to the servitudes, rights and privileges granted.

## **26 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,

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the authorised undertaker or the owner of the land may (after giving the notice required by subsection (3) below) 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) below) apply summarily to the sheriff for correction of such inaccuracy.
- (3) The notice required by subsections (1) and (2) above 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) above 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—
  - (a) in the case of an application under subsection (1) above, that the proposed amendment accurately reflects the obligation; and
  - (b) in the case of an application under subsection (2) above, that there is an inaccuracy which may be amended under this section.
- (5) In relation to any application under this section which has not been the subject of a counter-notice, if it appears to the sheriff—
  - (a) that the proposed amendment 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) above shall state in what respect any matter is misstated or wrongly described.
- (7) If any counter-notice is given pursuant to subsection (4) above, 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) above—
  - (a) the Parliamentary plans and the book of reference shall be deemed to be corrected 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 and execute the works 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) above may only be made in respect of land identified in the book of reference and on the Parliamentary plans.
- (12) In this section “the sheriff” means the sheriff principal of, or any sheriff appointed for, the sheriffdom of Lothian and Borders.

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

- (1) The authority given by sections 13 and 15 above for the compulsory acquisition of land and new rights for the purposes of this Act shall cease five years from the date on which this Act comes into force.
- (2) The powers conferred by sections 13, 14 and 15 above for the compulsory acquisition of such land and servitudes or other rights shall, for the purposes of this section, be deemed to have been exercised in relation to any land, servitude or right if before the expiry of five years from the date on which this Act comes into force notice to treat has been served in respect of that land, servitude or right.

### **Modifications etc. (not altering text)**

- C1** S. 27(1) modified (1.3.2011) by [The Waverley Railway \(Scotland\) Act 2006 \(Extension of Time for Land Acquisition\) Order 2011 \(S.S.I. 2011/14\)](#), arts. 1, 2

## **28 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 27 above provided that—
  - (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 10 years in total.
- (2) If the Scottish Ministers extend, or further extend, the period referred to in subsection (1) of section 27 above, 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.

## **29 Acquisition of land for Work No. 1B**

The authorised undertaker shall not construct Work No. 1B or acquire any land for that purpose if, before the authorised undertaker serves notice to treat or makes a general vesting declaration in respect of plot no. 40 on the Parliamentary plans in the local government area of Midlothian, there is in existence a private road capable of giving access from Work No. 1C to the CPL Distribution Depot at the former Monkton Hall Colliery, Danderhall.

## **30 Acquisition of land for Works Nos. 1C and 1E**

- (1) Subject to subsection (2) below, as soon as may be after the opening for public use of Works Nos. 1C and 1E, the authorised undertaker shall transfer to the owner of the land abutting the northern boundary of the development land so much of the development

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land as is not permanently required by the authorised undertaker for the purpose of those works.

- (2) A transfer under subsection (1) above—
- (a) may be subject to the creation for the benefit of the authorised undertaker of such servitudes or other rights in or over the land transferred as the authorised undertaker may require for the purpose of maintaining or operating the authorised works; and
  - (b) shall be for a consideration calculated as if the land were being transferred pursuant to section 120 of the 1845 Lands Act (which relates to the sale of superfluous lands by an acquiring authority) and determined in case of dispute by the tribunal.
- (3) Subsection (4) below shall have effect if before the authorised undertaker serves notice to treat or makes a general vesting declaration in respect of the development land there are in existence bridges in the same position as, and satisfying the authorised undertaker's requirements for—
- (a) so much of Work No. 1C as comprises a bridge over the railway (Work No. 1); and
  - (b) Work No. 1E.
- (4) If this subsection has effect, the authorised undertaker shall not acquire or use so much of the development land or plots nos. 43 and 43a on the Parliamentary plans in the local government area of Midlothian as is required for the construction of Works Nos. 1C and 1E, but nothing in this subsection prevents the authorised undertaker from acquiring in or over the development land such servitudes or rights as the authorised undertaker may require for the purpose of maintaining or operating the authorised works.
- (5) In this section “the development land” means plots nos. 46 and 46a on the Parliamentary plans in the local government area of Midlothian.

### PART 3

#### MISCELLANEOUS AND GENERAL

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

- (1) The authorised undertaker may fell, 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) above, 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 to be determined, in case of dispute, under the 1963 Act.



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- (4) 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) above.

### **32 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 Scottish Borders Council 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—
- (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 may be made under this section in relation to the works vested or powers transferred by that first agreement.
- (7) In subsection (1), an agreement entered into in connection with the authorised works includes any agreement—

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- (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.

### **33 Statutory undertakers, etc.**

The provisions of schedule 8 to this Act shall have effect in relation to the authorised works.

### **34 Arbitration**

- (1) Where under any provision of this Act any difference (other than a difference to which the provisions of the Lands Clauses Acts apply) is to be determined by arbitration, then, unless otherwise provided, the difference 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) above).
- (4) Subsection (3) above 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, Regeneration and Construction Act 1996 (c. 53).

### **35 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.

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- (3) For the purposes of subsection (1) above 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
  - (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.

### **36 Listed buildings and conservation areas**

Schedule 9 to this Act (which makes provision for the disapplication or modification, in relation to the authorised works, of controls relating to listed buildings and buildings in conservation areas) shall have effect.

### **37 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) above 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.

### **38 Interpretation of sections 39 and 40**

- (1) In sections 39 and 40 below—

“currency”, in relation to a financial support contract, means the period during which—

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- (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 39(4) below;
- “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 railway 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
- “relevant planning agreement” means an agreement entered into by a planning authority under section 75 of the 1997 Act in connection with land on which any development can be expected to benefit from or be enhanced by the provision of the authorised works.

- (2) For the purposes of subsection (1) above and of sections 39 and 40 below the relevant planning authorities are Scottish Borders Council, Midlothian Council and City of Edinburgh Council.

### **39 Planning agreements**

- (1) Section 75 of the 1997 Act, section 69 of the Local Government (Scotland) Act 1973 (c. 65) and Part 3 of the Local Government in Scotland Act 2003 (asp 1) shall, in their application to the relevant planning authorities, have effect in accordance with the following provisions of this section.
- (2) Subject to subsections (5) to (8) below, a relevant planning agreement may include provision relating to, or to development supporting, or otherwise connected with, the authorised works.
- (3) A relevant planning authority shall not be precluded from entering into a relevant planning agreement which includes provision relating to, or to development supporting, or otherwise connected with, 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.
- (4) Subject to subsections (5) to (8) below, in any relevant planning agreement made pursuant to this section financial provisions relating to the authorised works may

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require the payment of developer contributions towards the cost of providing the authorised works or any development relating to, supporting or otherwise connected with the authorised works.

- (5) 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.
- (6) No developer contribution under subsection (4) above shall be required more than 30 years after the opening of the railway works for public use.
- (7) For the purposes of this section and section 40 below 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.
- (8) Accordingly, developer contributions may be required at any time during the currency of a loan agreement or a financial support contract.
- (9) 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).

#### **40 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 (whether by payment to the authorised undertaker or otherwise) applied for the purpose of providing the authorised works.
- (2) A developer contribution that is not within 12 months of its receipt by the relevant planning authority applied as required by subsection (1) above shall on the expiry of that period be repayable to the person from whom it was obtained.

#### **41 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) Accordingly, 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.

#### **42 Method of vesting land**

- (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;

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- (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.

#### **43 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) above, 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) above shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### **44 Registration of new rights**

- (1) A servitude or other right acquired by the authorised undertaker under section 14 or 15 above 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) above, the deed by which it is created shall be effective whether or not it is registered against the benefited property.

#### **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 are not worse than the residual impacts identified in the environmental statement; 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 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, as amended by “Waverley Railway Act: Further Environmental Information (February 2005)” and the “Addendum Environmental Statement: Stow Station (January 2006)”;

“the promoter's undertakings” means all undertakings given by Scottish Borders Council as Promoter of the Bill for this Act—

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- (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 and Noise and Vibration Policy**

- (1) The authorised undertaker shall employ all reasonably practicable means to ensure that—
  - (a) the authorised works are carried out in accordance with—
    - (i) the code of construction practice; and
    - (ii) any relevant local construction code,  
as approved by the local planning authority and from time to time amended or replaced; and
  - (b) the noise and vibration policy, as from time to time amended or replaced, is applied to the use and operation of the authorised works.
- (2) Neither the code of construction practice nor the noise and vibration policy 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 10 has effect in relation to the approval, amendment, replacement and effect of the code of construction practice.
- (4) In this section “noise and vibration policy” means the “Policy Paper on behalf of the Promoter in respect of Noise and Vibration” dated 28th November 2005, 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 Works affecting the River Tweed Special Area of Conservation**

- (1) This section has effect in relation to the construction of the specified works, namely—
  - (a) Works Nos. 5, 5D, 6, 7, 7B, 8, 9 and 10; and
  - (b) all related works and operations.
- (2) Paragraphs 2 to 7 of Part 1 of schedule 11 to this Act shall have effect in relation to the construction of the specified works at the sites identified in paragraph 1 of that Part.
- (3) Regulation 60 of the Conservation (Natural Habitats, etc.) Regulations 1994 (SI 1994/2716) shall not apply to the works and operations described in Parts 1 and 2 of schedule 11 to this Act to the extent to which they have been the subject of appropriate assessment by the Scottish Parliament prior to the passing of the Bill for this Act.

#### **48 Regulation of mitigation measures**

- (1) The requirements imposed by or pursuant to the following provisions, that is to say—
  - (a) sections 45, 46 and 47 above;
  - (b) schedules 10 and 11 to this Act;
  - (c) any agreement under paragraph 6 of schedule 11; and

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(d) any code of construction practice or local construction code approved, amended or replaced under either of those schedules, shall be enforceable, and the local planning authority shall have the duty to enforce them, as valid planning conditions.

- (2) For the purpose only of such enforcement, 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 local planning authority shall appoint an Environmental Clerk of Works to monitor the carrying out by the authorised undertaker of the measures referred to in subsection (1).

#### **49 Application of the Crichton Down Rules**

In the event that the authorised undertaker compulsorily acquires land as authorised by section 13 above and that land is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker's requirements for the provision of the authorised works, the authorised undertaker shall apply the rules set out in Scottish Development Department Circular 38 of 1992 (“Disposal of Surplus Government Land – the Crichton Down Rules”) as may be amended or superseded from time to time.

#### **50 Application of original enactments**

- (1) The provisions of the original enactments mentioned in schedule 12 to this Act shall apply to the authorised works as though for references in those provisions to any former railway there were substituted references to the whole or any part of the authorised works and as if any reference to the railway undertaker (however described) were a reference to the authorised undertaker.
- (2) Except as provided in subsection (1) above, nothing in this Act shall have the effect of applying the original enactments to the authorised works.
- (3) 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 24 above, whichever is sooner, BRBR shall be discharged from any obligation to which it is subject in relation to that land under any statutory provision relating to the former railway.
- (4) In this section “BRBR” means BRB (Residuary) Limited (company no. 04146505) and its successors.

#### **51 Rights of the Scottish Ministers**

- (1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Scottish Ministers.
- (2) Without prejudice to the generality of subsection (1) above, nothing in this Act authorises the acquisition of land (including any rights or interests in land) belonging to the Scottish Ministers without their consent in writing.



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*Changes to legislation: There are currently no known outstanding effects for the Waverley Railway (Scotland) Act 2006. (See end of Document for details)*

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- (3) A consent under subsection (2) above may be given unconditionally or subject to terms and conditions.

## PART 4

### SUPPLEMENTARY

#### 52 Incorporation of enactments

- (1) The following enactments (so far as applicable for the purposes of and not inconsistent with, or varied by, the provisions of this Act) are incorporated with this Act—
- (a) the Lands Clauses Acts, except sections 120 to 124 and section 127 of the 1845 Lands Act;
  - (b) the 1845 Act, except sections 1, 7, 8, 9, 15, 17, 19, 20, 22, 23 and 25; and
  - (c) in the Railways Clauses Act 1863 (c. 92), Part I (relating to construction of a railway) except sections 13, 14 and 19.
- (2) This Act shall be deemed to be the special Act for the purposes of the enactments incorporated by subsection (1) above.

#### 53 Interpretation

- (1) In this Act—
- “the 1845 Act” means the Railways Clauses Consolidation (Scotland) Act 1845 (c. 33);
  - “the 1845 Lands Act” means the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19);
  - “the 1963 Act” means the Land Compensation (Scotland) Act 1963 (c. 51);
  - “the 1991 Act” means the New Roads and Street Works Act 1991 (c. 22);
  - “the 1997 Act” means the Town and Country Planning (Scotland) Act 1997 (c. 8);
  - “the ancillary works” has the meaning given by section 3 above;
  - “the authorised undertaker” means, at any time, Scottish Borders Council or such other person or persons in whom are vested at that time some or all of the functions conferred by this Act concerning the authorised works;
  - “the authorised works” means the works authorised by this Act;
  - “book of reference” means the book of reference submitted to the Parliament as an accompanying document with the Bill for this Act, together with the volume entitled “Book of Reference – Stow Station”, which was submitted to the Committee in connection with the Bill for this Act, 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;
  - “code of construction practice” means the edition of the Code of Construction Practice (which sets out the measures to be employed in the construction of the authorised works so to mitigate the impact of those works) Version 7 dated 28th April 2006, 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;
  - “the Committee” means the Waverley Railway (Scotland) Bill Committee to which the Bill for this Act was referred;

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“construction” includes execution, placing, alteration and reconstruction and demolition; and “construct” and “constructed” have corresponding meanings;

“the continuing private crossings” has the meaning given by section 8(1) above;

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the existing private crossings” has the meaning given by section 8(2) above;

“the former railway” means any railway which prior to the passing of this Act was situated within the limits of deviation;

“the limits of deviation” means the limits so described on the Parliamentary plans;

“the limits of land to be acquired or used” means the limits so described on the Parliamentary plans;

“local construction code” means a code of practice intended to define, and from time to time redefine, the authorised undertaker's policy in relation to construction practice to be adopted in the carrying out of the authorised works within an area specified in that code;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 2904587 (England)) whose registered office is at 40 Melton Street, London NW1 2EE and any other of the Network Rail group of companies which holds property for railway purposes;

“the original enactments” means any enactment by which any former railway was authorised, and any other enactment of local application relating to any former railway;

“Parliamentary plans” means the plans submitted to the Parliament as accompanying documents with the Bill for this Act, together with the Stow maps, plans and sections;

“Parliamentary sections” means the sections submitted to the Parliament as accompanying documents with the Bill for this Act;

“the railway works” has the meaning given by section 2 above;

“River Tweed Special Area of Conservation” means the special area of conservation designated, under Directive [92/43/EEC](#) on the Conservation of Natural Habitats and of Wild Flora and Fauna, with the SAC EU Code UK 0012691;

“road” has the meaning given by section 107 of the 1991 Act;

“the road works authority” has the meaning given by section 108 of the 1991 Act;

“the roads authority” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c. 54);

“SEPA” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995 (c. 25);

“SNH” means Scottish Natural Heritage established under section 1 of the Natural Heritage (Scotland) Act 1991 (c. 28);

“Stow maps, plans and sections” means the volume of the Parliamentary plans entitled “Maps, Plans and Sections – Stow Station”, which was submitted to the Committee in connection with the Bill for this Act, 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;

“Stow plan” means the plan forming part of the Stow maps, plans and sections; and

“the tribunal” means the Lands Tribunal for Scotland.

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- (2) Except in relation to section 4 above, all directions, distances and lengths stated in any description of works, powers or lands in this Act shall be construed as if the words “ or thereby ” were inserted after each such direction, distance and length.

**54 Short title**

This Act may be cited as the Waverley Railway (Scotland) Act 2006.

**Changes to legislation:**

There are currently no known outstanding effects for the Waverley Railway (Scotland) Act 2006.