



Edinburgh Airport Rail Link Act 2007

2007 asp 16

PART 1

WORKS, ETC.

Works

1 Power to construct works

The authorised undertaker may construct the authorised works, namely—

- (a) the scheduled works referred to in section 2 (“the scheduled works”);
- (b) the ancillary works referred to in section 3 (“the ancillary works”); and
- (c) any work authorised by section 11, 15 or 16.

2 The scheduled works

- (1) The scheduled 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.
- (2) The extent of the scheduled works for which authority is given by section 1 is subject to section 4 (which permits deviation within limits from the lines and levels shown on the Parliamentary plans and sections).

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 scheduled works.
- (2) Subject to subsection (3), section 1 only authorises the carrying out or maintenance of ancillary works—
 - (a) within the limits of deviation; and
 - (b) on land specified in columns (1), (2) and (3) of schedule 5 for the purpose specified in relation to that land in column (4) of that schedule (being land

shown on the Parliamentary plans as lying within the limits of land to be acquired or used).

- (3) The authorised undertaker may construct and maintain ancillary works identified in paragraphs 10 and 11 of schedule 2 to this Act anywhere within the Act limits.

4 Permitted deviation within limits

- (1) Subject to subsection (2), in constructing or maintaining the scheduled 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) in the case of Works Nos. 1 and 1A, upwards by a maximum of 7 metres;
 - (ii) in the case of any part of Work No. 2, 3A, 3B, 4, 4A, 5 or 6 which, at the date on which this Act comes into force, is on operational land of Edinburgh Airport, upwards by a maximum of 1 metre;
 - (iii) in the case of any part of Work No. 2, 3A, 3B or 5 which, at the date on which this Act comes into force, is on safeguarded airport land, upwards by a maximum of 1 metre or, with the agreement of EAL (which agreement shall not be unreasonably withheld), by a maximum of 3 metres from such levels;
 - (iv) in any other case, upwards by a maximum of 3 metres; and
 - (v) to any extent downwards.
- (2) Subsections (1)(b)(ii), (iii) and (iv) do not apply to the ventilation shafts forming part of Works Nos. 2, 3A, 3B and 4.
- (3) In this section “safeguarded airport land” means any land within the limits of deviation, the limits of land to be acquired or used or the limits of safeguarding which is within the land to the north of Edinburgh Airport (as existing at the date on which this Act comes into force) which is shown indicatively on the map of Edinburgh Airport included in paragraph 5.12 of the White Paper ‘The Future of Air Transport’ (December 2003, Cmd. 6046) and forms part of the land so shown within the possible new airport boundary.

5 Work No. 4: station and southern tunnel portal

- (1) The design, construction and location within the parameters described in schedule 1 to this Act of—
- (a) the station; and
 - (b) the southern portal of the tunnel,
- forming part of Work No. 4 shall be subject to agreement between the authorised undertaker and EAL.
- (2) Any dispute as to whether EAL or the authorised undertaker ought reasonably to accept any term proposed by the other of them for inclusion in an agreement under subsection (1) shall, unless the parties otherwise agree, be determined by arbitration; and in determining any dispute the arbiter shall have regard to the respective needs of EAL and the authorised undertaker for the future safe, effective and efficient operation of their respective undertakings.

- (3) Subject to section 36, and unless otherwise agreed with EAL, the authorised undertaker shall not take possession of any land for the purpose of constructing any work to which subsection (1) relates or commence any part of such a work until agreement is reached or a determination is made in accordance with the requirements of this section.

6 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, to or from any public road—
- (a) at the points shown on the Parliamentary plans; or
 - (b) in such location or locations within the Act limits as may be approved by the roads authority.
- (2) Approval of the roads authority under subsection (1)(b) shall not be unreasonably withheld or delayed and any question whether an approval has been unreasonably withheld or delayed shall, unless the parties otherwise agree, be determined by arbitration.

7 Construction and maintenance of new or altered roads

- (1) Each of Works Nos. 2C, 2J, 2K, 4H, 4J, 4M, 4P, 5B, 5C, 5E to 5H, 5J, 5K, 5P and 5R and so much of Work No. 4T as is situated in plots nos. 421b, 422a and 413b shall, unless otherwise agreed, be completed to the reasonable satisfaction of the roads authority.
- (2) Following such completion the work shall, unless otherwise agreed between the authorised undertaker and the roads authority, be maintained by and at the expense of the authorised undertaker for a period of 12 months from its completion.
- (3) Subject to subsection (7), at the expiry of the period during which the authorised undertaker is liable to maintain any work under subsection (2), the work and its associated land shall by virtue of this section vest in the roads authority.
- (4) The authorised undertaker shall give the roads authority notice in writing with a certificate that any authorised work to which subsection (3) applies is complete.
- (5) The roads authority may, within 21 days after such service, give the authorised undertaker a counter-notice in writing that the notice is disputed on the ground that the road is not complete.
- (6) Any dispute as to the completion of a road shall be determined by arbitration, and the determination of the arbiter (or other person to whom the dispute is referred) shall be final and binding.
- (7) Any road or associated land which is the subject of a notice under subsection (4) shall vest—
- (a) 28 days after the service of the notice;
 - (b) on the date of a determination under subsection (6) that the road is complete;
 - (c) on the date on which the authorised undertaker complies with any conditions for completion that are specified in the determination; or
 - (d) on the expiry of the period specified in subsection (3),

whichever is the latest.

- (8) A certificate issued by or on behalf of the authorised undertaker as to the date on which the authorised undertaker complied with any conditions of the sort referred to in subsection (7)(c) together, if so requested by the roads authority, with a report from a consultant to be agreed between the authorised undertaker and the roads authority confirming such compliance, shall for the purposes of this section be conclusive evidence of such compliance.
- (9) Nothing in this section shall prejudice the operation of section 146 of the 1991 Act (which enables the local roads authority to declare that a road shall become a public road); and the authorised undertaker shall not by reason of any duty under this section to maintain a road be taken to be the roads authority in relation to that road for the purposes of Part IV of that Act.
- (10) Nothing in this section shall have effect in relation to road works as respects which the provisions of Part IV of the 1991 Act apply.

8 Vesting of private roads and private accesses

- (1) Unless otherwise agreed between the authorised undertaker and the intended owner, each of—
 - (a) the private roads comprising Works Nos. 1B, 2D and 4L; and
 - (b) the private accesses comprising Works Nos. 2E, 5A, 6A, 6B and 6D, so much of Work No. 4T as is situated in plot no. 422b and so much of Castle Gogar Drive as is situated in plots nos. 705 and 711b,
 shall, following its completion as certified or determined under this section, be maintained by and at the expense of the authorised undertaker for a period of 12 months from such completion.
- (2) Subject to subsection (7), at the expiry of the period during which the authorised undertaker is liable under subsection (1) to maintain any private road or private access, the road or access and its associated land shall, if they are vested in the authorised undertaker, by virtue of this section vest in the intended owner.
- (3) Any vesting effected by subsection (2) shall be subject to such rights specified by the authorised undertaker as may be requisite to reflect public or private rights in any road or access for which the private road or private access is a substitute.
- (4) The authorised undertaker shall give every intended owner notice in writing specifying—
 - (a) the private road, private access or associated land that is to be vested;
 - (b) details of any other person in whom that road, access or land is to be vested; and
 - (c) details of any rights to which the road, access or land is to be subject and of every person who has or will have such rights,
 together with a certificate that the road or access is complete.
- (5) A person on whom a notice is served under subsection (4) may, within 21 days after such service, give the authorised undertaker a counter-notice in writing that the notice is disputed on the grounds that—
 - (a) the person on whom the notice has been served is not such a person as is described in subsection (9);

Status: This is the original version (as it was originally enacted).

- (b) the road or access is not complete; or
 - (c) any rights specified under subsection (4)(c) are not such as described in that subsection.
- (6) Any dispute as to whether a person is such a person as is described in subsection (9), as to the completion of a private road or private access or as to whether rights specified in a notice are such as described in subsection (4)(c) shall be determined by arbitration, and the determination of the arbiter (or other person to whom the dispute is referred) shall be final and binding.
- (7) Any private road, private access or associated land which is the subject of a notice under subsection (4) shall vest—
- (a) 28 days after the service of the notice;
 - (b) on the date of a determination under subsection (6) that the person on whom the notice has been served is such a person as is described in subsection (9) and that the road or access is complete;
 - (c) on the date on which the authorised undertaker complies with any conditions for completion that are specified in the determination; or
 - (d) on the expiry of the period specified in subsection (2),
- whichever is the latest.
- (8) A certificate issued by or on behalf of the authorised undertaker as to the date on which the authorised undertaker complied with any conditions of the sort referred to in subsection (7)(c) together, if so requested by the intended owner, with supporting consultants' reports, shall for the purposes of this section be conclusive evidence of such compliance.
- (9) In this section “intended owner” means a person or persons identified by the authorised undertaker to become the owner of a private road or private access constructed under this Act as being—
- (a) the owner of the private road or private access for which the private road or private access being vested is a substitute; or
 - (b) the owner of land that is served by the private road or private access.

9 Registration of vested land

- (1) The Keeper of the Registers of Scotland may, without prejudice to section 4 of the Land Registration (Scotland) Act 1979 (c. 33), register any land vested under section 7 or 8 on receiving the material specified in subsection (2).
- (2) The material referred to in subsection (1) is—
- (a) particulars of the land vested under section 7 or 8 sufficient to enable the Keeper to identify it by reference to the Ordnance Map;
 - (b) particulars of the person or persons in whom the land is vested;
 - (c) an application for registration made by or on behalf of the authorised undertaker or the person in whom the land is vested;
 - (d) details of any rights to which the vesting is subject;
 - (e) such proof as the Keeper may require that the events giving rise to the vesting have happened; and
 - (f) such other documents and evidence as the Keeper may require in order to satisfy himself that the vesting should be registered.

10 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 3 to this Act to the extent specified (by reference to the letters and numbers shown on the Parliamentary plans) in column (3) of that Part.
- (2) No part of a road specified in Part 1 of schedule 3 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 either—
 - (a) the substitute has been completed to the reasonable satisfaction of the roads authority and is open for public use; or
 - (b) a temporary alternative route between the commencement and termination points of the road to be stopped up is first provided and thereafter maintained by the authorised undertaker to the reasonable satisfaction of the roads authority until completion of the new road in accordance with paragraph (a).
- (3) 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.
- (4) 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.
- (5) Any dispute under subsection (2) as to the completion of a substitute road or the provision or maintenance of an alternative route shall, unless the parties otherwise agree, be determined by arbitration.
- (6) This section is subject to paragraph 2 of schedule 7 to this Act.

11 Power to execute road works

- (1) The authorised undertaker may, for the purposes of exercising the powers conferred by this Act to construct any scheduled work having a junction with a road, enter upon any road and execute any works required for or incidental to the exercise of those powers.
- (2) In exercise of the powers of subsection (1) the authorised undertaker may break up or open the road, or any sewer, drain or tunnel under it, may tunnel or bore under or open the road and may remove and use the soil or other materials in or under the road.
- (3) In this section “road” includes any road within Edinburgh Airport.

12 Works to be major works for roads purposes

- (1) Works to which subsection (2) applies shall be treated for the purposes of Part IV of the 1991 Act as major works for roads purposes if—

- (a) they are of a description mentioned in any of paragraphs (a) to (d), (f) and (g) of section 145(3) of that Act (which defines what roads authority works are major works for roads purposes); or
 - (b) they are works which, had they been executed under the powers of the roads authority, might have been carried out in exercise of the powers conferred by section 27 (dual carriageways, roundabouts and refuges) or 63 (new access over verges and footways) of the Roads (Scotland) Act 1984 (c. 54).
- (2) Subject to subsection (3), this subsection applies to any of the works mentioned in section 7(1), or any scheduled work having a junction with a road, in either case where the construction of the work involves the execution of road works in relation to a road which consists of or includes a carriageway.
- (3) Subsection (2) does not apply to any work executed under power delegated to a roads authority by an agreement under section 13.
- (4) In Part IV of the 1991 Act, references, in relation to major works for roads purposes, to the roads authority concerned shall, in relation to the works which are major works for roads purposes by virtue of subsection (1), be construed as references to the authorised undertaker.

13 Agreements with roads authorities, etc.

- (1) Where under this Act the authorised undertaker is authorised to stop up or interfere with an existing road or part of an existing road, it may enter into agreements with the persons having the charge, management or control of the road concerning the construction (or contribution towards the expense of the construction) of—
- (a) any new road to be provided in substitution;
 - (b) any alteration of the existing road; and
 - (c) any other related matters.
- (2) The authorised undertaker may, by agreement with any such persons, delegate to them the power of constructing any such new road or any such alteration of an existing road, including any bridge over any railway, and, where the authorised undertaker is responsible for maintaining the new or altered road or bridge, the power to maintain it.

Supplemental powers

14 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 (3), prevent all persons from passing along the road.
- (2) Without prejudice to the generality of subsection (1), the authorised undertaker may exercise the powers of this section in relation to each of the roads specified in columns (1) and (2) of Part 2 of schedule 3 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.

- (3) Without prejudice to the generality of subsection (1), the authorised undertaker may use any road stopped up under the powers of this section as a temporary working site.
- (4) 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.
- (5) The authorised undertaker shall not exercise the powers conferred by this section—
 - (a) in relation to any road specified as mentioned in subsection (2), without first consulting the road works authority; and
 - (b) in relation to any other road, without the consent of the road works authority.
- (6) Consent under subsection (5)(b) shall not be unreasonably withheld or delayed but may be given subject to such reasonable conditions as the road works authority may impose.
- (7) Any question whether—
 - (a) consent under subsection (5)(b) has been unreasonably withheld or delayed; or
 - (b) a condition imposed under subsection (6) is unreasonable,shall, unless the parties otherwise agree, be determined by arbitration.

15 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, public sewer or drain,on any land within the Act limits or the limits of safeguarding.
- (2) The authorised undertaker shall not discharge any water into any artificial watercourse, or 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 or delayed.
- (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 or delayed.
- (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 the owner of an artificial watercourse or a public sewer or drain shall, unless the parties otherwise agree, be determined by arbitration.
- (6) Nothing in this section shall affect the operation of Part IV of the 1991 Act or the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI2005/348).
- (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, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

16 Safeguarding works to buildings

- (1) Subject to the provisions of this section the authorised undertaker may at its own expense and from time to time carry out such safeguarding works to any building situated on land within—
 - (a) the Act limits; or
 - (b) the limits of safeguarding and specified in Part 1 of schedule 4 to this Act, as the authorised undertaker considers to be necessary or expedient.
- (2) The powers conferred by subsection (1) may also be exercised in relation to the boundary wall within the curtilage of Carlowrie House, and comprising part of that house for the purpose of its category A listing.
- (3) The powers conferred by this section shall be exercised subject to and in accordance with Part 2 of schedule 4 to this Act.
- (4) In this section and that schedule—
 - (a) “building” includes any structure or erection (including a road, runway, taxiway or area any of which has a metalled surface) or any part of a building, structure or erection;
 - (b) “category A listing” means the entry in the list of buildings maintained by the Scottish Ministers under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) relating to Carlowrie House and dated 30th January 1981;
 - (c) 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
 - (d) “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.