



Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004

2004 asp 10

PART 3

MISCELLANEOUS AND GENERAL

27 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.
- (4) The following, namely—
 - (a) an order under section 198(1) of the 1997 Act (tree preservation orders); and
 - (b) section 211(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 of subsection (1) above.

28 Powers of disposal, agreements for operation, etc.

- (1) The authorised undertaker may enter into all or any of the agreements described in subsections (2), (3) and (4) below.

Status: Point in time view as at 10/08/2004.

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- (2) The authorised undertaker may enter into and carry into effect agreements with respect to the transfer to and vesting in that other person of all or any of the functions of the authorised undertaker under this Act, including the powers conferred by this section.
- (3) The authorised undertaker may enter into and carry into effect agreements, on such terms and conditions as it thinks fit, to sell, feu, lease, excamb, charge or otherwise dispose 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.
- (4) The authorised undertaker may enter into agreements with respect to the construction, maintenance and operation of the authorised works and any matter consequential, incidental or ancillary thereto.
- (5) The exercise of any power conferred by this Act by any person pursuant to any transfer agreement shall be subject to the same restrictions, liabilities and obligations as would apply if that power were exercised by the authorised undertaker making the transfer.
- (6) Where the exercise by any transferee of the powers conferred by this Act is subject to any statutory or other obligations or liabilities (including any obligations or liabilities pursuant to any undertaking or agreement given before or after the date on which this Act comes into force by Clackmannanshire Council or after that date by an authorised undertaker), then those obligations and liabilities shall not apply to or bind that authorised undertaker for so long as and to the extent that they apply to the transferee.
- (7) For so long as a transfer agreement remains in force references in this Act to the authorised undertaker shall, to the extent that the agreement so provides, have effect as references to the transferee.
- (8) Without prejudice to the powers of the authorised undertaker to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.
- (9) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the authorised undertaker may consider to be necessary or expedient.
- (10) Within 21 days of the completion of any transfer agreement 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.
- (11) If an authorised undertaker fails, without reasonable excuse, to comply with the obligation imposed by subsection (10) above it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (12) On the completion of a transfer agreement the effect of which is to—
 - (a) vest the railway works in; or
 - (b) transfer the powers of this Act relating to the railway works to,Network Rail as operator of the national railway infrastructure adjoining either end of the railway works, this section shall cease to have effect in relation to the railway works.
- (13) On the completion of a transfer agreement the effect of which is to—
 - (a) vest the major road works in; or

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(b) transfer the powers of this Act relating to the major road works to, Clackmannanshire Council as roads authority, this section shall cease to have effect in relation to the major road works.

(14) In this section, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the authorised undertaker have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under subsection (2), (3) or (4) above.

29 Statutory undertakers, etc.

The provisions of schedule 9 to this Act shall have effect in relation to the authorised works.

30 Arbitration

(1) Where under any provision of this Act any difference or dispute (other than a difference or dispute 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 giving 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).

31 Service of notices, etc.

(1) A notice or other document required or authorised to be served on a person for the purposes of this Act may be served—

- (a) by delivering it to that person;
- (b) by leaving it at that person’s proper address; or
- (c) by sending it by post to that person at that address.

(2) A notice or document is duly served on a body corporate or a firm—

- (a) in the case of a body corporate if it is served on the secretary or clerk of that body; and
- (b) in the case of a firm, if it is served on a partner of that firm.

(3) For the purposes of subsection (1) 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

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- (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.

32 Listed buildings and conservation areas

Schedule 10 to this Act (which makes provision for the disapplication or modification, in relation to the authorised works, of controls relating to listed buildings, buildings in conservation areas and ancient monuments, etc.) shall have effect.

33 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.

34 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.

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35 Environmental mitigation

For the purpose of entering into any management agreement under section 49A of the Countryside (Scotland) Act 1967 (c. 86) to secure the provision of environmental mitigation measures in respect of the authorised works, the authorised undertaker shall be deemed to have an interest in any land within the limits of deviation or the limits of land to be acquired or used which is required for such measures.

36 Application of existing enactments, etc.

- (1) As from the coming into force of this Act the existing railways, or any part of them, shall continue to be subject to—
 - (a) the existing enactments (so far as relating to railways); and
 - (b) all other statutory and other provisions applicable to the existing railways, or any part of them, at that date (insofar as such provisions are still subsisting and capable of having effect).
- (2) Except as may be otherwise provided in this Act, as from the coming into force of this Act the authorised undertaker shall—
 - (a) be subject to all statutory and other provisions applicable to the existing railways (but only insofar as such provisions are still subsisting and capable of having an effect); and
 - (b) to the exclusion of all other parties, be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations (in both cases whether statutory or otherwise) relating to the existing railways insofar as the same are still subsisting and capable of having effect, to the intent that such other parties shall be released from all such obligations.
- (3) Subsection (2) above shall not apply to the exercise by Network Rail otherwise than as the authorised undertaker of any function in relation to the authorised works; and accordingly the existing enactments shall apply to such exercise.
- (4) In subsection (2) above, “other parties” includes (without prejudice to the generality of that expression) the statutory successors to the parties authorised or obligated by virtue of the existing enactments or the enactments incorporated by section 37(1) below.
- (5) The existing enactments shall have effect subject to the provisions of this Act.

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