

EXECUTIVE NOTE

THE WAVERLEY RAILWAY (SCOTLAND) ACT 2006 (EXTENSION OF TIME FOR LAND ACQUISITION) ORDER 2011

SSI 2011/14

The above instrument was made on the application of the Scottish Borders Council, which is authorised undertaker for the purposes of sections 13 to 15 of the Waverley Railway (Scotland) Act 2006 ('the Act'), in exercise of the powers conferred by section 28(1) of that Act. The instrument is subject to negative resolution procedure.

Background and Policy Objective

The Act authorises the reconstruction of a railway from a point in Midlothian immediately south of Newcraighall in the City of Edinburgh to Tweedbank in Scottish Borders, including stations at Shawfair, Eskbank, Newtongrange, Gorebridge, Stow, Galashiels and Tweedbank; to make provision concerning planning agreements and developer contributions relating to the railway; and for connected purposes.

Section 53 of the Act provides that the 'authorised undertaker' is Scottish Borders Council ('the Council') or such other person or persons in whom are vested some or all of the functions conferred by the Act concerning the works authorised by the Act. A Transfer Agreement under section 32 of the Act between the Scottish Ministers and the Council dated 6th August 2008 transferred all of the functions of the authorised undertaker from the Council to the Scottish Ministers, subject to certain exceptions including sections 13 to 15, which together provide for the compulsory acquisition by the authorised undertaker of land and servitudes or specific new rights over land. The Council is accordingly the authorised undertaker for the purposes of sections 13 to 15.

The transfer of the authorised undertaker functions of the Act to Scottish Ministers was taken forward in agreement with Scottish Borders Council (the previous authorised undertaker) in August 2008. As Transport Scotland (acting on behalf of Scottish Ministers) has proven transport delivery skills, and as the Scottish Borders Council's primary remit was to promote the project through the Parliamentary Bill process, Transport Scotland was deemed best placed to take the project forward to delivery stage. Scottish Borders Council remain responsible for delivering the aspects of the project that it has proven experience in, such as conclusion of the land assembly (already underway), and the relocation of local path networks.

Section 27(1) of the Act provides that the powers of the authorised undertaker for the compulsory acquisition of land under section 13 of the 2006 Act and for the compulsory acquisition of servitudes or specific new rights under section 15 of the Act shall cease five years from the date on which the Act came into force. The Act came into force on 24th July 2006 (Royal Assent).

Section 28(1) of the Act provides that, on the application of the authorised undertaker, the Scottish Ministers may, by order, extend the five year period specified in section 27(1) provided that (a) such application is made prior to the expiry of the period or any extension to it; and (b) the five year period specified in section 27(1), taken together with any extension to it, shall not exceed 10 years in total.

Between September 2007 and November 2009 the Council exercised the land acquisition powers to acquire permanent land and permanent rights for 777 of 876 plots identified for potential acquisition for the purposes of the authorised works.

There is, accordingly, a remaining tranche of identified permanent rights, the majority of which are likely to be acquired. Where the Council as authorised undertaker elects to acquire these remaining rights to facilitate future construction and infrastructure maintenance activities, they will be subject to the General Vesting Declaration process in the latter stages of the procurement process currently underway. A decision or decisions on the acquisition of these remaining rights will be informed by discussions with organisations bidding for the Borders Railway Design, Build, Finance & Maintain (DBFM) Contract in the latter part of 2011, where the detail of construction and maintenance methodologies will be agreed.

As these discussions are programmed to commence, and the anticipated further acquisitions in consequence of those discussions will take place, more than five years from the date on which the Act came into force (i.e. after 24 July 2011), an extension of the authorised undertaker powers in sections 13 and 15 of the Act is required.

The Council has made application to the Scottish Ministers for an extension of the initial five year period. This purpose of this Order is to extend the period for the exercise of the powers in sections 13 and 15 of the Act until 23 July 2016.

Consultation

The request for an extended timescale to the Act relates to the anticipated acquisition of a small number of identified rights after the expiry date of the initial five year period specified in section 27(1) of the Act. The extension and this instrument are therefore technical in nature. As a result no formal public consultation has been undertaken.

Impact Assessments

An equality impact assessment has not been completed. There are no equality impact issues.

Financial Effects

The instrument has no new financial effects on the Scottish Government, local government or on business. The changes proposed will extend the time period specified in section 27(1) but will have no other implications for the legislation or its application.