



# Edinburgh Tram (Line One) Act 2006

## 2006 asp 7

### PART 5

#### MISCELLANEOUS AND GENERAL

#### 63 Insulation against noise

- (1) The authorised undertaker shall, after consulting the Council, make a scheme providing for the making of grants towards the cost of insulating buildings, or such classes of buildings as the authorised undertaker may think fit, or any parts of such buildings, against noise caused, or expected to be caused, by the use of the tram system.
- (2) The authorised undertaker shall make grants in accordance with a scheme under subsection (1).
- (3) A scheme under subsection (1)—
  - (a) shall specify the areas in respect of which grants are payable;
  - (b) shall make provision as to the persons to whom, the expenditure in respect of which, and the rate at which, the grants are to be paid;
  - (c) may make the payment of any grant dependent upon compliance with such conditions as may be specified in the scheme;
  - (d) shall specify a date, not less than two years after first publication of the notice referred to in subsection (5), for the submission of a valid application for a grant; and
  - (e) shall require the authorised undertaker, in any case where application for a grant is refused, to give at the request of the applicant a written statement of its reasons for the refusal.
- (4) A scheme under subsection (1) may make different provisions with respect to different areas or different circumstances and may be varied or revoked by a subsequent scheme under subsection (1) without affecting grants already made.
- (5) As soon as possible after the making of a scheme under this section the authorised undertaker shall publish, once at least in each of two successive weeks, in one or more newspapers circulating in the areas to which the scheme relates, a notice stating the general effect of the scheme and specifying a place or places in each such area where

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a copy of the scheme may be inspected by any person free of charge at all reasonable hours.

- (6) A photostatic or other reproduction certified, by a person authorised by the authorised undertaker for that purpose, to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing a notice mentioned in subsection (5) shall be evidence of the publication of the notice and of the date of publication.

#### **64 Orders for insulating new buildings**

- (1) Where the authorised undertaker has made a scheme under section 63 (Insulation against noise) in respect of any area or areas, it may apply to Scottish Ministers for an order requiring provision for insulation against noise to be made in any building of a class to which the scheme applies which is erected after a date specified in the order, or in any extension of, or alteration to, any building of such class made after that date.
- (2) The order shall define by reference to a map the areas to which it applies, which may comprise the whole or part of any areas to which the scheme relates.
- (3) Application for an order under this section shall be accompanied by a draft of the order and a map defining the areas to which it relates.
- (4) Before making an application for an order under this section the authorised undertaker shall publish, once at least in each of two successive weeks, in one or more newspapers circulating in the areas to which the draft order applies, a notice—
- (a) stating the general effect of the intended order;
  - (b) specifying a place in the said areas where a copy of the draft order and of the relevant map may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice; and
  - (c) stating that within that period any person may, by notice to Scottish Ministers, object to the application.
- (5) Any person claiming to be affected by the application may object to it by sending notice of the objection, stating the grounds of objection, to Scottish Ministers within the period specified in the notice and a copy of the notice of objection to the authorised undertaker.
- (6) If any objection is duly made by any person appearing to Scottish Ministers to be affected by the application and is not withdrawn, then they shall cause a local inquiry to be held into the proposed order and shall consider the report of the person who held the inquiry before making an order under this section.
- (7) No earlier than 28 days after the date of first publication of the notice specified in subsection (4), and following consideration of any report required by subsection (6), Scottish Ministers may make the order in the terms of the draft order or in those terms as modified in such manner as they think fit, or may refuse to make the order.
- (8) If Scottish Ministers make an order under this section the authorised undertaker shall publish notice of the making, and of the effect, of the order in one or more newspapers circulating in the areas to which the order relates.
- (9) Where an application is made to a local authority under the Building (Scotland) Act 1959 (c. 23) for a warrant for the erection, extension or alteration of a building

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in an area to which an order under this section relates, the local authority shall, notwithstanding any thing in that Act or regulations as to building standards made under it, refuse to grant the warrant unless it is shown to them—

- (a) that satisfactory provision will be made for insulating the building (or, as the case may be, the extension or alteration of the building) against noise; or
  - (b) that in the case of an extension or alteration no such insulation is necessary.
- (10) Scottish Ministers may cause such local inquiries to be held as they may consider necessary for the purpose of any of their functions under this section.

## **65 Repeal of sections 63 and 64**

- (1) If it appears to Scottish Ministers that, as a result of the coming into force of any enactment after the date that this Act comes into force, it is appropriate that section 63 (Insulation against noise) and section 64 (Orders for insulating new buildings) should be repealed, they may make an order repealing those sections.
- (2) Subsection (10) of section 64 shall apply to the functions of Scottish Ministers under this section as it applies to their functions under that section.
- (3) An order under this section shall not be made except on application by the authorised undertaker.

## **66 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 the code of practice as may from time to time be amended or superseded and any relevant local construction plan; and
  - (b) the policy as may from time to time be amended or superseded is applied to the use and operation of the authorised works and in particular any scheme made under section 63 of this Act is drawn up in accordance with the policy.
- (2) Neither the code of practice nor the policy shall be amended or superseded so as to reduce the standards of mitigation and protection contained in them.
- (3) In this section—
  - “code of practice” means the Code of Construction Practice dated 6 March 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,
  - “local construction plan” means a local construction plan 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 plan,
  - “policy” means the Noise and Vibration Policy dated March 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.

## **67 Mitigation of environmental impacts**

- (1) The authorised undertaker shall employ all reasonably practicable means to ensure—

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- (a) that the environmental impacts of the construction or 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 undertakings given to objectors to the Bill for this Act or to the Edinburgh Tram (Line One) Bill Committee during the Consideration Stage of the Bill for this Act 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 the supplementary environmental statement submitted to the Parliament in June 2005;

“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.

## **68 Landscape and habitat management plan**

- (1) The authorised undertaker shall not commence any of the scheduled works described as Work No. 12 in schedule 1 until the landscape and habitat management plan has been submitted to and approved by the planning authority.
- (2) Without prejudice to the foregoing, the landscape and habitat management plan will include the following—
  - (a) details of the trees to be removed and retained, including any proposed pruning, lopping and topping of trees to be retained and the species, specification and location of any replacement trees;
  - (b) details of the proposed accesses and finishes of such accesses to and from the tramroad and the cycletrack and walkway adjacent to the tramroad, all comprised in Work No. 12;
  - (c) the locations of noise barriers, fences, lighting and other street furniture;
  - (d) details of the location and species of existing planting to be retained;
  - (e) schedules and plans of proposed planting, including details of species, sizes, proposed numbers, planting density and location;
  - (f) proposals for maintaining the landscaping; and
  - (g) a plan, to be annexed as a confidential annex to the landscape and habitat management plan, to mitigate any adverse impact on the habitat of badgers.
- (3) The authorised undertaker shall employ all reasonably practicable means to ensure that—
  - (a) not less than one tree is planted for each tree that is removed;
  - (b) the tramroad comprised in Work No. 12 is constructed of a track form having a significant proportion of its surface finish in grass or similar;
  - (c) there is at least one access point adequate for use by emergency vehicles for each third of the cycletrack and walkway adjacent to the tramroad comprised in Work No. 12;

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- (d) there is no detrimental impact on the adequacy of the existing drainage system comprised in Work No. 12.
- (4) Prior to the submission of the landscape and habitat management plan to the planning authority for approval in accordance with subsection (1) of this section, the authorised undertaker shall consult with Scottish Natural Heritage and the emergency services in the preparation of the landscape and habitat management plan.
- (5) Prior to the submission of the landscape and habitat management plan to the planning authority for approval in accordance with subsection (1) of this section, the authorised undertaker shall consult with residents of property abutting the tramroad comprised in Work No. 12 in relation to the relocation, replacement or retention of their boundary fences.
- (6) Prior to the submission of the landscape and habitat management plan to the planning authority for approval in accordance with subsection (1) of this section, the authorised undertaker shall consult with residents of property abutting the tramroad comprised in Work No. 12 in relation to the security of properties abutting the tramroad comprised in Work No. 12.
- (7) The authorised undertaker shall comply with the terms of the landscape and habitat management plan approved by the planning authority in accordance with subsection (1) of this section.
- (8) The requirements imposed by or by virtue of the landscape and habitat management plan approved by the planning authority in accordance with subsection (1) of this section shall be enforceable by the planning authority as if planning permission for the construction of the scheduled works described as Work No. 12 in schedule 1 had been granted under section 37 of the 1997 Act subject to the imposition of those conditions under section 41 of that Act.
- (9) The landscape and habitat management plan approved by the planning authority in accordance with subsection (1) of this section shall not reduce the standards of mitigation and protections contained in the draft landscape and habitat management plan dated 17 June 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.
- (10) For the purposes of this section, the planning authority shall have the necessary power to approve, with or without modification, the landscape and habitat management plan; and such approval shall be given within 84 days of the submission of the landscape and habitat management plan, failing which consent will have deemed to have been given.

## **69 Powers of disposal, agreements for operation, etc.**

- (1) The authorised undertaker may sell, lease, excamb, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection with them or the right to operate or maintain the authorised tramway under this Act.
- (2) Without prejudice to the generality of subsection (1), the authorised undertaker may enter into and carry into effect agreements with respect to all or any parts of the authorised works, authorised tramway and tramway premises, concerning—
- (a) their construction, maintenance, use and operation, by any other person,
  - (b) other matters incidental or subsidiary to or consequential on them, and

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- (c) the defraying of, or the making of contribution towards, the cost of (a) or (b) by the authorised undertaker or any other person.
- (3) Any agreement under subsection (2) may provide for the exercise of the powers of the authorised undertaker in respect of the authorised works, authorised tramway and tramway premises or any part of them by any person, and for the transfer to any person of the authorised works, authorised tramway and tramway premises or any part of them together with the rights and obligations of the authorised undertaker in relation to them.
- (4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, excambion, charge or disposal under subsection (1), or any agreement under subsection (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Act if those powers were exercised by the authorised undertaker.
- (5) Within 21 days of the completion of any agreement entered into by the authorised undertaker under subsection (2), the authorised undertaker 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.

## **70 Application of landlord and tenant law**

- (1) This section applies to any agreement for leasing to any person the whole or any part of the authorised tramway or the right to operate it and any agreement entered into by the authorised undertaker with any person for the construction, maintenance, use or operation of the authorised tramway, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.
- (2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this section applies.
- (3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—
  - (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
  - (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted to be done on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
  - (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

## **71 Trams deemed public service vehicles**

- (1) On such day as may be appointed under subsection (2), regulations made, or having effect as if made, under section 24, 25, 26 or 60(1)(j) or (k) (which provide for the regulation of drivers, conductors, inspectors, the control and number of passengers, carriage of luggage and goods and left luggage) of the Public Passenger Vehicles Act

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1981 (c. 14) shall have effect as if trams operating on the authorised tramway were public service vehicles within the meaning of the Transport Act 1985 (c. 67).

- (2) The authorised undertaker may by resolution appoint a day for the purpose of any regulation mentioned in subsection (1), the day so appointed being fixed in accordance with subsection (3).
- (3) The authorised undertaker shall publish in a newspaper circulating in its area, notice—
  - (a) of the passing of any such resolution and of the day fixed thereby; and
  - (b) of the general effect of the regulations for the purposes of which the day has been fixed;and the day so fixed shall not be earlier than the expiration of 28 days from the date of publication of the notice.
- (4) A photostatic or other reproduction certified, by a person authorised by the authorised undertaker for that purpose, to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in subsection (3) shall be evidence of the publication of the notice and of the date of publication.

## **72 Statutory undertakers, etc.**

The provisions of schedule 9 shall have effect.

## **73 Listed buildings and conservation areas**

- (1) If a listed building was such a building at the coming into force of this Act and is specified in columns (1) and (2) of Part 1 of schedule 10—
  - (a) section 6 (Restriction on works affecting listed buildings) of the 1997 Act shall not apply to works carried out to such a building under the provisions of this Act;
  - (b) to the extent that a notice issued in relation to the building under section 34(1) (Power to issue listed building enforcement notice) of the 1997 Act requires the taking of steps which would be rendered ineffective, or substantially ineffective, by works proposed to be carried out in exercise of the powers conferred by this Act, it shall not have effect, or, as the case may be, shall cease to have effect;
  - (c) no steps may be taken in relation to the building under section 38(1) (Execution of works required by listed building enforcement notice) of the 1997 Act which would be rendered ineffective, or substantially ineffective, by such works as are mentioned in paragraph (b) of this subsection; and
  - (d) no works may be executed for the preservation of the building under section 49 (Urgent works to preserve unoccupied listed buildings) of the 1997 Act which would be rendered ineffective, or substantially ineffective, by such works as are mentioned in paragraph (b) of this subsection.
- (2) If a listed building was such a building at the coming into force of this Act and is not specified in Part 2 of schedule 10—
  - (a) section 6 of the 1997 Act shall not apply to works carried out to such a building under the provisions of section 16 (Attachment of equipment to buildings for purposes of works);

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- (b) to the extent that a notice issued in relation to the building under section 34(1) of the 1997 Act requires the taking of steps which would be rendered ineffective, or substantially ineffective, by works proposed to be carried out in exercise of the powers conferred by section 16, it shall not have effect, or, as the case may be, shall cease to have effect;
  - (c) no steps may be taken in relation to the building under section 38(1) of the 1997 Act which would be rendered ineffective, or substantially ineffective, by such works as are mentioned in paragraph (b); and
  - (d) no works may be executed for the preservation of the building under section 49 of the 1997 Act which would be rendered ineffective, or substantially ineffective, by such works as are mentioned in paragraph (b).
- (3) In the case of any building specified in columns (1) and (2) of Part 1 of schedule 10 in relation to which any description of works is specified in column (3) of that Part of that schedule, subsection (1) shall have effect as if the references to works carried out in exercise of the powers conferred by this Act were, so far as concerns works of demolition or alteration (as opposed to extension), to works so carried out which are of a description specified in relation to it in that column.
- (4) Paragraphs (a) to (d) of subsections (1) and (2) shall also apply in relation to a listed building which was not such a building immediately before the coming into force of this Act.
- (5) If a building included in a conservation area and not a listed building—
- (a) was not included in a conservation area immediately before the coming into force of this Act, or
  - (b) was included in such an area immediately before that date and is specified in columns (1) and (2) of Part 1 of schedule 10,
- section 66 (Control of demolition in conservation areas) of the 1997 Act shall not apply to the demolition of it in exercise of the powers conferred by this Act.
- (6) Anything which, by virtue of section 1(4) (Listing of buildings of special architectural or historic interest) of the 1997 Act is treated as part of the building for the purposes of that Act, shall be treated as part of the building for the purposes of this section.
- (7) Section 53 (Acts causing or likely to result in damage to listed buildings) of the 1997 Act shall not apply to anything done in exercise of the powers conferred by this Act with respect to works.
- (8) In this section—
- “the 1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9);
  - “building” and “listed building” have the same meaning as in the 1997 Act;
  - “conservation area” means an area which is designated as a conservation area under the terms of the 1997 Act; and
  - “works” includes the attachment of equipment to buildings authorised by section 16 (Attachment of equipment to buildings for purposes of works).

## **74 Town and country planning, etc.**

- (1) So far as they are not inconsistent with the provisions of this Act, the 1997 Act and any orders, regulations, rules, schemes and directions made or given under it and any restrictions or powers imposed by it or conferred in relation to land shall apply and



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may be exercised in relation to any land notwithstanding that the development of such 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 1992 Order (which permit development authorised by any Act of the Parliament (among other legislation) which designates specifically both the nature of the development authorised by it 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 15 years of the date on which this Act comes in to force.
- (3) Subsection (2) shall not apply to the carrying out of development consisting of the alteration, maintenance or repair of the authorised works or the substitution of new works for them.
- (4) In its application to development authorised by this Act and for the avoidance of doubt, Class 29 in Part 11 of Schedule 1 to the 1992 Order shall be interpreted as follows—
  - (a) buildings shall be deemed to include substations, tramstops and poles;
  - (b) extensions to buildings shall be deemed to include attachments to buildings;
  - (c) in relation to prior approval for works affecting a listed building, consideration of the phrase “injury to the amenity of the neighbourhood” in paragraph 3(b) shall be deemed to include the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses; and
  - (d) the exercise of the power to attach equipment to buildings under section 16 (Attachment of equipment to buildings for purposes of works) and any wires so attached shall be deemed to be on land specifically designated by this Act.
- (5) Without prejudice to development permitted by Class 29 in Part 11 of Schedule 1 to the 1992 Order and for the avoidance of doubt, for the purposes of Part 13 of Schedule 1 to the 1992 Order (which permits certain development by statutory undertakers)—
  - (a) the road tramways comprised in the works and the works and conveniences connected with those tramways shall be taken to be a tramway undertaking within Class 41 of that Part of that Schedule; and
  - (b) the tramroads comprised in the works and the works and conveniences connected with those tramroads shall be taken to be a light railway undertaking within Class 34 of that Part of that Schedule.
- (6) In the application of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) to the works, the Parliament shall be deemed to have been a competent authority for the purposes of those regulations.
- (7) In this section “the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (S.I. 1992/223).

## **75 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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## **76 Saving for roads authority**

- (1) Subject to subsection (2), this Act shall not affect any power of a roads authority to widen, alter, divert or improve any public road along which a road tramway is laid.
- (2) Works for the purpose, or having the effect, of altering the part of the road in which an authorised road tramway is situated shall not be carried out without the consent of the authorised undertaker.
- (3) Consent under subsection (2) may be given subject to such reasonable terms and conditions as the authorised undertaker may require, but shall not be unreasonably withheld, and any difference arising under this section shall be determined by Scottish Ministers.

## **77 Certification of plans, etc.**

The authorised undertaker shall, as soon as practicable after the coming into force of this Act, submit copies of the book of reference, the Parliamentary plans and the Parliamentary sections to the Clerk of the Parliament for certification that they are, respectively the book of reference, Parliamentary plans and Parliamentary sections referred to in this Act, and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

## **78 Service of notices**

- (1) A notice or other document required or authorised to be served for the purposes of this Act may be served by post.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Act is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (3) For the purposes of section 7 (References to service by post) of the Interpretation Act 1978 (c. 30) as it applies for the purposes of this section, the proper address of any person in relation to the service on that person of a notice or document under subsection (1) is, if such person has given an address for service, that address, and otherwise—
  - (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
  - (b) in any other case, the last known address of such person at the time of service.
- (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 name or address of such person cannot be ascertained after reasonable enquiry, the notice may be served by—
  - (a) addressing it to such person by name or by the description of “owner”, “lessee” or “occupier” as the case may be, 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.

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## **79 Application of Railways Act 1993**

For the avoidance of doubt it is hereby declared that the authorised tramway shall be deemed to be a tramway for the purposes of Part I of the Railways Act 1993 (c. 43).

## **80 Arbitration**

- (1) Any difference under any provision of this Act (other than a difference which falls to be determined by the tribunal or Scottish Ministers) shall be referred by either party to the dispute 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 Institute of Civil Engineers, and the arbiter shall be entitled to state a case for the opinion of the Court of Session pursuant to section 3 (Power of arbiter to state case to Court of Session) of the Administration of Justice (Scotland) Act 1972 (c. 59).
- (2) Section 108 (Right to refer disputes to adjudication) of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) and any regulations made under that section shall not apply to the authorised works.

**Changes to legislation:**

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