

GLASGOW AIRPORT RAIL LINK ACT 2007

EXPLANATORY NOTES

STRUCTURE OF THE ACT

12. Before commenting on the individual sections it may be helpful to explain how the Act operates.
13. **Part 1** confers the powers relating to the works themselves. It distinguishes between –
those works that are specifically described (the scheduled works described in **schedule 1**); and
works carried out under general powers (the ancillary works as described in **schedule 2**).
14. **Part 2** confers statutory authority for the compulsory purchase of the land required for the scheme. All the sections in this Part are concerned with the implementation of the compulsory purchase powers, so that the Act will have the same effect as would a compulsory purchase order in other types of scheme e.g. for roads.
15. Fairness demands that compulsory purchase under the Act must be on the same standardised basis as any other compulsory purchase in Scotland. Departure from what is generally applicable also has human rights implications. This means that in the Act compulsory purchase must be subject to all the same procedural rules, safeguards and requirements regarding compensation as apply generally. All these provisions are in a large and complex body of law contained in several public Acts of Parliament and case law¹. So that those affected by the Act are on the same footing as those affected by compulsory purchase orders, this body of legislation must be applied to the Act.
16. In theory this might be done either by writing the relevant provisions at length in the Act or by applying the existing public Acts as if they had been included in the Act. **Section 47** of the Act applies the latter. In this it adopts the format for legislation authorising railways and similar infrastructure works which has been in place throughout Great Britain since the mid 19th century and which continues to be utilised².
17. The Act follows this precedented format because writing the entire statutory code into the Act is not a practical option. The scheme of the law in question is outlined below in **paragraphs 58 to 152 and 207** explaining Part 2 of the Act and **section 47**. The Acts applied by **section 47** contain a total of some 400 sections. Not all sections are relevant,

¹ *The relevant law has been described as having “become an unwieldy and lumbering creature” – see ‘Fundamental Review of the Laws and Procedures Relating to Compulsory Purchase and Compensation: Final Report’, Office of the Deputy Prime Minister, January 2003, para. 20.*

² *Recent Scottish examples of provisions similar to section 47 are the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004, section 37, the British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.3 (authorising an upgrading of the part of the present route between Cambus and Alloa) and the British Railways (No. 3) Order Confirmation Act 1994 (c.iii), s.3 (authorising an upgrading of the railway between Hamilton and Larkhall). More recent examples are in Orders made under the Transport and Works Act 1992, which are the means of authorising most infrastructure works in England and Wales and which apply the equivalent English Law. See for example article 4 of the Leeds Supertram (Extension) Order 2001 SI 2001/1347, articles 4 and 5 of the Leeds Supertram (Land Acquisition and Road Works) Order 2001 (SI 2001/1348) and articles 3 and 10 of the Heathrow Express Railway Extension Order 2002 (SI 2002/1064).*

*These notes relate to the Glasgow Airport Rail Link Act 2007
(asp 1) which received Royal Assent on 15 January 2007*

but in much of this legislation it is not possible to say with absolute certainty that a particular provision is not going to be relevant. In addition, this legislation is written in 19th century legal English that would be unacceptable today. As a result, it could not be written into the Act at length without being completely rewritten. The result of this would inevitably be that the meaning would be affected. Such an exercise in statute law revision, however desirable, is far outside the scope of any private Act promoter.

18. The Act accordingly incorporates provisions of the Acts referred to in [section 47](#). These Acts were passed for the purpose of being incorporated as standard “clauses”. They only have effect if they are referred to and implemented by some other piece of legislation such as the Act. The effect of the incorporation is that the incorporated provisions become part of the Act. The Acts in question are—

the Lands Clauses Acts³;

the [Railways Clauses Consolidation \(Scotland\) Act 1845 \(c.33\)](#);

the [Railways Clauses Act 1863 \(c.92\)](#).

The Act makes a number of adjustments to the incorporated Acts for the purpose of streamlining the 19th century procedures so as to bring them more nearly into line with the more modern legislative improvements that have been made in England and Wales, but not in Scotland⁴ and also to allow for the greater flexibility provided for in the Act. Details of the adjustments are explained in the notes below on [sections 13, 21, 23, 24 and 25](#) of the Act.

³ *i.e. The Lands Clauses Consolidation (Scotland) Act 1845 (c.19) and the Lands Clauses Consolidation Acts Amendment Act 1860 (c.106), and any Acts for the time being in force amending those Acts – see The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379), Schedule 1. Where a word or expression is defined in the 1999 Interpretation Order, that definition will apply unless a contrary intention appears in the enactment being interpreted. (Bennion, ‘Statutory Interpretation’ (4th edn. 2002) p. 497.) Where, as with this definition, an Interpretation Order definition is intended to apply, the definition is not repeated in the Act. (“The purpose of an Interpretation Act is by the use of labelling definitions to shorten the language which needs to be used in legislation”. Bennion, p. 491.)*

⁴ “... it is unfortunate in view of ... the criticism which has been levelled at the [[Lands Clauses Consolidation \(Scotland\) Act 1845](#)] that Parliament has not found time to produce more up-to-date legislation as was done in England with the passing of the [Compulsory Purchase Act 1965 \(c.56\)](#). *Stair Memorial Encyclopaedia*, Title ‘Compulsory Acquisition and Compensation’ para. 13.