

# GLASGOW AIRPORT RAIL LINK ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2 – Land

#### Compensation

#### *Section 22 – Extinction or suspension of private rights of way*

109. The Act provides for necessary public and private means of access<sup>1</sup>. The authorised works cannot accommodate further rights of way over the land that may be compulsorily acquired under the Act. **Section 22** accordingly extinguishes<sup>2</sup> private rights of way over this land or, where the land is subject only to temporary possession, suspends the rights of way while the authorised undertaker remains on the land. In relation to compulsory purchase orders, servitudes over the land are extinguished automatically by virtue of section 106 of the **Title Conditions (Scotland) Act 2003 (asp 9)** but that provision may not apply to land acquired under the powers of the Act. **Section 22** is consistent with the general law in this regard.
110. Subsection (1) provides for the extinguishment of private rights of way over land which may be compulsorily acquired under the Act. It applies where the land is actually acquired by the authorised undertaker, both where the purchase has been by using the compulsory purchase procedures and where the authorised undertaker and the landowner have instead agreed terms without recourse to the formal procedures. The private rights of way will be extinguished as from the date when the land is acquired. Where the authorised undertaker enters the land and takes possession before completion under **section 24**, the extinguishment or suspension takes place instead as from the date on which possession is taken.
111. Subsection (2) provides for the suspension of private rights of way over land of which the authorised undertaker takes temporary possession. The suspension continues while the authorised undertaker is in temporary possession of the land.
112. Under subsections (3) and (4) a person who suffers loss as a result of the extinguishment or suspension is entitled to compensation. Any dispute as to the amount is determined by the Lands Tribunal for Scotland under the **Land Compensation (Scotland) Act 1963 (c.51)**.
113. Subsection (5) provides that the section does not apply to rights of way of statutory undertakers to which section 224 or 225 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply. (The position of statutory and utility undertakers is separately dealt with in **section 34** and **schedule 7**.)
114. Subsection (6) allows for the extinction or suspension of private rights of way under the section to be subject to agreement between the authorised undertaker and the person

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<sup>1</sup> See e.g. *Work No.1B*.

<sup>2</sup> i.e. terminates the rights, so that they cease to exist.

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

entitled to the right of way or to a unilateral determination by the authorised undertaker. The authorised undertaker might be able to agree to a right of way continuing between the date of acquisition and the commencement of construction works, or to a diversion of the route used. Alternatively the authorised undertaker may conclude, following detailed design of the scheme, that the construction and maintenance of the scheme is not incompatible with the continuation of a right of way over the land and need not therefore be extinguished or suspended

115. Subsections (7) and (8) spell out that any determination that a right of way is not to be extinguished must be made before the extinguishment would have taken place, while a determination that a suspension is not required can take place at any time. This reflects the fact that an extinction of a right of way is a single event while a suspension is an ongoing process which can be terminated.
116. Subsection (9) provides for notice of a determination not to extinguish or suspend a right to be given to the person entitled to the right.
117. The object of subsection (6) is to ensure that the interference with private rights which results from their extinction or suspension under this section is kept to the minimum necessary to accommodate the construction and maintenance of the authorised works.
118. The purpose of **section 22** is to ensure there are no incompatible rights of way over land on which the authorised undertaker is to construct works. It is unnecessary to extinguish other rights in relation to land where the authorised undertaker is only acquiring rights<sup>3</sup>. Accordingly, under subsection (10) the automatic extinguishment effected by subsection (1) will not apply on land where the authorised undertaker is only acquiring rights. Subsection (10) refers only to subsection (1) and not to subsection (2) (which authorises the suspension of rights during compulsory possession of land). There are areas where powers are sought both to occupy the land temporarily as a working site and to acquire permanent rights of access. During the temporary occupation it may be necessary to have exclusive occupation of land and therefore suspend other rights.

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**3** See section 14 and Part 2 of schedule 5.