



# Waverley Railway (Scotland) Act 2006

## 2006 asp 13

### PART 3

#### MISCELLANEOUS AND GENERAL

#### **31 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 160(1) of the 1997 Act (tree preservation orders); and
  - (b) section 172(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 conferred by subsection (1) above.

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

- (1) In addition to any thing the authorised undertaker may do by virtue of any enactment or rule of law, it shall be competent for the authorised undertaker to enter into, and carry into effect, in connection with the authorised works, any agreement that includes provision for the matters described in subsection (2).
- (2) The matters referred to in subsection (1) are—

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- (a) the transfer to and vesting in another person of all or any of the functions of the authorised undertaker under this Act, including the powers conferred by this section;
  - (b) the disposal 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;
  - (c) the creation of any heritable security, charge or other encumbrance secured on the undertaking.
- (3) Any restrictions, liabilities or obligations to which the authorised undertaker is subject—
- (a) under this Act; or
  - (b) under any undertaking or commitment given by, or on behalf of Scottish Borders Council or any other authorised undertaker, at any time, whether before or after the passing of this Act,
- shall (notwithstanding any enactment or rule of law) be equally binding on any authorised undertaker.
- (4) Within 21 days of the completion of any agreement providing for any matter described in subsection (2)(a), 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.
- (5) If an authorised undertaker fails, without reasonable excuse, to comply with the obligation imposed by subsection (4) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) On the completion of an agreement the effect of which is to—
- (a) vest any of the authorised works in Network Rail; or
  - (b) transfer to Network Rail the powers conferred by this Act relating to any of those works,
- no further agreement may be made under this section in relation to the works vested or powers transferred by that first agreement.
- (7) In subsection (1), an agreement entered into in connection with the authorised works includes any agreement—
- (a) with respect to the funding, construction, maintenance and operation of the authorised works and any matter consequential thereon or incidental or ancillary thereto; or
  - (b) which (whether separately or as part of any other agreement) contains such supplementary, incidental, transitional and consequential provisions as the authorised undertaker may consider to be necessary or expedient.
- (8) In this section, unless the context otherwise requires—
- “disposal” includes sale, lease, excambion and charge; and
  - “functions” includes powers, duties and obligations.

### **33 Statutory undertakers, etc.**

The provisions of schedule 8 to this Act shall have effect in relation to the authorised works.

## **34 Arbitration**

- (1) Where under any provision of this Act any difference (other than a difference 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 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).
- (3) Section 108 of the 1996 Act (right to refer disputes to adjudication) and any regulations made under that section shall not apply to any dispute under this Act (whether or not it is a dispute of the sort described in subsection (1) above).
- (4) Subsection (3) above does not affect the operation of the 1996 Act so far as applicable to any contract under which a contracting party other than the authorised undertaker is responsible for the construction or funding of the authorised works.
- (5) In this section “the 1996 Act” means the Housing Grants, Regeneration and Construction Act 1996 (c. 53).

## **35 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
  - (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

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- (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.

### **36 Listed buildings and conservation areas**

Schedule 9 to this Act (which makes provision for the disapplication or modification, in relation to the authorised works, of controls relating to listed buildings and buildings in conservation areas) shall have effect.

### **37 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.

### **38 Interpretation of sections 39 and 40**

- (1) In sections 39 and 40 below—
  - “currency”, in relation to a financial support contract, means the period during which—
    - (a) a financial support contract is in force; and
    - (b) financial obligations under the financial support contract relating to the provision of the authorised works remain to be discharged;
  - “developer contribution” means a developer contribution obtained under section 39(4) below;
  - “financial support contract” means—
    - (a) an agreement under which a party to the agreement makes a commitment to—
      - (i) procure funding for the provision of the authorised works;
      - (ii) approve any of the relevant planning authorities incurring expenditure or entering into any financial obligation for that purpose;
    - (b) a contract under which a party to the contract is obliged to provide money to pay for providing the authorised works and the authorised undertaker

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is obliged to pay interest or otherwise give monetary consideration for that money; or

- (c) a contract under which a party to the contract is obliged to provide, or to procure the provision of, all or part of the authorised works for a consideration all or part of which is represented by the transfer or grant to that person of assets or benefits in either case other than money;

“provision”, in relation to any part of the railway works, means the design, construction or financing of those works, and includes maintenance and operation so far as provided in conjunction with design, construction or financing; and

“relevant planning agreement” means an agreement entered into by a planning authority under section 75 of the 1997 Act in connection with land on which any development can be expected to benefit from or be enhanced by the provision of the authorised works.

- (2) For the purposes of subsection (1) above and of sections 39 and 40 below the relevant planning authorities are Scottish Borders Council, Midlothian Council and City of Edinburgh Council.

### **39 Planning agreements**

- (1) Section 75 of the 1997 Act, section 69 of the Local Government (Scotland) Act 1973 (c. 65) and Part 3 of the [Local Government in Scotland Act 2003 \(asp 1\)](#) shall, in their application to the relevant planning authorities, have effect in accordance with the following provisions of this section.
- (2) Subject to subsections (5) to (8) below, a relevant planning agreement may include provision relating to, or to development supporting, or otherwise connected with, the authorised works.
- (3) A relevant planning authority shall not be precluded from entering into a relevant planning agreement which includes provision relating to, or to development supporting, or otherwise connected with, the authorised works by reason only of the fact that all or some of the authorised works are located outwith the local government area of the planning authority concerned.
- (4) Subject to subsections (5) to (8) below, in any relevant planning agreement made pursuant to this section financial provisions relating to the authorised works may require the payment of developer contributions towards the cost of providing the authorised works or any development relating to, supporting or otherwise connected with the authorised works.
- (5) The developer contributions obtained by the relevant planning authorities towards the cost of providing the authorised works shall not in aggregate exceed the total of the sums necessary for the purpose of providing the authorised works.
- (6) No developer contribution under subsection (4) above shall be required more than 30 years after the opening of the railway works for public use.
- (7) For the purposes of this section and section 40 below the sums necessary for the purpose of providing the authorised works include all sums from time to time payable for that purpose, and (without prejudice to that generality) include interest payments, loan charges and sums payable under or in consequence of any financial support contract.

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- (8) Accordingly, developer contributions may be required at any time during the currency of a loan agreement or a financial support contract.
- (9) A requirement for developer contributions does not amount to the raising of money by making a levy or imposition within the meaning of section 22(7) of the [Local Government in Scotland Act 2003 \(asp 1\)](#).

#### **40 Application of developer contributions**

- (1) A relevant planning authority shall secure that any developer contribution it obtains towards the cost of providing the authorised works is (whether by payment to the authorised undertaker or otherwise) applied for the purpose of providing the authorised works.
- (2) A developer contribution that is not within 12 months of its receipt by the relevant planning authority applied as required by subsection (1) above shall on the expiry of that period be repayable to the person from whom it was obtained.

#### **41 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.

#### **42 Method of vesting land**

- (1) Section 195 of, and Schedule 15 to, the 1997 Act shall apply to the compulsory acquisition of land under this Act as if this Act were a compulsory purchase order so as to enable the authorised undertaker to vest by general vesting declaration any land authorised to be compulsorily acquired under this Act.
- (2) The notice required by paragraph 2 of that Schedule (as so applied) shall be a notice—
  - (a) that this Act has received Royal Assent;
  - (b) containing the particulars specified in sub-paragraph (1) of that paragraph;
  - (c) published and served in accordance with the requirements of paragraph 6 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42); and
  - (d) given at any time after this Act comes into force.

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

- (1) As soon as practicable after the coming into force of this Act, the authorised undertaker shall submit copies of the book of reference, the Parliamentary plans and the Parliamentary sections to the Clerk of the Parliament for certification under this section.
- (2) On being satisfied as to the accuracy of documents submitted under subsection (1) above, the Clerk shall certify them as being, respectively the book of reference, Parliamentary plans and Parliamentary sections referred to in this Act.

- (3) A document certified under subsection (2) above shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### **44 Registration of new rights**

- (1) A servitude or other right acquired by the authorised undertaker under section 14 or 15 above shall, unless otherwise expressly stated in the instrument by which it is created, be treated for all purposes as benefiting the land from time to time held by the authorised undertaker for the purposes of the authorised works.
- (2) Notwithstanding section 75 of the [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), where a servitude falls to be treated as mentioned in subsection (1) above, the deed by which it is created shall be effective whether or not it is registered against the benefited property.

#### **45 Mitigation of environmental impacts**

- (1) The authorised undertaker shall employ all reasonably practicable means to ensure—
- (a) that the environmental impacts of the construction and 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 the promoter’s undertakings 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 ‘Waverley Railway Act: Further Environmental Information (February 2005)’ and the ‘Addendum Environmental Statement: Stow Station (January 2006)’;

“the promoter’s undertakings” means all undertakings given by Scottish Borders Council as Promoter of the Bill for this Act—

- (a) to the Committee during the Consideration Stage of the Bill for this Act; or
- (b) to any person in connection with that Bill;

“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.

#### **46 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—
    - (i) the code of construction practice; and

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- (ii) any relevant local construction code,  
as approved by the local planning authority and from time to time amended or replaced; and
  - (b) the noise and vibration policy, as from time to time amended or replaced, is applied to the use and operation of the authorised works.
- (2) Neither the code of construction practice nor the noise and vibration policy shall be amended or replaced so as to reduce the standards of mitigation and protection provided for in the versions being amended or replaced.
- (3) Schedule 10 has effect in relation to the approval, amendment, replacement and effect of the code of construction practice.
- (4) In this section “noise and vibration policy” means the ‘Policy Paper on behalf of the Promoter in respect of Noise and Vibration’ dated 28th November 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.

#### **47 Works affecting the River Tweed Special Area of Conservation**

- (1) This section has effect in relation to the construction of the specified works, namely—
- (a) Works Nos. 5, 5D, 6, 7, 7B, 8, 9 and 10; and
  - (b) all related works and operations.
- (2) Paragraphs 2 to 7 of Part 1 of schedule 11 to this Act shall have effect in relation to the construction of the specified works at the sites identified in paragraph 1 of that Part.
- (3) Regulation 60 of the [Conservation \(Natural Habitats, etc.\) Regulations 1994 \(SI 1994/2716\)](#) shall not apply to the works and operations described in Parts 1 and 2 of schedule 11 to this Act to the extent to which they have been the subject of appropriate assessment by the Scottish Parliament prior to the passing of the Bill for this Act.

#### **48 Regulation of mitigation measures**

- (1) The requirements imposed by or pursuant to the following provisions, that is to say—
- (a) sections 45, 46 and 47 above;
  - (b) schedules 10 and 11 to this Act;
  - (c) any agreement under paragraph 6 of schedule 11; and
  - (d) any code of construction practice or local construction code approved, amended or replaced under either of those schedules,
- shall be enforceable, and the local planning authority shall have the duty to enforce them, as valid planning conditions.
- (2) For the purpose only of such enforcement, planning permission for the construction of the authorised works shall be deemed to have been granted under section 37 of the 1997 Act subject to the imposition of those conditions under section 41 of that Act.
- (3) The local planning authority shall appoint an Environmental Clerk of Works to monitor the carrying out by the authorised undertaker of the measures referred to in subsection (1).



#### **49 Application of the Crichel Down Rules**

In the event that the authorised undertaker compulsorily acquires land as authorised by section 13 above and that land is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker's requirements for the provision of the authorised works, the authorised undertaker shall apply the rules set out in Scottish Development Department Circular 38 of 1992 ("Disposal of Surplus Government Land – the Crichel Down Rules") as may be amended or superseded from time to time.

#### **50 Application of original enactments**

- (1) The provisions of the original enactments mentioned in schedule 12 to this Act shall apply to the authorised works as though for references in those provisions to any former railway there were substituted references to the whole or any part of the authorised works and as if any reference to the railway undertaker (however described) were a reference to the authorised undertaker.
- (2) Except as provided in subsection (1) above, nothing in this Act shall have the effect of applying the original enactments to the authorised works.
- (3) As from—
  - (a) the acquisition of any land by the authorised undertaker, whether compulsorily or by agreement; or
  - (b) the entry on the land by the authorised undertaker under section 24 above, whichever is sooner, BRBR shall be discharged from any obligation to which it is subject in relation to that land under any statutory provision relating to the former railway.
- (4) In this section "BRBR" means BRB (Residuary) Limited (company no. 04146505) and its successors.

#### **51 Rights of the Scottish Ministers**

- (1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Scottish Ministers.
- (2) Without prejudice to the generality of subsection (1) above, nothing in this Act authorises the acquisition of land (including any rights or interests in land) belonging to the Scottish Ministers without their consent in writing.
- (3) A consent under subsection (2) above may be given unconditionally or subject to terms and conditions.