



# Edinburgh Tram (Line Two) Act 2006

## 2006 asp 6

### PART 2

#### LAND

##### *Principal acquisition powers*

#### **23 Power to acquire land**

- (1) The authorised undertaker may acquire compulsorily—
- (a) so much of the land shown on the Parliamentary plans within the limits of deviation for the authorised works shown on those plans and described in the book of reference as may be required for the purposes of the authorised works, and
  - (b) so much of the land specified in columns (1) and (2) of Parts 1 and 2 of schedule 6 (being land shown on the Parliamentary plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of those Parts of that schedule;
- and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its tramway undertaking.
- (2) This section is subject to sections 40 (Time limit for exercise of powers of acquisition), 24 (Powers to acquire new rights) and 26 (Temporary use of land for construction of works).

#### **24 Powers to acquire new rights**

- (1) Subject to section 40 (Time limit for exercise of powers of acquisition), the authorised undertaker may compulsorily acquire such servitudes or other heritable or moveable rights over any land referred to in section 23(1)(a) or (b) (Power to acquire land) as may be required for any purpose for which that land may be acquired under that provision.
- (2) Servitudes and other rights may be acquired by creating them as well as by acquiring servitudes and other rights already in existence in accordance with subsection (1).

- (3) Where the authorised undertaker acquires any rights over land under this section, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.
- (4) Section 90 (Parties not to be required to sell part of a house) of the 1845 Act shall not apply to any compulsory acquisition under this section.
- (5) The provisions of the Lands Clauses Acts shall apply to rights over land acquired under this section as if they were lands within the meaning of those Acts.

## **25 Rights under or over roads**

- (1) The authorised undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any road shown on the Parliamentary plans and described in the book of reference as may be required for the purposes of the authorised works and may use the subsoil and air-space for those purposes or any other purpose connected with or ancillary to its tramway undertaking.
- (2) The power under subsection (1) may be exercised in relation to a road without the authorised undertaker being required to acquire any part of the road or any servitude or other right in it.
- (3) The authorised undertaker shall not be required to pay compensation for the exercise of the powers conferred by subsection (1) where the road is a public road; but where the road is not a public road, any person suffering loss by the exercise of that power shall be entitled to compensation.
- (4) Subsections (2) and (3) shall not apply in relation to—
  - (a) any subway or underground building, or
  - (b) any cellar, vault, arch or other construction in or on a road which forms part of a building fronting onto the road.
- (5) For the purposes of section 28 (Interpretation) of the Land Registration (Scotland) Act 1979 (c. 33), the powers conferred by this section shall constitute a real right and shall be an overriding interest.

## **26 Temporary use of land for construction of works**

- (1) The authorised undertaker may, in connection with the carrying out of the authorised works—
  - (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of schedule 7 (Land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that schedule relating to the authorised works specified in column (4) of that schedule,
  - (b) remove any buildings and vegetation from that land, and
  - (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) Not less than 28 days before entering upon and taking possession of land under this section, the authorised undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The authorised undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this section after the end of the period of one

year beginning with the date of completion of the work or works specified in relation to that land in column (4) of schedule 7.

- (4) Before giving up possession of land of which temporary possession has been taken under this section, the authorised undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the authorised undertaker shall not be required to replace a building removed under this section.
- (5) The authorised undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this section for any loss or damage arising from the exercise in relation to the land of the powers conferred by this section.
- (6) Any dispute as to a person's entitlement to compensation under subsection (5), or as to the amount of compensation, shall be determined under the 1963 Act.
- (7) Nothing in this section shall affect any liability to pay compensation in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under subsection (5).
- (8) Where the authorised undertaker takes possession of land under this section, it shall not be required to acquire the land or any interest in it.
- (9) In this section “building” includes any structure or any other erection.

## **27 Temporary use of land for maintenance of works**

- (1) The authorised undertaker may—
  - (a) enter upon and take temporary possession of any land within 20 metres of any of the authorised works if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it or securing the safe operation of that work,
  - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Subsection (1) shall not authorise the authorised undertaker to take temporary possession of—
  - (a) any house or garden belonging to a house, or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this section, the authorised undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The authorised undertaker may only remain in possession of land under this section for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this section, the authorised undertaker shall remove all works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The authorised undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this section for any loss or damage arising from the exercise in relation to the land of the powers conferred by this section.

- (7) Any dispute as to a person's entitlement to compensation under subsection (6), or as to the amount of compensation, shall be determined under the 1963 Act.
- (8) Nothing in this section shall affect any liability to pay compensation in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under subsection (6).
- (9) Where the authorised undertaker takes possession of any land under this section, it shall not be required to acquire the land or any interest in it.
- (10) In this section—
  - “building” includes structure or other erection, and
  - any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

## **28 Power as to acquisition and use of additional lands**

- (1) In addition to the lands which the authorised undertaker is authorised to acquire by section 23 (Power to acquire land) of this Act, the authorised undertaker may acquire, by agreement, any lands required for the following purposes—
  - (a) providing for the relocation of population or industry from any lands within the limits of deviation;
  - (b) providing recreational land or allotments in substitution for any lands within the limits of deviation;
  - (c) forming junctions between the works or any part of them and a road or other way; and
  - (d) executing, improving or maintaining the works.
- (2) The authorised undertaker may be authorised by Scottish Ministers to purchase compulsorily any lands for the purposes mentioned in subsection (1) and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) shall apply in relation to any such compulsory purchase as if this section had been contained in a public general Act in force immediately before the commencement of that Act.
- (3) The authorised undertaker may use any lands acquired by it in pursuance of the provisions of subsection (1) or (2), or any other land vested in it, for such purposes and for the purposes of section 1(3) (Power to construct works).

## **29 Power to retain, sell, etc., lands**

Notwithstanding anything to the contrary contained in the 1845 Act, the authorised undertaker may retain, hold and use for such time as it thinks fit, or may from time to time sell, lease, excamb or otherwise dispose of any lands vested in or belonging to it for the purpose of the works, or that may be acquired under the provisions of this Act, on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the authorised undertaker and their successors in title) as the authorised undertaker may see fit.

### **30 Application of the Crichton Down Rules**

In the event that the authorised undertaker compulsorily acquires land as authorised by section 23 (Power to acquire land) and that land is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker's requirements, the authorised undertaker shall apply the rules set out in Scottish Development Department Circular 38 of 1992 ("Disposal of Surplus Government Land – The Crichton Down Rules") as may be amended or superseded from time to time.

### *Compensation*

### **31 Disregard of certain interests and improvements**

- (1) In assessing the compensation (if any) payable on the acquisition from any person of any land under this Act, the tribunal shall not take into account—
  - (a) any interest in land; or
  - (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land, if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.
- (2) In subsection (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

### **32 Compensation in respect of depreciation in value of interest in land subject to a standard security**

- (1) Where an interest in land is subject to a standard security—
  - (a) any compensation which is payable under this Act in respect of the depreciation in value of that interest shall be calculated as if the interest were not subject to the standard security;
  - (b) a claim for the payment of any such compensation may be made by the heritable creditor under a standard security granted before the happening of the event giving rise to the compensation, but without prejudice to the making of a claim by any other person; and
  - (c) any such compensation payable in respect of the interest in land subject to the standard security shall be paid to the heritable creditor or where there is more than one heritable creditor, to the first ranking heritable creditor, and shall in either case be treated by the heritable creditor as if it were received as proceeds of sale and applied in the order of priority specified in section 27 (Application of proceeds of sale) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35).
- (2) In this section "standard security" includes a bond and disposition in security and any other real right in the nature of a security.

**33 Set-off against betterment**

- (1) In determining the amount of compensation or purchase money payable to any person in respect of an interest in land—
- (a) acquired under this Act in a case where—
    - (i) the person has an interest in any other land contiguous with or adjacent to the land so acquired; and
    - (ii) the value of that person’s interest in any such contiguous or adjacent land is enhanced by reason of the works authorised by this Act or any of them; or
  - (b) injuriously affected by construction works authorised by this Act where the value of that land is also enhanced by reason of the works authorised by this Act or any of them,
- then the amount of the enhancement in value shall be set off against the compensation or purchase money.
- (2) In this section any reduction in expenditure that would have been required in order to comply with an obligation under any Act with respect to any land is an enhancement in the value of an interest in the land.

*Supplemental powers***34 Acquisition of part of certain properties**

- (1) This section shall apply instead of section 90 (Parties not to be required to sell part of a house) of the 1845 Act in any case where—
- (a) a notice to treat is served on a person (“the owner”) under that Act (as incorporated with this Act by section 80 (Incorporation of enactments)) in respect of—
    - (i) land forming only part of a house, building or factory, or
    - (ii) land consisting of a house with a park or garden,
 (“the land subject to the notice to treat”), and
  - (b) a copy of this section is served on the owner with the notice to treat.
- (2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the authorised undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).
- (3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.
- (4) If such a counter-notice is served within that period, the question of whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the authorised undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.
- (5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—
- (a) without material detriment to the remainder of the land subject to the counter-notice, or

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*Status: This is the original version (as it was originally enacted).*

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- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.
- (6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—
- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.
- (7) If on such a reference the tribunal determine that—
- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,
- the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (8) If the authorised undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
- (b) that the material detriment is not confined to a part of the land subject to the counter-notice,
- the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the authorised undertaker is authorised to acquire compulsorily under this Act.
- (9) In any case where by virtue of a determination by the tribunal under this section a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the authorised undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay to the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in the case of dispute by the tribunal.
- (10) Where the owner is required under this section to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the authorised undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

**35 Persons under a disability may grant servitudes, etc.**

Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and this Act, grant to the authorised undertaker any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for any of the purposes of this Act in, over or affecting any such lands.

**36 Extinction or suspension of private rights of way**

- (1) Subject to the provisions of this section, all private rights of way over land subject to compulsory acquisition under this Act shall be extinguished—
  - (a) as from the acquisition of the land by the authorised undertaker, whether compulsorily or by agreement, or
  - (b) on the entry on the land by the authorised undertaker under section 37 (Power of entry on lands compulsorily acquired),whichever is sooner.
- (2) Subject to the provisions of this section, all private rights of way over land owned by the authorised undertaker which is within the limits of land to be acquired or used shown on the Parliamentary plans and is required for the purposes of this Act, shall be extinguished on the appropriation of the land for any of those purposes by the authorised undertaker.
- (3) Subject to the provisions of this section, all private rights of way over land of which the authorised undertaker takes temporary possession under this Act shall be suspended and unenforceable for as long as the authorised undertaker remains in lawful possession of the land.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this section shall be entitled to compensation to be determined, in case of dispute, under the 1963 Act.
- (5) This section does not apply in relation to any right of way to which section 224 or 225 (Extinguishment of rights of statutory undertakers, etc.) of the 1997 Act or paragraph 2 of schedule 9 applies.
- (6) Subsections (1), (2) and (3) shall have effect subject to—
  - (a) any notice given by the authorised undertaker before the completion of the acquisition of the land, the authorised undertaker's appropriation of it, the authorised undertaker's entry onto it, or the authorised undertaker's taking temporary possession of it, as the case may be, that any or all of those subsections shall not apply to any right of way specified in the notice; and
  - (b) any agreement made (whether before or after any of the events mentioned in paragraph (a) and before or after the coming into force of this Act) between the authorised undertaker and the person in or to whom the right of way in question is vested or belongs.

**37 Power of entry on lands compulsorily acquired**

Subject to the provisions of this Act, where the authorised undertaker is authorised to purchase land compulsorily then at any time after notice to treat has been served, it may, after giving the owner and occupier of the land not less than three months' notice in writing, enter on and take possession of the land or such part thereof as is specified



in the notice without previous consent or compliance with the provisions of sections 83 to 89 of the 1845 Act, but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

### **38 Correction of errors in Parliamentary plans and book of reference**

- (1) If the Parliamentary plans or the book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the authorised undertaker, after giving not less than 10 days' notice to the owner, lessee or occupier of the land in question, may apply to the sheriff for the correction of such inaccuracy.
- (2) Any person to whom a notice has been given under subsection (1) may, within the period of 10 days from the giving of the notice, give to the sheriff and the authorised undertaker a counter-notice in writing that the person disputes that there is an inaccuracy which may be amended under this section.
- (3) If in relation to any application under this section which has not been the subject of a counter-notice it appears to the sheriff that the inaccuracy arose from mistake, the sheriff shall certify the fact accordingly and shall in such certificate state in what respect any matter is misstated or wrongly described.
- (4) If any counter-notice is given under subsection (2), the sheriff shall before making any decision on the application cause a hearing to be held.
- (5) The certificate shall be deposited in the office of the Clerk of the Parliament, and a copy with the sheriff clerk, with the Partner Libraries with whom the book of reference has been deposited and with the solicitor to the authorised undertaker, from which time the Parliamentary plans and the book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the authorised undertaker to take the land or, as the case may be, a right over the land and execute the works in accordance with the certificate.
- (6) A person with whom a copy of a certificate is deposited under this section shall keep it with the other documents to which it relates.
- (7) An application under subsection (1) may only be made in respect of land identified in the book of reference and on the Parliamentary plans.
- (8) In this section “Partner Libraries” means the following public libraries: Edinburgh Central Library, Portobello Library, Leith Library, Wester Hailes Library, Morningside Library and Blackhall Library.

### **39 No double recovery**

Compensation shall not be payable in respect of the same matter both under this Act and under any other enactment, any contract or any rule of law.

### **40 Time limit for exercise of powers of acquisition**

- (1) The powers of land acquisition in sections 23 (Power to acquire land) and 24 (Powers to acquire new rights) shall cease at the end of the period of five years beginning on the day of the coming into force of this Act.

- (2) Subsection (1) shall not prevent the authorised undertaker remaining in possession of land under section 26 (Temporary use of land for construction of works) after that date, if the land was entered and possession of it was taken on or before that date.

#### **41 Extension of time**

On the application of the authorised undertaker, Scottish Ministers may, by order, extend, or further extend, the period referred to in section 40 (Time limit for exercise of powers of acquisition) provided that—

- (a) such application is made prior to the expiry of said period or any extension of that said period; and
- (b) the period referred to in section 40, and any extension to the said period, cannot exceed fifteen years in total.

#### **42 General vesting declarations**

- (1) Section 195 (General vesting declarations) and Schedule 15 of the 1997 Act shall apply to this Act as if it were a compulsory purchase order.
- (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.