

GLASGOW AIRPORT RAIL LINK ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Land

Introduction

52. Without provision in the Act the authorised undertaker will not have any compulsory purchase powers to acquire land for construction of the railway and associated infrastructure, or to acquire rights in land e.g. for the purpose of re-routing statutory undertakers' apparatus. Provisions are therefore required in the Act to confer appropriate compulsory purchase powers.

53. The principal purposes for which compulsory purchase powers are needed are for the acquisition of:

land and rights to access land to construct and then maintain the railway;

land for pedestrian and vehicular access to premises;

land for replacement of fuel farm at Glasgow Airport;

land for road alterations; and

land for provision of recreational facilities, associated mitigation and landscaping.

The promoters have also identified land which the authorised undertaker will not need to acquire permanently but which will need to be used to allow temporary access or to be occupied temporarily during the construction period e.g. as construction sites. (In the Act temporary occupation is referred to as “temporary possession”.)

54. In many cases (roads and housing are examples) powers are given by compulsory purchase order made by the authority that is to have the powers, or by the relevant Minister. In the present case compulsory purchase is authorised by the Act itself: there will not be a separate compulsory purchase order. The compulsory purchase powers are in Part 2 of the Act, either set out in full or applying the compulsory purchase and compensation law that applies to compulsory purchase orders. This suite of provisions gives the authorised undertaker powers for the compulsory purchase of land and rights over land, access and temporary possession, all of which are needed in connection with the authorised works. It also deals with issues concerning compulsory purchase procedures, entry on land, the assessment of compensation and procedures relating to compensation, as well as the particular issues dealt with in specific sections of the Act. The effect of the provisions is explained in greater detail below.

55. The land affected by the compulsory purchase powers in the Act is the land described – that is, given a description and not merely referred to as an unused plot number – in

the book of reference. On the Parliamentary plans it is all the land within the limits of deviation¹ and within the limits of land to be acquired or used².

56. The compulsory purchase powers conferred by the Act will enable the authorised undertaker to acquire the land necessary to construct the works authorised by the Act. In the absence of compulsory purchase powers this would not be possible if landowners refused to make their land available. The acquisition of land under compulsory powers (including purchase by agreement but where compulsory purchase powers have been conferred) also operates to extinguish all rights and claims which are inconsistent with the scheme and thus might inhibit the construction of the works. These include private rights of way as well as rights to maintain plant and equipment in the land.

Other compulsory purchase legislation

57. The provisions in the Act simply grant compulsory purchase powers. They do not include the detailed procedures required for implementation. Implementation is governed by an existing body of law relating to the detailed procedure for any compulsory purchase (whether authorised by Act, compulsory purchase order or some other means) and the way in which compensation is determined. This law is all applied to the compulsory purchase powers conferred by the Act³. An outline of this applied legislation is given below.

Compulsory purchase procedures

58. After the Act has been enacted, the first stage of the procedures will be the service on each landowner whose land is required of a notice (called a notice to treat) under section 17 of the [Lands Clauses Consolidation \(Scotland\) Act 1845 \(c.19\)](#) (in the Act called “the 1845 Lands Act”). This notice will inform those with an interest in land of the intention of the authorised undertaker to acquire the land or the rights described in the notice. Service of a notice to treat results in the authorised undertaker being in the same position as if a binding contract for the purchase of the land had been completed. As an alternative to serving a notice to treat, the authorised undertaker may acquire land by a general vesting declaration (on this see [paragraphs 192 to 196](#)).
59. The authorised undertaker may need to enter land to start the works in advance of completing its purchase. Before it can do so it must serve a notice (called a notice of entry) on the landowner.
60. Where a landowner is unwilling or unable to sell the authorised undertaker may acquire the land by executing a notarial instrument⁴. The same procedure applies where the authorised undertaker has made diligent efforts to find the landowner but has been unable to do so. These provisions are intended to ensure that a landowner cannot hold up the scheme unreasonably by refusing to sell and that the scheme can go ahead even if the landowner cannot be traced.
61. In practice an authority having compulsory purchase powers will often be able to buy land by agreement without having to resort to the formal statutory procedures. When this happens the Lands Clauses Acts give powers of sale to landowners (such as trustees) who otherwise might not be at liberty to sell. Although land may be purchased by agreement, the compensation rules will be the same as if the land had been purchased compulsorily.

¹ For an explanation of “limits of deviation” see notes on section 4.

² i.e. land situated outside the limits of deviation which is required to be acquired or used for specific purposes - see sections 12(b), 13, 14 and 16 and schedules 5 and 6.

³ For an explanation of the reason for applying other Acts see paragraphs 15 to 17 above.

⁴ “Notarial instrument”: the term used in sections 74 to 76 of the 1845 Lands Act when referring to the formal document that in these circumstances will vest land in the authorised undertaker. The expression is only a description. There is no special style laid down for this type of deed.

Compensation

62. The money paid for lands and rights purchased compulsorily is known as compensation. The body of law governing rights to compensation where there are compulsory purchase powers and the rules for calculating the basis and amount of compensation are in part in the common law, in part in the Lands Clauses Acts and in part in Part I of the [Land Compensation \(Scotland\) Act 1963 \(c.51\)](#). This detailed body of law will apply to compulsory purchase under the Act. Disputes about compensation will be referred to the Lands Tribunal for Scotland⁵.
63. The Act applies the [Railways Clauses Consolidation \(Scotland\) Act 1845 \(c.33\)](#), (in the Act called “the 1845 Act”). This Act includes a detailed code relating to minerals under the railway. These provisions (as amended by the [Mines \(Working Facilities and Support\) Act 1923 \(c.20\)](#)) restrict mineral extraction where this risks damaging the railway. If these restrictions apply the authorised undertaker may be required to pay compensation to the person with the right to work the mine.

Section 12 – Authority to acquire land

64. **Section 12(1)(a)** is the power for the authorised undertaker to acquire land within the limits of deviation. The land that may be acquired must be within those limits must be described⁶ in the book of reference and it must be land that may be required for the purposes of the authorised works.
65. **Section 12(1)(b)** relates to the permanent outright acquisition of land within the limits of land to be acquired or used. The authorised undertaker is authorised to acquire the land within those limits if (a) it is specified in columns (1), (2) and (3) of Part 1 of [schedule 5](#) to the Act and (b) it may be required for the purposes specified in relation to that land in column (4). Part 1 of [Schedule 5](#) lists specific plots of land within the limits of land to be acquired or used and specifies against each entry the purpose for which the land may be acquired. This is only some of the land within the limits of land to be acquired or used. The rest of the land within those limits is not to be acquired permanently and is dealt with in separate sections of the Act⁷.
66. **Section 12 (2)** provides specific protection to CGM (Oswald) Limited (company no. SC 190896) which occupies part of the land numbered 45 on sheet 19 of the Parliamentary plans. This provision prevents the authorised undertaker from compulsorily acquiring CGM (Oswald) Limited’s leasehold interest in part of plot number 45 , except in relation to airspace occupied by any protective or strengthening works constructed under the powers conferred by the Act. This provision will enable the company to resume occupation of their property following completion of construction of the authorised works, whilst allowing the authorised undertaker to acquire ownership of any permanent protective or strengthening works constructed within the property. If the authorised undertaker did not have authority to acquire the airspace occupied by any of the protective or strengthening works, there would be nothing to prevent the tenant from removing them, which would affect the safe construction and operation of the railway.

Section 13 – Acquisition of subsoil, airspace or rights

67. **Section 13** applies to any land that is authorised to be compulsorily acquired under **section 12**. **Section 12** authorises outright purchase of the land i.e. including the

⁵ *The Lands Tribunal for Scotland was set up under the [Lands Tribunal Act 1949 \(c.42\)](#). Section 8 of the [Land Compensation \(Scotland\) Act 1963 \(c.51\)](#) makes the tribunal responsible for determining disputes about compensation for compulsory purchase. The tribunal’s composition is governed by section 2(1) and (9)(b) of the 1949 Act (substituted by section 50(1) of the [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c.35\)](#)). It comprises a President (who must be a suitably qualified lawyer) and such number of other members as is determined by the Lord President of the Court of Session. The other members must be either suitably qualified lawyers or persons with experience in the valuation of land. The President and other members are all appointed by the Lord President (in the case of valuer members after consultation with the Royal Institution of Chartered Surveyors).*

⁶ See paragraph 55 above.

⁷ See [sections 14, 15 and 16](#).

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

airspace above the surface and the subsoil and bedrock beneath it. The purpose of **section 13** is to ensure that when exercising those powers the authorised undertaker is able to acquire less than that total interest in cases where all that is required is the subsoil under the land, the airspace above it or some right over the land.

68. Subsection (1) accordingly enables the authorised undertaker to acquire only the subsoil beneath or airspace over land or servitudes⁸ or other rights in relation to land.
69. Subsection (2) covers the case where the rights required by the authorised undertaker do not already exist. The subsection expressly allows for the creation of new rights, which will then be compulsorily acquired by the authorised undertaker.
70. Subsection (3) is intended to ensure that by exercising the powers of **section 13** the authorised undertaker will not be required to acquire the land itself or any interest in the land greater than the rights acquired under the section. In the absence of this provision the authorised undertaker will or may be required to buy land outright, even though all that is required for the authorised works is the airspace (e.g. because the authorised undertaker will only need to construct a viaduct over the land), or some right of access to the railway.
71. Subsection (3) accordingly provides that section 90 of the 1845 Lands Act and paragraph 20 of Schedule 15 to the Town and Country Planning (Scotland) Act 1997 do not apply to the acquisition of subsoil, airspace or rights under this section. Section 90 of the 1845 Act (which is discussed further in **paragraph 96**) states that landowners cannot be required to sell part of any house, building or factory. Paragraph 20 of Schedule 15 to the 1997 Act, which would apply if land is acquired under a general vesting declaration (see **paragraphs 192 to 196**), entitles a landowner to object to the purchase of part only of property consisting of a house, building or factory, or of a part of garden belonging to a house.
72. Subsection (4) applies the other provisions of the Lands Clauses Acts to the compulsory acquisition of new rights under **section 13** (on the Lands Clauses Acts, see **paragraph 18**). In subsection (6), the modifications in the 1845 Lands Act reflect similar provision in the **Land Compensation (Scotland) Act 1973 (c.56)**.

Section 14 – Purchase of specific new rights under land

73. In addition to **section 13**, in relation to the land within the limits of land to be acquired or used which is specified in columns (1), (2) and (3) of Part 2 of **schedule 5, section 14** enables the authorised undertaker to acquire new rights over that land for the specific purposes mentioned in column (4). This is mainly to allow access for construction and then maintenance of the railway.
74. **Section 14(2)** relates to the specific protection from compulsory acquisition of land afforded to CGM (Oswald) Ltd under section 12(2), explained in paragraph 66 above. It makes specific provision for the authorised undertaker to acquire permanent rights of access to the land as required for the purpose of maintaining the authorised works within plot 45.

Section 15 – Rights in roads

75. **Section 15** applies to any road that is included in the land that may be compulsorily acquired under **section 12**. In relation to such land, the section allows subsoil or airspace to be used for the works without the need for compulsory purchase.

⁸ “Servitudes” are rights created for the benefit of one plot of land (known as the dominant tenement) over another plot of land (known as the servient tenement). A servitude binds the servient tenement itself and so has to be observed by every owner of the servient tenement, not just the owner who agreed to the servitude at the outset. Only certain types of rights are servitudes e.g. the right to have a building supported, a right of way, a right to lay water pipes.

76. Subsection (1) enables the authorised undertaker to enter and use the subsoil of or airspace over such land for the purposes of the authorised works. The subsection permits the authorised undertaker to do this without serving notice on the roads authority or other owner of the land involved.
77. By subsection (2), the authorised undertaker may exercise these powers without being obliged to acquire the road or place or any servitude or right in relation to it.
78. Subsection (3) is a technical provision to safeguard the authorised undertaker's exercise of the powers in this section. The subsection provides that the powers in subsection (1) are taken to create a real right, even though it is not a right that is registered. An unregistered real right is an overriding interest⁹. An overriding interest takes effect as against the registered owner of land even though it is not registered¹⁰. Thus the effect of subsection (3) is to ensure that the powers in subsection (1) will be binding on anyone who owns land to which this section applies. The ability to create such rights is unaffected by the Title Conditions (Scotland) Act 2003.
79. The section enables the public works authorised by the Act to occupy the public space under and over roads on the same basis as the usual public use of those places, that is without the authorised undertaker having any owning interest. The section recognises that there may also be private interests in this land (for example, the subsoil under roads is often owned by the owners of land adjoining the road). Subsection (4) accordingly provides for the payment of compensation to any private owner of land to which the section applies who suffers loss as the result of the use of his or her land under subsection (1). Under subsection (5) any dispute as to compensation will be determined by the Lands Tribunal for Scotland in accordance with the Land Compensation (Scotland) Act 1963.
80. Subsection (6) provides that subsection (2) shall not apply where subsoil to which the section applies is occupied by an underground subway or building or by an underground part of an adjoining building. This recognises that in these cases the authorised undertaker will be occupying an integral part of a larger structure. Where what is occupied is a part of a structure the authorised undertaker ought not to be able to avoid the obligation to acquire the relevant land or obtain appropriate rights. There may well need to be obligations included in the legal transfer or grant of rights concerning the use by the authorised undertaker of part of the structure. Accordingly, subsection (6) obliges the authorised undertaker to acquire the relevant land, or an appropriate servitude or right, before using it for the authorised works.

Section 16 – Temporary use of land for construction of works

81. Where the authorised undertaker only needs to occupy land for a temporary period, purchase of the land cannot be justified (see [paragraph 52](#) above). [Section 16](#) allows for the authorised undertaker to take temporary possession of specified land for the period required for specific authorised works. Provision of this sort is standard in legislation authorising works.
82. By subsection (1) the authorised undertaker may take temporary possession of the land specified in columns (1), (2) and (3) of [schedule 6](#) for the various purposes mentioned in column (4) of that schedule. (These are purposes such as the provision of construction compounds, working spaces and access.) On exercising these powers the authorised undertaker may remove buildings and vegetation and construct temporary works (including means of access) and temporary buildings on the land and carry out as necessary permanent works to mitigate the effects of the authorised works.
83. Subsection (2) requires the authorised undertaker to serve 28 days' prior notice of entry on the owners and occupiers of the land.

⁹ See *Land Registration (Scotland) Act 1979 (c.33) s.28(1)*, definition of "overriding interest" paragraph (h).

¹⁰ *Land Registration (Scotland) Act 1979 (c.33) s.3(1)(a)*.

84. Subsection (3) provides that, except with the landowner's agreement, the authorised undertaker may not remain in temporary possession for more than one year after the date of completion of the works for the purposes of which entry was made. The relevant work is specified, in relation to each plot, in column (5) of [schedule 6](#). The authorised undertaker is allowed to remain in possession for this further year so that it can do all the work required during the 12 month maintenance period immediately after construction has been completed. It is normal in construction contracts for contractors to be liable to maintain works for a given period (usually 12 months) after the works have been completed. This makes the contractor responsible to rectify any defects that come to light while the works are 'bedding in'.
85. Subsection (4) provides that before giving up possession the authorised undertaker must remove temporary buildings and restore the land to the reasonable satisfaction of its owners. The authorised undertaker is not required to replace buildings that have been removed on the basis that the character of the land has fundamentally changed as the result of its temporary use¹¹.
86. Subsection (5) requires the authorised undertaker to pay the owners and occupiers of land of which temporary possession has been taken compensation for any loss they suffer as the result of the temporary possession.
87. By subsection (6) the amount of any compensation is to be determined in case of dispute under the [Land Compensation \(Scotland\) Act 1963 \(c.51\)](#). The compensation payable under [section 16](#) is in respect of loss or damage arising from the temporary possession. The same landowner might be entitled to compensation in respect of the same land arising from the construction of the authorised works. Accordingly, subsection (7) provides that any compensation payable under this section is additional to any other compensation that may be payable in respect of the land. Compensation will continue to be payable under any other enactment except in so far as this duplicates compensation payable under [section 16](#).
88. Subsection (8) provides that the authorised undertaker is not required to acquire the land which is used temporarily under this section, or any interest in it.

Section 17 – Disregard of certain interests and improvements

89. Under the rules applicable to the assessment of compensation land is valued at its market value. The purpose of [section 17](#) is to ensure that landowners do not act to enhance the value of their land solely for the purpose of obtaining compensation or increased compensation. Subsection (1) accordingly provides that when assessing compensation payable on the acquisition of the land the Lands Tribunal for Scotland shall not take into account the creation of any interest in land, the erection of buildings or the carrying out of works, improvements or alterations which was undertaken for this purpose.
90. Subsection (2) makes clear that this section applies to works or improvements undertaken both on the land to be acquired and any other land in which the claimant has an interest (a claim for compensation will take into account the impact on land which has been retained by the claimant as well as on the land which is being acquired).

Section 18 – Set-off of betterment against compensation

91. Development may enhance the value of adjoining or nearby land. [Section 18](#) accordingly provides for compensation to be reduced by an amount equivalent to any enhanced value of other contiguous¹² or adjacent¹³ land of the person seeking the compensation.

¹¹ This is standard in provisions of this sort – see e.g. *City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s.8(4)(b)*. It reflects the legal rule that where land that has been compulsorily acquired outright for a particular authorised purpose is no longer needed for that purpose and is to be sold, the original owner has no right to be given first refusal if the character of the land has fundamentally changed as the result of its use for the authorised purpose.

¹² "contiguous": touching or immediately next to, sharing a common boundary with [other land].

Section 19 – Application of legislation relating to certificates of appropriate alternative Development

92. The provisions relating to a certificate of appropriate alternative development under section 25 and 26 of the Land Compensation (Scotland) Act 1963 apply (as provided by section 30(2)(a) of the 1963 Act) to an interest in land subject to compulsory purchase where a notice to landowners has been served as part of the requirements of UK Parliament’s standing orders for a Act when it is first introduced.
93. The effect of the certificate is that where an interest in land is subject to compulsory acquisition under an Act, the person in whom that interest is vested or the authorised undertaker may apply to the planning authority for a certificate of appropriate alternative development in respect of that land. If the planning authority issues such a certificate stating that, in the absence of the promoter’s proposal, planning permission would have been granted for specified development, then it is assumed for compensation valuation purposes that such planning permission would have been granted.
94. Section 30(2)(a) of the 1963 Act was not extended on devolution to refer also to the standing Orders of the Scottish Parliament. The purpose of **section 19** is to amend section 30(2)(a) so that when (in accordance with the Scottish Parliament’s standing orders) a notification is given of the proposal to acquire land compulsorily the provisions relating to a certificate of appropriate alternative development (sections 25 and 26) will apply.

Section 20 – No double recovery

95. **Section 20** ensures that those entitled to compensation under the Act and any other enactment, contract or rule of law are not compensated twice in respect of the same item of compensation.

Section 21 – Acquisition of part of certain properties

96. **Section 21** lays down special procedures in place of section 90 of the 1845 Lands Act, which would otherwise be applicable where an acquiring authority wishes to acquire part only of certain types of property required for the works. Section 90 provides that the owner of a house, building or factory cannot be compelled to sell only part of his or her property if he or she is willing to sell the whole. This would enable a landowner to insist on the acquisition of the whole of his or her property, however large, even where the purchase of the part proposed for compulsory acquisition is insignificant in relation to the whole. The replacement procedures allow the authorised undertaker to acquire only part of a property where this can be done without material detriment¹⁴ to the rest of the property and, in the case of a house with a park or garden, without also seriously affecting the amenity or convenience of the house¹⁵. These replacement provisions reflect the modernised state of the law in England and Wales (under section 8 of the **Compulsory Purchase Act 1965 (c.56)**). Their application in legislation of this sort is standard¹⁶.
97. Subsection (1) applies this section to any case where a notice to treat¹⁷ relates to land forming part of a house, building or factory or to land consisting of a house with a park or garden. For the section to apply a copy of the section must also be served with the notice to treat.

13 “adjacent” includes land that is not contiguous, but which is close to or near other land.

14 “Material detriment” to the remainder of the property: the test is whether the remainder, after the part is compulsorily acquired, is less useful or less valuable in some significant degree compared with the property as existing before the acquisition took place (*McMillan v Strathclyde Regional Council* 1984 S.L.T. Lands Tr. (Scot)) 25.

15 “Seriously affecting the amenity and convenience of the house”: the test is whether after the part has been compulsorily acquired the house has less amenity and less convenience in some significant degree compared with the property as existing before the acquisition took place (see *McMillan v Strathclyde Regional Council*).

16 See e.g. *City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii)*, s.6.

17 For an explanation of this expression see paragraph 58 above.

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

98. Subsection (2) provides that where a notice to treat is served under subsection (1), the owner may serve a counter-notice on the authorised undertaker within 21 days, objecting to the sale of part of the land and stating that the owner is willing to sell the whole of the land.
99. Subsection (3) provides that if the owner does not serve a counter-notice within 21 days, he or she is obliged to sell the land the authorised undertaker wishes to acquire.
100. Subsection (4) provides that where the authorised undertaker agrees to take the land the subject of the counter notice, the notice to treat is deemed to apply to that land, in addition to the land it originally applied to.
101. Subsection (5) provides that where the authorised undertaker does not agree to take the land the subject of the counter notice, the question as to what land the owner shall be required to sell is referred to the Lands Tribunal for Scotland.
102. Subsection (6) provides that if the Tribunal decides that the part subject to the notice to treat can be taken without material detriment to the land specified in the counter notice, or in the case of a house with a park or a garden, without seriously affecting the amenity of the house, the owner is obliged to sell the land that the authorised undertaker wishes to acquire.
103. Under subsection (7) the Tribunal may make a similar decision in relation to part of the land subject to the notice to treat. In that case the notice is deemed to apply only to that part, which can then be acquired.
104. Subsection (8) provides for the case where the Tribunal finds that there is material detriment or serious effect on amenity or convenience, but limited to part of the land subject to the counter-notice. The notice to treat is then deemed to apply to both the land referred to in that original notice and, in addition, the land affected by the material detriment.
105. Under subsection (9), where the Tribunal determines that there will be material detriment or an adverse effect on amenity or convenience, and also determines that any material detriment extends to all¹⁸ the land subject to the counter-notice, the notice to treat is deemed to apply to all the land included in the counter-notice.
106. Under subsection (4), (8) or (9) a notice to treat can be deemed to include other land whether or not that land is subject to compulsory acquisition under the Act.
107. Subsections (11) and (12) cover the situation where the Tribunal determines that the authorised undertaker should acquire either more or less land than was included in the original notice. Either of these circumstances could have serious implications for the design or operation of the authorised works. The authorised undertaker is allowed 6 weeks within which to withdraw the notice to treat rather than proceed with the acquisition of the land determined by the Lands Tribunal. If the authorised undertaker withdraws the notice to treat it is obliged to pay the owner compensation for any expense caused by the giving and withdrawal of the notice to treat. This enables the authorised undertaker to take any available alternative options. This might for example involve re-designing works or methods of construction so that none of the land is required.
108. By subsection (13), where this section results in an owner being required to sell only part of—
 - a house, building or factory; or
 - land with a house and a park or garden,

¹⁸ Where material detriment extends to only part of the land subject to the counter-notice subsection (7) applies.

the authorised undertaker is not required to buy the whole property. However, the authorised undertaker must in addition to paying compensation for the value of the interest acquired, pay compensation for any loss resulting from severance of the land¹⁹.

Section 22 – Extinction or suspension of private rights of way

109. The Act provides for necessary public and private means of access²⁰. The authorised works cannot accommodate further rights of way over the land that may be compulsorily acquired under the Act. **Section 22** accordingly extinguishes²¹ 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 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.

¹⁹ *i.e. diminution in value of the remaining land due to the loss of the compulsorily acquired land.*

²⁰ *See e.g. Work No.1B.*

²¹ *i.e. terminates the rights, so that they cease to exist.*

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 rights²². 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.

Section 23 – Power to enter land for survey, etc.

119. The Lands Clauses Acts do not allow adequately for the carrying out of survey and similar work before acquiring land. Surveys and the other activities described in subsection (1) are a necessary part of the detailed design and preparatory work that is required in advance of starting construction. It is impracticable for survey work to await completion of formal purchase procedures, which can include Lands Tribunal hearings. This is recognised in section 83 of the 1845 Lands Act which allows entry before purchase for survey and a limited number of other purposes (drilling and soil samples). **Section 23** of the Act extends these purposes to include what is necessary for a modern construction project. It is a standard provision in modern legislation of this sort²³.
120. Subsection (1) enables the authorised undertaker to enter any land within the limits of deviation or the limits of land to be acquired or used for the purposes of carrying out surveys and investigations (including archaeological investigations) and to protect or remove flora or fauna.
121. Subsection (2) requires the authorised undertaker to give, on the first occasion seven, and thereafter three, days' notice to the owner and occupier.
122. Subsection (3) requires a person entering under these powers to produce written evidence of authority, and authorises such a person to enter with vehicles and equipment. The subsection does not specify the form of written authority required, but this might take the form of a letter of authority from the authorised undertaker.
123. By subsection (4) no trial holes may be made in a carriageway or footway without the consent of the road works authority.
124. Subsection (6) requires the authorised undertaker to pay compensation for damage caused to owners and occupiers.

Section 24 – Further powers of entry

125. **Section 24** is also a standard provision²⁴. The 1845 Lands Act permits entry on land under compulsory purchase powers only after full payment has been made (1845 Lands Act, section 83) or after the body with the compulsory purchase powers has

²² See *section 14 and Part 2 of schedule 5*.

²³ See e.g. *The Stirling-Alloa- Kincardine Railway and Linked Improvements Act 2004, section 23, British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.21, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), ss. 12 and 13*.

²⁴ See e.g. *The Stirling-Alloa- Kincardine and Linked Improvements Act 2004 section 24, British Railways (No.2) Order Confirmation Act 1994 (c.ii), s.22, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s.14*.

deposited in a bank as security either the compensation claimed by the landowner or a sum representing the value of the land as valued by a valuer appointed by the sheriff (section 84). Sections 85 and 86 require the money to remain in the bank as a security to be distributed as directed by the sheriff. Section 87 imposes financial penalties on entering land without complying with the procedures, and in the event of a landowner refusing entry even after full payment has been made, the only recourse is to apply to the sheriff for a possession order. The procedures are cumbersome and time consuming. In England and Wales they have been simplified and modernised so as to allow entry after the landowner has been given notice²⁵. The purpose of **section 24** of the Act is to allow this modern procedure to apply.

126. Where a notice to treat has been served in respect of any land subject to compulsory purchase subsection (1) enables the authorised undertaker to enter the land and take possession of it.
127. Under subsection (2), at least three months' prior notice of entry must be given to the owner and the occupier of the land.
128. Subsection (3) enables the authorised undertaker to exercise these powers without complying with sections 83 to 89 of the 1845 Lands Act.
129. Where the authorised undertaker enters land under **section 24**, subsection (4) provides that the authorised undertaker must pay compensation as though sections 83 to 89 had been complied with. **Section 24** does not therefore alter a landowner's right to compensation, including the right to receive an advance payment of 90% of the compensation, as required by section 48 of the **Land Compensation (Scotland) Act 1973 (c.56)**. Subsection (5) makes it clear that the obligation to make an advance payment is not affected by **section 24**.
130. The object of this section is to ensure that the works are not delayed by negotiations with landowners about the compensation to which they are entitled. As landowners are to be obliged to give up their land in any event, the amount of compensation is a completely separate issue from possession of the land.

Section 25 – Persons under disability may grant servitudes, etc.

131. **Section 25** applies to persons such as trustees who are only able to convey the land because they are empowered to do so by the 1845 Lands Act. People who are legally disabled from doing something (in this case selling land) are described as being under a disability.

Section 7 of the 1845 Lands Act enables such people to convey existing rights, but not to create new rights. Provision is accordingly required to ensure that it will always be possible for the authorised undertaker to acquire new rights under **section 14** of the Act.

132. Subsection (1) accordingly allows persons under a disability to grant to the authorised undertaker servitudes, rights or privileges²⁶ over their land. If they remained unable to do this such people in this position could only sell the whole of the land. The authorised undertaker could be left with land it did not need and an increased compensation liability.
133. By subsection (2), rights cannot be granted in relation to water in which others have an interest. Where several landowners have interests in the same water, the law treats them as sharing a common interest: one of them cannot therefore do something that affects the others. Subsection (2) is needed to prevent **section 25** being used to override these general property rights.

²⁵ See *Compulsory Purchase Act 1965 (c.56), s.11*.

²⁶ "Privileges": rights that are of benefit to the person entitled to exercise them, for example fishing rights.

Section 26 – Period for compulsory acquisition of land

134. Subsection (1) provides that the compulsory purchase powers of the Act will expire five years from the date on which the Act comes into force (i.e. five years following the day after it receives Royal Assent). Subsection (2) provides that for the purposes of this deadline the powers are deemed to have been exercised before that date if either notice to treat has already been served or if the authorised undertaker has executed a general vesting declaration under paragraph 1 of Schedule 15 to the Town and Country Planning (Scotland) Act 1997, the effect of which is to vest that land in the authorised undertaker. (See [paragraphs 192 to 196](#)).
135. A time limit on exercising the compulsory purchase powers is needed so that landowners are not prejudiced. Without a time limit landowners would be likely to find that for so long as land was at risk of compulsory purchase it would be difficult if not impossible to sell, or its value would be reduced. [Section 39](#) provides for the situation where a landowner needs to sell land that is affected in this way.
136. It is normal for legislation authorising the construction of works to impose time limits on the exercise of compulsory purchase powers²⁷.

Section 27 – Extension of time

137. Subsection (1) provides for the time limit on the exercise of compulsory powers referred to in [Section 26\(1\)](#) to be extended on the application of the authorised undertaker. Subsection (1)(a) provides that the application must be made before the original five year period has expired. More than one extension may be ordered but subsection (1)(b) provides that the total period for compulsory acquisition shall not exceed 10 years. Subsection (3) requires extensions to be made by statutory instrument, thereby subjecting any such application to the scrutiny of Parliament. Subsection (4) provides that any statutory order containing an extension of time can be annulled by resolution of the Parliament.

Section 28 – Time limit on validity of notice to treat

138. Section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 which requires an acquiring authority to give notice of its intention to take land (that is, to serve a notice to treat), is incorporated with this Act by virtue of [Section 47](#). In relation to compulsory purchase orders section 78 of the [Planning and Compensation Act 1991 \(c.34\)](#) limits the life of a notice to treat served under section 17 of the 1845 Act to three years from the date on which it is served. The effect of [Section 28](#) is to apply the three-year limit under section 78 of the 1991 Act to a notice to treat served under this Act. Without this provision there would be a degree of uncertainty as to whether or when a notice to treat should be treated as having been abandoned.

Section 29 – Parliamentary plans and book of reference: adjustments agreed with landowners and correction of errors

139. [Section 29](#) provides a procedure whereby owners of land as well as the authorised undertaker will be able to have binding agreements not to acquire land reflected in the plans and book of reference. It also provides for the authorised undertaker to correct an inaccurate description of any land or its ownership or occupation in the Parliamentary plans or the book of reference. Subsection (2), for which there are numerous precedents, is an extension of the procedure in [section 41](#) for certifying the book of reference and the Parliamentary plans and sections.
140. Where a binding obligation has been entered into not to acquire land within the limits of deviation or limits of land to be acquired or used, subsection (1) allows the owner of

²⁷ See e.g. *British Railways (No.2) Order Confirmation Act 1994 (c.ii), s.15*; *City of Edinburgh (Guided Busways) Order 1998 (c.iii), s.20*.

the land and the authorised undertaker to have the plans and book of reference altered to reflect the agreement. The owner or authorised undertaker must give 10 days notice as required by subsection (3) and may then apply to the sheriff. Subsection (3) provides that an authorised undertaker must give notice to the owner, lessee and occupier of the land in question and the owner must give notice to the authorised undertaker and any lessee or occupier.

141. For corrections to errors, the authorised undertaker must apply to the sheriff under subsection (2) giving notice of the application as required by subsection (3).
142. Subsection (4) enables a recipient of a notice to give a counter-notice in writing to dispute, in the case of an application under subsection (1), that the proposed amendment or addendum accurately reflects the obligation or, in the case of a notice under subsection (2), that there is an inaccuracy which may be amended under section 29. If a counter-notice is received, subsection (7) requires the sheriff to have a hearing before making a decision on the application.
143. Where no counter-notice is received, and the Sheriff is satisfied that the proposed amendment or addendum accurately reflects the obligation, or that the inaccuracy arose by mistake, the sheriff will certify that this is the case (subsection (5)). Where an application was for correction of an inaccuracy, the certificate shall state in what respect the matter was misstated or wrongly described. The certificate will then be deposited in the office of the Clerk to Parliament (subsection (8)) and the plans and book of reference shall be deemed to be corrected or amended according to the certificate (subsection (9)). Subsection (10) obliges the Clerk to keep the certificate with the plans and book of reference to which it relates.
144. Subsection (12) defines sheriff as the sheriff for the area in which the land is situated.
145. The purpose of the section is to ensure that binding obligations not to acquire land may be recorded by either party and that implementation of the Act (when passed) is not prevented by mistaken misdescriptions. The Act authorises the compulsory acquisition of land as shown on the Parliamentary plans and described in the book of reference. A minor mistake in a description in one document might result in it being inconsistent with the other, which might in turn prevent proper identification of land to be compulsorily acquired. In the absence of this procedure to correct the position, the compulsory purchase powers in the Act could not be used in relation to that land. Subsection (11) ensures that this provision cannot be used to bring in further land which was not identified on either the original plans or the book of reference.

Section 30 – Restrictions on compulsory purchase in respect of operational airport land

146. The Act will authorise works on land within Glasgow Airport. It is recognised that the exercise of unrestricted compulsory powers over such land could compromise the operation or safety of this key transport undertaking. The object of these provisions is to restrict the exercise of compulsory powers in order to safeguard the statutory responsibilities of the body which owns and operates the relevant infrastructure while at the same time establishing that this body must act reasonably in imposing requirements in relation to the construction of the railway.
147. Subsection (1) refers by reference to the parcel numbers on the Parliamentary plans to the land within Glasgow Airport, and provides that compulsory acquisition of this land or the exercise of powers to occupy land temporarily is subject to such requirements as Glasgow Airport Limited, the owner and operator of the airport, may reasonably make to ensure there is no material adverse impact on the operation or safety of its airport undertaking. The requirements imposed could cover the extent of land being acquired, the nature of the interest (in so far as this could have an impact on airport operations) and the terms on which the acquisition is made. However they relate only to operational requirements (rather than for example issues relating to retail facilities at the airport).

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

148. Subsection (2) and (3) provide for disputes to be determined by arbitration, unless the parties agree on some other alternative form of dispute resolution, and that the authorised undertaker will not take possession of any of the land stipulated until the dispute has been resolved. Arbitration is governed by **section 35** of the Act.
149. Subsection (4) amends in relation to operational airport land, the restriction on the length of leases imposed by section 67(1) of the Abolition of Feudal Tenure etc (Scotland) Act 2000 which sets the maximum as 175 years and provides the authorised undertaker with powers to take leases of up to 250 years at Glasgow Airport.

Section 31 – Protection of Access at St James’ Park

150. The purpose of **section 31** is to protect pedestrian and vehicular access at St James’ Park. By subsection (1) when the authorised undertaker acquires title to all or any part of the land under the viaduct, it must immediately grant and register rights for pedestrian and vehicular access over that land in favour of the proprietor or proprietors for the time being of plots 75 and 78. Subsection (2) provides that the rights conferred by this section are to operate for as long as there are football pitches available for use on either side of the viaduct.
151. These access rights are subject to reasonable restrictions for the protection of the authorised works or their operation (subsection (3)) which may include the right to obstruct access temporarily across plots 76 and 83 for the purpose of maintaining the authorised works and restrictions on the nature of vehicles permitted to pass under the authorised works. However, where restrictions occur, the authorised undertaker must provide suitable alternative means of access and egress (subsection (4)).
152. Subsection (5) requires the authorised undertaker not to exercise its powers over the private access road adjoining the playing fields in a manner that would prevent access to and from plots 75 and 78 at any time during which there is a football pitch available for use on either or both of those plots.