

GLASGOW AIRPORT RAIL LINK BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9A.2 of the Parliament's Standing Orders, the following documents are published to accompany the Glasgow Airport Rail Link Bill introduced in the Scottish Parliament on 31 January 2006:

- Explanatory Notes;
- an Estimate of Expense and Funding Statement;
- a Promoter's Statement; and
- the Presiding Officer's Statement on legislative competence.

A Promoter's Memorandum is printed separately as SP Bill 54-PM.

2. In addition to the accompanying documents published by the Parliament (referred to in paragraph 1 above), the following accompanying documents are published separately by the promoter:

- maps / plans / sections / book of reference;
- an Environmental Statement under Rule 9A.2.3(c)(iii); and
- an Assignment of Copyright/Licensing Agreement under Rule 9A.2.3(e).

EXPLANATORY NOTES

INTRODUCTION

3. These Explanatory Notes have been prepared by John Kennedy & Co., Parliamentary Agents, on behalf of the promoter Strathclyde Passenger Transport Executive (“SPTE”) in order to assist the reader of the Glasgow Airport Rail Link Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

5. The Bill will grant powers to SPTE and its successors (for an explanation of successors to SPTE see paragraph 9). In the Bill the body exercising the powers is called “the authorised undertaker”. The Bill will enable the authorised undertaker to build new railway works. All the other powers in the Bill, including the other works described below, are required in connection with the construction of the new railway works. In particular, the Bill grants compulsory purchase powers. This will ensure that the authorised undertaker will be able to acquire the land or rights in land that are required for the works to be constructed and operated. **Paragraphs 6 to 8** below outline the purpose of the Bill in greater detail.

6. The principal purpose of the Bill is to give statutory authority to SPTE and its successors (in the Bill called “the authorised undertaker”) for the construction of works to provide a new railway service between Glasgow Airport and Glasgow Central Station. The works comprise:

- the construction of a new railway spur from a new elevated station at Glasgow Airport, passing on viaduct over the M8 motorway, across St James’ Park and the Murray Industrial Area and joining with the existing railway east of Paisley St James Station; and
- works to the existing railway including the remodelling of Wallneuk Junction east of Paisley Gilmour Street Station; additional track between Arkleston Junction and Shields Junction and at Elderslie; and additional track and new platform at Glasgow Central Station.

7. In connection with these principal works the Bill also provides for the alteration of a length of Murray Street and the construction of a new access road leading off the slip road to the M8 at Glasgow Airport. Diversions will be provided. In addition, the Bill enables the authorised undertaker to construct miscellaneous works and do other things within the limits of deviation and limits of land to be acquired or used (see **paragraph 28 and 68** for explanation) that are required in connection with or in consequence of the railway works including the provision of replacement aviation fuel farm facilities at Glasgow Airport. In the Bill the works that will enable these miscellaneous things to be done are called “the ancillary works”.

8. Provision is also included for the compulsory acquisition of land for the scheme.

RECIPIENTS OF THE POWERS

9. The powers of the Bill will be conferred initially on SPTE. Provision is made for SPTE to transfer the railway undertaking and related powers in whole or in part, and to share or delegate any of the powers of the Bill under section 31 of the Bill.

RELATIONSHIP WITH PLANNING AND RAILWAYS REGULATION

10. The development authorised by the Bill will be permitted development,¹ so that the Act will effectively grant planning permission. The Bill restricts this planning permission so that it applies only to works authorised by the Act where construction has been started within 10 years of the Act receiving Royal Assent. The position is described further in the explanation of **section 36** (see **paragraphs 178 to 181** below).

11. The Bill does not state that the authorised undertaker may operate the railway and related facilities. This is because statutory authority to operate the railway will be conferred in another way. Under section 6 of the Railways Act 1993 (c.43) the operation (including maintenance) of a railway asset (which includes track and other infrastructure and stations) requires a licence under section 8 of that Act, and section 122 of the Act confers the benefits of statutory authority on a licensed operator. Statutory authority to operate the railway will also result from the incorporation of the Railways Clauses Consolidation (Scotland) Act of 1845 (c.33). (The incorporation of this and other Acts is explained in **paragraphs 17 to 20** and **66** and **190** below.)

THE BILL AND RELATED DOCUMENTS

12. The Bill is the only document that is submitted for enactment by the Parliament. However, although it is free-standing from its accompanying documents, it must be read by reference to the documents referred to in it, namely the Parliamentary plans, the Parliamentary sections and the book of reference. The Parliamentary plans show the lands to be used, the works and facilities to be constructed and (in some cases) the uses to be made of certain areas. The Parliamentary sections show sections of the railway works, including associated road works. The book of reference lists the owners, lessees and occupiers of all lands which may be compulsorily acquired or used or who have interests in any land or water in or over which rights would be extinguished, or interests in the rights that would be extinguished.

13. European legislation on environmental assessment (EC Directive 85/337/EEC as amended by EC Directive 97/11/EC) applies to the Bill. The requirements are transposed into domestic law for development projects authorised under planning legislation through the Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1) as amended by the Environmental Impact Assessment (Scotland) Regulations 2002 (SSI 2002/324). The

¹ "Permitted development" means development which is permitted by article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223) to be carried out without the need to apply for planning permission. The precise scope of the different classes of permitted development and the conditions subject to which it is permitted are set out in Schedule 1 to the 1992 Order. The relevant class in this case is Class 29 (development authorised by private Act, etc.).

requirements of those Regulations are applied to the procedures for Scottish Private Bills authorising works by virtue of Rule 9A.2.3(c)(iii) of the Standing Orders of the Scottish Parliament and the Presiding Officer's determinations as set out in Annexes K and N to the Parliament's *Guidance on Private Bills*. The findings of the environmental assessment that has been carried out in relation to the Bill's proposals are set out in the Environmental Statement that has been lodged as one of the accompanying documents.

STRUCTURE OF THE BILL

14. Before commenting on the individual sections it may be helpful to explain how the Bill operates.

15. Part 1 confers the powers relating to the works themselves. It distinguishes between—

- those works that are specifically described (the scheduled works described in **schedule 1**); and
- works carried out under general powers (the ancillary works as described in **schedule 2**).

16. Part 2 confers statutory authority for the compulsory purchase of the land required for the scheme. All the sections in this Part are concerned with the implementation of the compulsory purchase powers, so that the Bill will have the same effect as would a compulsory purchase order in other types of scheme e.g. for roads.

17. Fairness demands that compulsory purchase under the Bill must be on the same standardised basis as any other compulsory purchase in Scotland. Departure from what is generally applicable also has human rights implications. This means that in the Bill compulsory purchase must be subject to all the same procedural rules, safeguards and requirements regarding compensation as apply generally. All these provisions are in a large and complex body of law contained in several public Acts of Parliament and case law.² So that those affected by the Bill are on the same footing as those affected by compulsory purchase orders, this body of legislation must be applied to the Bill.

18. In theory this might be done either by writing the relevant provisions at length in the Bill or by applying the existing public Acts as if they had been included in the Bill. **Section 40** of the Bill proposes the latter. In this it adopts the format for legislation authorising railways and similar infrastructure works which has been in place throughout Great Britain since the mid 19th century and which continues to be utilised.³

² The relevant law has been described as having “become an unwieldy and lumbering creature” – see ‘Fundamental Review of the Laws and Procedures Relating to Compulsory Purchase and Compensation: Final Report’, Office of the Deputy Prime Minister, January 2003, para. 20.

³ Recent Scottish examples of provisions similar to section 40 are the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004, section 37, the British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.3 (authorising an upgrading of the part of the present route between Cambus and Alloa) and the British Railways (No. 3) Order Confirmation Act 1994 (c.iii), s.3 (authorising an upgrading of the railway between Hamilton and Larkhall). More recent examples are in Orders made under the Transport and Works Act 1992, which are the means of authorising most infrastructure works in England and Wales and which apply the

19. The Bill follows this precedented format because writing the entire statutory code into the Bill is not a practical option. The scheme of the law in question is outlined below in **paragraphs 61 to 137 and 190** explaining Part 2 of the Bill and **section 40**. The Acts applied by **section 40** contain a total of some 400 sections. Not all sections are relevant, but in much of this legislation it is not possible to say with absolute certainty that a particular provision is not going to be relevant. In addition, this legislation is written in 19th century legal English that would be unacceptable today. As a result, it could not be written into the Bill at length without being completely rewritten. The result of this would inevitably be that the meaning would be affected. Such an exercise in statute law revision, however desirable, is far outside the scope of any private Bill promoter.

20. The Bill accordingly incorporates provisions of the Acts referred to in **section 40**. These Acts were passed for the purpose of being incorporated as standard “clauses”. They only have effect if they are referred to and implemented by some other piece of legislation such as the Bill. The effect of the incorporation is that the incorporated provisions become part of the Bill. The Acts in question are—

- the Lands Clauses Acts⁴;
- the Railways Clauses Consolidation (Scotland) Act 1845 (c.33);
- the Railways Clauses Act 1863 (c.92).

The Bill makes a number of adjustments to the incorporated Acts for the purpose of streamlining the 19th century procedures so as to bring them more nearly into line with the more modern legislative improvements that have been made in England and Wales, but not in Scotland⁵ and also to allow for the greater flexibility provided for in the Bill. Details of the adjustments are explained in the notes below on **sections 13, 21, 23, 24 and 25** of the Bill.

equivalent English Law. See for example article 4 of the Leeds Supertram (Extension) Order 2001 (SI 2001/1347), articles 4 and 5 of the Leeds Supertram (Land Acquisition and Road Works) Order 2001 (SI 2001/1348) and articles 3 and 10 of the Heathrow Express Railway Extension Order 2002 (SI 2002/1064).

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

⁵ “... it is unfortunate in view of ... the criticism which has been levelled at the [Lands Clauses Consolidation (Scotland) Act 1845] that Parliament has not found time to produce more up-to-date legislation as was done in England with the passing of the Compulsory Purchase Act 1965 (c.56).” Stair Memorial Encyclopaedia, Title ‘Compulsory Acquisition and Compensation’ para. 13.

COMMENTARY ON SECTIONS

Part 1 – Works

21. The meaning of “the scheduled works” and “the ancillary works” is explained in **paragraphs 24 to 27** below. They are collectively described as “the authorised works” (defined in **section 43**).

Section 1 – Authority to construct works

22. **Section 1** gives the specific statutory authority for the works which are required.⁶ In the absence of this section the activities permitted by the Bill would potentially be liable to challenge in the courts e.g. on the ground that the railway constituted a legal nuisance. Such an action could potentially result in an order preventing the nuisance by stopping the works (called an interdict). The protection of statutory authority is therefore important to the viability of the scheme because it allows the works to be constructed without the threat of legal challenge.

23. **Section 2** refers to the scheduled works as being within the limits of deviation shown on the Parliamentary plans. However, the precise position of the works may move (“deviate”) within those limits, in accordance with **section 4**.

Section 2 – The scheduled works

24. **Section 2** gives effect to **schedule 1**, which contains the detailed descriptions of the works authorised by the Bill described in **paragraph 6** above.

Section 3 – The ancillary works

25. **Section 3** gives effect to **schedule 2**, which describes the types of works which may be provided in connection with the scheduled works. Works of this nature will only be authorised by the Bill if they are necessary or expedient⁷ in connection with the construction of the scheduled works, or are required as a consequence of those works being constructed.

26. **Schedule 2** catalogues types of works and operations that are normally necessary for the operation of a railway and also mitigation works and works for the protection of neighbouring landowners. The “railway” itself is only the railway track as laid along the route.⁸ The ancillary items accordingly range from the provision of stations and platforms to operations such as discharging water during construction⁹ and moving utility apparatus.¹⁰ They also cover the provision of recreational facilities at St James’ Park and replacement fuel farm facilities at Glasgow Airport. The ancillary works will form an essential part of the authorised works (the term “authorised works” is explained in **paragraph 21**).

⁶ The need for such authority is explained in **paragraph 12** of the Promoter’s Memorandum.

⁷ i.e. advantageous; suitable, appropriate (Concise Oxford English Dictionary).

⁸ See, by virtue of section 81(3) of the Railways Act 1993 (c.43), the definition of “railway” in section 67(1) of the Transport and Works Act 1992 (c.42).

⁹ e.g. when pumping away water from a site so as to be able to lay track on dry ground.

¹⁰ e.g. water mains and power supply cables.

27. At this stage the nature of the ancillary works is known but not the precise ancillary works or, in some cases, their positions. However by virtue of **sections 3(2) and 3(3)** they can only be constructed within “the Act limits” i.e. the limits shown on the plans in which the powers of the Bill can be exercised. This term is defined in **section 43** of the Bill.

Section 4 – Permitted deviation within limits

28. **Section 4** allows for a degree of flexibility within the defined limits. It permits movement or variance from the precise lines and sections shown on the Parliamentary plans and sections. In the Bill this is described as “deviation”.

29. The Parliamentary plans show the centre lines of the works and also show limits of deviation around those centre lines. **Section 2** specifically states that the authorised works are situated within the limits of deviation. The Bill will not accordingly permit the construction of those works outside these lateral limits.

30. The Parliamentary sections show the vertical dimensions and situation of the proposed works. The Bill authorises the works in accordance with those dimensions and levels, subject to the flexibility permitted by **section 4**.

31. **Section 4** provides that every work as constructed or maintained may deviate laterally within the limits of deviation, and vertically by up to 3 metres upwards and to any extent downwards. This reflects the outline nature of the authorisation being given by the Bill. The works are not being authorised in the fine detail which will be formulated at a later stage when the railway is finally designed. The permission to deviate therefore allows for the normal design process.

32. The ability to deviate vertically to any extent downwards that may be necessary or expedient enables the authorised undertaker to construct the works at whatever depth is needed to achieve stability. It also allows for e.g. the undertaking of ground stabilisation works in the event of mine workings or other geological conditions.

Section 5 – Access to works

33. It will be necessary for the authorised undertaker to provide access from existing roads to land to be used for the authorised works. **Section 5** will enable the authorised undertaker to facilitate such access by constructing drop kerbs and similar works both at the points shown on the Parliamentary plans and at other points approved by the roads authority. In the absence of this section such works, amounting to an interference with the road, could not be carried out by the authorised undertaker without first obtaining the consent of the roads authority under section 56 of the Roads (Scotland) Act 1984 (c.54).

Section 6 – Construction and maintenance of altered roads

34. In accordance with standard arrangements when a new road is built, **section 6** provides for alterations of roads authorised by the Bill to be completed to the reasonable satisfaction of the roads authority, and to become maintainable by the roads authority after an initial 12 month maintenance period during which the authorised undertaker remains liable for any maintenance.

This is normal practice to allow any defects that emerge once the roads are first commissioned after construction to be remedied at the expense of the authorised undertaker.

Section 7 – Works treated as major works for road purposes

35. **Section 7** is intended to ensure that the regime under Part IV of the New Roads and Street Works Act 1991 (c.22) (in the Bill referred to as the 1991 Act)) for dealing with apparatus of utilities affected by road works will apply to the authorised works. Part IV of the 1991 Act together with the Road Works (Sharing of Costs of Works) (Scotland) Regulations 2003 and the Codes of Practice issued under the 1991 Act provide a regime dealing with the measures (and the costs of these measures) in relation to utilities' apparatus in streets as a result of types of road works described in the 1991 Act as "major works for road purposes". This regime includes a process for identifying and agreeing work required, including any necessary diversions of apparatus, and also deals with the costs of these works. It provides for a contribution to be payable by the utilities in respect of work carried out in relation to their apparatus.

36. "Major works for road purposes" under the 1991 Act cover various categories of road works such as reconstruction or widening of roads, or substantial alterations in the level of roads but only if those works are carried out by the roads authority. Since the authorised undertaker will not be the roads authority, the regime under the 1991 Act would not apply to road works carried out under the powers of the Bill. **Section 7** accordingly provides for such works carried out by the authorised undertaker to be treated as "major works for road purposes" for the purpose of the 1991 Act. It puts the authorised undertaker in the same position as the roads authority would be if it was carrying out these works and ensures that the same regime will apply.

37. Similar provision relating to the equivalent provisions of the 1991 Act in England was included in the Channel Tunnel Rail Link Act 1996 and is commonly included in Orders under the Transport and Works Act 1992.

Section 8 – Agreements with roads authorities

38. **Section 8** permits the authorised undertaker to enter into agreements with the roads authorities to carry out any works to existing roads authorised by the Act. The authorised undertaker is also authorised to delegate by agreement its powers to alter or maintain such altered roads. It is necessary to refer to maintenance because under section 6 the authorised undertaker is required to maintain a road which has been altered under the powers of the Act for a period of 12 months, before the roads authority resumes its maintenance responsibilities.

Section 9 – Temporary stopping up, alteration or diversion of roads

39. It will be necessary for the authorised undertaker during construction temporarily to stop up, alter, or divert roads. Precise details of the roads, timing and duration of closures will be developed as the scheme is designed. Subsection (1) will enable such temporary stoppings up by the authorised undertaker provided consent is obtained from the road works authority¹¹ under subsection (4). By subsection (5) consent could not be unreasonably withheld but could be given subject to conditions. Under subsection (6) disputes as to the reasonableness of any condition

¹¹ i.e. in the case of a public road, the roads authority for the road, and in the case of any other road the road managers (New Roads and Street Works Act 1991 (c.22), s.108(i)).

would be determined by arbitration unless the parties agree on an alternative form of disputes procedure. (**Section 33** provides for the way in which any arbiter is appointed.)

40. In addition to any condition imposed by the road works authority, the authorised undertaker will be obliged by subsection (2) to provide continued pedestrian access to premises¹² abutting on the temporarily stopped up road.

41. Five necessary temporary stoppings up have been identified at this stage as being required at the locations and for the purposes specified in **schedule 3**. For this reason subsection (3) authorises these temporary closures and, unlike the unspecified closures, subsection (4)(a) requires consultation with the road works authority but not consent.

42. . If there is any suspension of a private right of way under this section compensation would be payable under the compensation code applied by the Bill (see **paragraph 65**).

Section 10 – Discharge of water

43. **Section 10** ensures that the authorised undertaker can effectively drain its works, both during construction and thereafter. Subsection (1) enables the authorised undertaker to use any available watercourse or any public sewer or drain for drainage purposes. It provides that within the limits of deviation or the limits of land to be acquired or used¹³ the authorised undertaker may lay down, take up or alter pipes or make openings into or connections with the watercourse, public sewer or drain.

44. Under subsection (2) water may not be discharged into an artificial watercourse or a public sewer or drain without the consent of the person to whom it belongs (who in the case of a public sewer or drain will be Scottish Water or the roads authority), but although consent may be given subject to reasonable terms and conditions, it cannot be unreasonably withheld.

45. Under subsection (3) an opening into a sewer or drain will have to be made in accordance with plans approved by the authority to which the sewer or drain belongs and subject to such supervision as the authority provides, but plan approval cannot be unreasonably withheld.

46. Subsection (4) requires the authorised undertaker to take such steps as are reasonably practicable to secure that water is free from gravel, soil or other solid substances or from oil or matter in suspension. This might include installation of gullies, filter drains or settlement ponds¹⁴ to separate out such matter from clean water before the water is discharged into a stream,

¹² “Premises” is used in its ordinary meaning i.e. places, landholdings (including buildings). Except where it is especially defined, as in some legislation, it is not a technical term. ““Premises” is an ordinary word of the English language which takes colour and content from the context in which it is raised ... it has, in my opinion, no recognised and established primary meaning.” *Maunsell v Olins* [1975] 1 All ER 16 at 19, HL, per Viscount Dilhorne.

¹³ For explanation of this expression see paragraph 68 below.

¹⁴ A “gully” is a concrete box with a pipe and a metal grid on top: solid materials settle on the bottom of the box and water to be discharged continues along the pipe. A “filter drain” (also known as a “French drain”) is a ditch filled with stones which act to remove large solid particles from the water before the water is discharged into the ground or a drainage system. A “settlement pond” is a large pond that allows water to sit while slow settlement of particles takes place.

watercourse or public sewer or drain. The precise means of separating such matter from clean water will be determined during the design process in consultation with all appropriate people and bodies, including the roads authority and the Scottish Environment Protection Agency.

47. Subsection (5) provides that any disagreement between the authorised undertaker and a person owning an artificial watercourse or a public drain or sewer shall be resolved by arbitration. (**Section 33** provides for the way in which any arbiter is appointed.)

48. Subsection (6) ensures that the normal pollution control regime will apply to discharges of water authorised by **section 10**. It does this by applying section 30F of the Control of Pollution Act 1974 (c.40) (“the 1974 Act”) to those discharges. Section 30F makes it an offence to pollute rivers and other waters but by virtue of section 30I(1)(f) of the 1974 Act no offence is committed where (as would be the case here) the discharge is authorised by a local Act¹⁵. It is the promoter’s intention that (as is the normal practice in legislation authorising the construction of works) the works should be subject to the same pollution control regime as the rest of the rail and road networks. Subsection (6) achieves that aim by making clear that the authorised undertaker will not be able to rely on the defence that the discharge was authorised by a local Act.

49. Subsection (7) provides for the continued operation of Part IV of the New Roads and Street Works Act 1991 (c.22) in tandem with this section. Part IV contains a detailed code regulating the carrying out of works in roads by utilities and others. As a result of subsection (7), the authorised undertaker will have to comply with all the requirements of Part IV as to the giving of notice of the works, the compliance with directions given by the road works authority, the duty to co-operate with the road works authority and other undertakers, safety measures, and the provisions for the avoidance of danger, delay or obstruction.

50. In the absence of **section 10** effective drainage of the works would be subject to the risk of legal action for nuisance in respect of discharges, and subject also to successful private negotiation as regards the use of public sewers or drains. The section is intended to ensure that works authorised by the Parliament can be drained without the risk of legal action or failed private negotiations and will also ensure that drainage from these works is subject to the same pollution controls as other railway and road works.

Section 11 – Safeguarding works to buildings

51. The ground conditions along the route may give rise to a need to prevent or remedy damage to buildings caused by the construction, operation or maintenance of the authorised works or conversely to carry out remedial works to a building which might otherwise affect the safe construction or operation of the authorised works. This will call for underpinning, strengthening or other works for the same purposes (all in the Bill called “safeguarding works”). The area where there is a possibility of such works being required is the land within the limits of the Act which are shown on the Parliamentary plans.

¹⁵ i.e. an Act that has effect in a particular locality, rather than generally throughout the country. Every private Act authorising specified works has effect only in the area affected by the works and so is a local Act.

52. Subsection (1) accordingly enables the authorised undertaker at its own expense to carry out such safeguarding works to any building within the Act limits as the authorised undertaker considers to be necessary or expedient. Safeguarding works may be carried out during construction or at any time during the five years after any part of the authorised works is first opened for public use.

53. The detailed procedure that must be adopted is set out in **schedule 4**. This allows for the carrying out of preliminary surveys and (except in an emergency) the service of 14 days' notice prior to entry and carrying out the safeguarding works. A landowner may question the necessity for safeguarding works and require the issue to be referred to arbitration. However there is no right to question the initial entry to carry out preliminary surveys. Without such preliminary survey it would be very difficult to identify whether and to what extent safeguarding works are required, or to determine the extent of any damage which is caused and for which compensation would be payable. A compulsory power of entry is required in order to make the operation of this provision effective.

54. Where damage is caused by safeguarding works, or where safeguarding works prove to be inadequate within five years after the opening of the relevant authorised works, the authorised undertaker must pay compensation.

Part 2 – Land

Introduction

55. Without provision in the Bill 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-routeing statutory undertakers' apparatus. Provisions are therefore required in the Bill to confer appropriate compulsory purchase powers.

56. 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 Bill temporary occupation is referred to as “temporary possession”.)

57. 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 Bill itself: there will not be a separate compulsory purchase order. The compulsory purchase powers are in Part 2 of the Bill, 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 Bill. The effect of the provisions is explained in greater detail below.

58. The land affected by the compulsory purchase powers in the Bill 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 deviation¹⁶ and within the limits of land to be acquired or used.¹⁷

59. The compulsory purchase powers conferred by the Bill will enable the authorised undertaker to acquire the land necessary to construct the works authorised by the Bill. 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

60. The provisions in the Bill 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 Bill, 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 Bill.¹⁸ An outline of this applied legislation is given below.

Compulsory purchase procedures

61. After the Bill 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 Bill 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 184 to 188**).

¹⁶ For an explanation of “limits of deviation” see notes on section 4.

¹⁷ 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.

¹⁸ For an explanation of the reason for applying other Acts see paragraphs 17 to 19 above.

62. 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.

63. Where a landowner is unwilling or unable to sell the authorised undertaker may acquire the land by executing a notarial instrument.¹⁹ 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.

64. 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.

Compensation

65. 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 Bill. Disputes about compensation will be referred to the Lands Tribunal for Scotland.²⁰

66. The Bill applies the Railways Clauses Consolidation (Scotland) Act 1845 (c.33), (in the Bill 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

67. **Section 12(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, it must be described²¹

¹⁹ “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.

²⁰ 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).

²¹ See paragraph 58 above.

in the book of reference and it must be land that may be required for the purposes of the authorised works.

68. **Section 12(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 Bill 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 Bill.²²

Section 13 – Acquisition of subsoil, airspace or rights

69. **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 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.

70. Subsection (1) accordingly enables the authorised undertaker to acquire only the subsoil beneath or airspace over land or servitudes²³ or other rights in relation to land.

71. 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.

72. 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.

73. 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 97**) 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 184 to 188**), entitles a

²² See **sections 14, 15 and 16**.

²³ “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.

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.

74. 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 20**). 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

75. 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.

Section 15 – Rights in roads

76. **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.

77. 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.

78. 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.

79. 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 interest.²⁴ An overriding interest takes effect as against the registered owner of land even though it is not registered.²⁵ 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.

80. The section enables the public works authorised by the Bill 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

²⁴ See Land Registration (Scotland) Act 1979 (c.33) s.28(1), definition of “overriding interest” paragraph (h).

²⁵ Land Registration (Scotland) Act 1979 (c.33) s.3(1)(a).

compensation will be determined by the Lands Tribunal for Scotland in accordance with the Land Compensation (Scotland) Act 1963.

81. 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

82. Where the authorised undertaker only needs to occupy land for a temporary period, purchase of the land cannot be justified (see **paragraph 55** 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.

83. 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.

84. Subsection (2) requires the authorised undertaker to serve 28 days' prior notice of entry on the owners and occupiers of the land.

85. 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'.

86. 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 use.²⁶

87. 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.

88. 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**.

89. Subsections (8) and(9) provides that the authorised undertaker is not required to acquire the land which is used temporarily under this section, or any interest in it, but may acquire new rights over it under **section 13** or **section 14**.

Section 17 – Disregard of certain interests and improvements

90. 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.

91. 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

92. 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 contiguous²⁷ or adjacent²⁸ land of the person seeking the compensation.

²⁶ 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.

²⁷ “contiguous”: touching or immediately next to, sharing a common boundary with [other land].

²⁸ “adjacent” includes land that is not contiguous, but which is close to or near other land.

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

93. 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 Bill when it is first introduced.

94. 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.

95. 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

96. **Section 20** ensures that those entitled to compensation under the Bill 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

97. **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 detriment²⁹ 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 house.³⁰ These replacement

²⁹ "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).

³⁰ "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*).

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 standard.³¹

98. Subsection (1) applies this section to any case where a notice to treat³² 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.

99. 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.

100. 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.

101. 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.

102. 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.

103. 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.

104. 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.

105. 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.

106. 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 all³³ the land subject to the counter-notice, the notice to treat is deemed to apply to all the land included in the counter-notice.

³¹ See e.g. City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s.6.

³² For an explanation of this expression see paragraph 61 above.

³³ Where material detriment extends to only part of the land subject to the counter-notice subsection (7) applies.

107. 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 Bill.

108. 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.

109. 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,

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 land.³⁴

Section 22 – Extinction or suspension of private rights of way

110. The Bill provides for necessary public and private means of access.³⁵ The authorised works cannot accommodate further rights of way over the land that may be compulsorily acquired under the Bill. **Section 22** accordingly extinguishes³⁶ 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 Bill. **Section 22** is consistent with the general law in this regard.

111. 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.

³⁴ i.e. diminution in value of the remaining land due to the loss of the compulsorily acquired land.

³⁵ See e.g. Work No.1B.

³⁶ i.e. terminates the rights, so that they cease to exist.

112. 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.

113. 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).

114. 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 32** and **schedule 7**.)

115. 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

116. 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.

117. 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.

118. 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.

119. The purpose of **section 22** is to ensure there are no incompatible rights of way over land on which the authorised undertaker is to construct works. It is unnecessary to extinguish other rights in relation to land where the authorised undertaker is only acquiring rights.³⁷ 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.

³⁷ See **section 14** and **Part 2** of **schedule 5**.

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

120. 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 Bill extends these purposes to include what is necessary for a modern construction project. It is a standard provision in modern legislation of this sort.³⁸

121. 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.

122. Subsection (2) requires the authorised undertaker to give, on the first occasion seven, and thereafter three, days' notice to the owner and occupier.

123. 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.

124. By subsection (4) no trial holes may be made in a carriageway or footway without the consent of the road works authority.

125. Subsection (6) requires the authorised undertaker to pay compensation for damage caused to owners and occupiers.

Section 24 – Further powers of entry

126. **Section 24** is also a standard provision.³⁹ 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 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

³⁸ 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.

³⁹ 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.

entry after the landowner has been given notice.⁴⁰ The purpose of **section 24** of the Bill is to allow this modern procedure to apply.

127. 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.

128. Under subsection (2), at least three months' prior notice of entry must be given to the owner and the occupier of the land.

129. Subsection (3) enables the authorised undertaker to exercise these powers without complying with sections 83 to 89 of the 1845 Lands Act.

130. 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.

131. 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.

132. **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 Bill.

133. Subsection (1) accordingly allows persons under a disability to grant to the authorised undertaker servitudes, rights or privileges⁴¹ 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.

134. 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.

⁴⁰ See Compulsory Purchase Act 1965 (c.56), s.11.

⁴¹ "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

135. Subsection (1) provides that the compulsory purchase powers of the Act will expire ten years from the date on which the Act comes into force (i.e. ten 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 184 to 188**).

136. 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 37** provides for the situation where a landowner needs to sell land that is affected in this way.

137. It is normal for legislation authorising the construction of works to impose time limits on the exercise of compulsory purchase powers.⁴²

Section 27 – 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 40**. 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 27** 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 28 – Correction of errors in Parliamentary plans and book of reference

139. **Section 28** provides a procedure to enable the correction of any inaccurate description of any land or its ownership or occupation in the Parliamentary plans or the book of reference. The authorised undertaker must apply to the sheriff for the relevant area under subsection (1); on being satisfied that there was a mistake, the sheriff certifies the nature of the mistake under subsection (2); under subsection (3) the certificate is deposited with the Clerk of the Parliament and the Partner Libraries where the book of reference was deposited and the document requiring correction is deemed to be corrected according to the certificate; subsection (4) obliges the Clerk to keep the certificate with the plans and book of reference to which it relates.

140. The purpose of the section is to ensure that implementation of the Act (when passed) is not prevented by mistaken misdescriptions. The Bill 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

⁴² 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.

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 (5) 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.

141. This section, for which there are numerous precedents, is an extension of the procedure in **section 39** for certifying the book of reference and the Parliamentary plans and sections.

Section 29 – Restrictions on compulsory purchase of operational airport land

142. The Bill will authorise works on land within Glasgow Airport. It is recognised that the exercise of unrestricted compulsory powers over such land could compromise the safe operation 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.

143. 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 make for the protection of the safe operation 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).

144. Subsection (2) provides for disputes to be determined by arbitration unless the parties agree on some alternative form of dispute resolution. Arbitration is governed by **section 33** of the Bill.

Part 3 – Miscellaneous and general

Section 30 – Power to fell, etc. trees or shrubs

145. Subsection (1) enables the authorised undertaker to fell, lop or cut back the roots of any tree or shrub that is near either any part of the authorised work or any land proposed to be used for the authorised works. The power is exercisable if the authorised undertaker reasonably believes it to be necessary in order to prevent the tree or shrub—

- from obstructing or interfering with the maintenance or operation of the authorised works or associated apparatus; or
- from constituting a danger to those using the authorised works.

The powers are exercisable in relation to any tree or shrub that comes within the tests in subsection (1), whether inside or outside the limits of deviation and the limits of land to be acquired or used.

146. Subsection (2) requires that the authorised undertaker is not to damage a tree or shrub unnecessarily.

147. Subsection (3) requires the authorised undertaker to pay compensation to any person who suffers loss or damage arising from the exercise of this section.

148. Under subsection (4) any dispute as to compensation will be determined by the Lands Tribunal for Scotland in accordance with the Land Compensation (Scotland) Act 1963.

149. Subsection (5) disapplies any tree preservation order or prohibition on interfering with trees in conservation areas which might otherwise apply.

Section 31 – Powers of disposal, agreements for operation, etc.

150. **Section 31** is required because, although SPTE is the promoter of the Bill, it will not necessarily own or operate the railway. For instance the expectation is that ownership of the alterations to the existing rail network will be transferred to Network Rail as the national rail infrastructure operator. **Section 31** therefore gives effect to the intention that SPTE may be no more than the procurer of the powers. In the absence of **section 31** the powers in the Bill would not be transferable.

151. Subsection (1) allows the authorised undertaker to make transfer agreements for the transfer of all or any of the authorised undertaker's functions under the Act. This subsection would, for example, allow for the transfer to Network Rail or another body of the powers in the Bill to construct the railway and the compulsory purchase powers relating to the railway.

152. Subsection (2) will operate after construction. It authorises transfer agreements⁴³ relating to the authorised works once they have come into existence. Agreements authorised by subsection (2) can relate not simply to the physical works and the land held with the works but also to "the undertaking". This expression means the statutory 'package' consisting of the physical works and land and all the statutory powers that go with them by virtue of the Bill.

153. Subsection (3) enables the authorised undertaker to make agreements for the construction, maintenance and operation of the authorised works, and anything ancillary to those things. An agreement under subsection (3) would not necessarily involve a transfer of statutory functions. The most obvious example of the use of this subsection is to authorise the letting of the construction contract on terms that might involve a transfer of statutory powers, for example relating to land acquisition or use.

154. Subsection (4) provides that any transferee exercising a power in the Act will be subject to the same restrictions, liabilities and obligations as would apply if the function were being exercised by the authorised undertaker making the transfer. This applies not only to restrictions, liabilities and obligations under the Bill, but also to commitments given by SPTE in the course of promoting the Bill. This has the effect that the exercise of any of the powers of the Act, whether by a new authorised undertaker to whom the powers have been transferred or by someone with a lesser interest, will be subject to the same obligations as bind the authorised undertaker.

⁴³ This includes, in addition to transfer, sale, lease and similar disposals, a power to charge the undertaking as security for borrowings.

155. Subsection (5) allows for a transfer agreement to include any necessary related provisions that follow from the main provisions of the agreement.

156. The effect of a transfer agreement may be to transfer statutory functions in which there is a public interest. Subsection (6) accordingly ensures that the transfer is notified to the Scottish Ministers as custodians of the public interest in transport. Under subsection (7) failure to notify is a criminal offence attracting a maximum level 3 penalty (currently £1,000).

157. Subsection (8) contains definitions. “Functions” includes powers, duties and obligations: in short, in relation to the statutory functions under the Bill, anything arising under the Bill. A “transferee” is any person to whom the authorised undertaker has transferred property or functions under a transfer agreement. And a “transfer agreement” is any agreement made under subsection (1), (2) or (3). As the section is designed to allow for maximum flexibility, this includes the transfer of the statutory powers and duties contained in the Bill, the transfer of the railway when built or the disposal or grant of any lesser interest, as well as leasing and other delegations.

Section 32 – Statutory undertakers, etc.

158. Subsection (1) introduces **schedule 7** to the Bill. This schedule is concerned with the rights of the providers of water, gas, electricity, sewerage and telecommunications services to maintain their supplies through apparatus that will or may be affected by the Bill. These providers (frequently described in legislation as “undertakers”) have historically been legislated for as “statutory undertakers”. In particular, “statutory undertakers” is the expression used in sections 224 to 227 of the Town and Country Planning (Scotland) Act 1997 (c.8) (in the Bill called “the 1997 Act”). Sections 224 to 227 provide a statutory code that applies in certain cases where the use of land for planning purposes makes it necessary to extinguish undertakers’ rights to maintain apparatus.

159. This code provides for the acquiring authority to be able to serve notice to require the relocation of apparatus of the undertaker, and for the statutory undertaker to object to the proposal (disputes being determined by Scottish Ministers). Alternatively the statutory undertaker can serve notice on the acquiring authority if it considers that a relocation will be necessary. In either case the compensation is payable by the acquiring authority.

160. **Schedule 7** is well precedented. Legislation authorising infrastructure provides protection for undertakers’ apparatus in one of two ways. Either it applies the statutory code in the 1997 Act or it sets out at length the arrangements between the promoter and each of the affected undertakers. The latter course would call for the Bill to include detailed provisions concerning the approval or agreement of detailed works, the methods of carrying them out and the provision of alternative undertakers’ apparatus. These are all matters that can be agreed privately between the parties and recorded in formal agreements. **Schedule 7** seeks to put in place a baseline framework that will ensure that the authorised undertaker is obliged to make the necessary arrangements, and which will operate in the absence of any separate private agreement.

161. It is known that there is undertakers’ apparatus in some of the land required for the authorised works. The Bill when enacted will therefore give rise to the situation for which

sections 224 to 227 are designed. **Schedule 7** accordingly applies the code in sections 224 to 227 to the authorised works.

162. Paragraph 1 of **schedule 7** provides for those sections to apply. Paragraph 2 applies all other provisions of the 1997 Act that are needed for the operation of sections 224 to 227, including the provisions regarding compensation.

163. Paragraphs 3 and 4 provide for compensation to be payable to owners and occupiers of premises who have to make alternative connection arrangements because of the removal of apparatus in accordance with the Ccode. Paragraph 3 deals with connections in order to retain a supply of water, electricity, gas or electronic communications services and paragraph 4 deals with connections with sewers.

164. Part IV of the New Roads and Street Works Act 1991 is a separate code governing works in roads. It covers works involving the removal or laying of undertakers' apparatus in roads, and it applies automatically. Accordingly, paragraph 5 of **schedule 7** provides that this schedule will not apply to cases that are governed by Part IV.

Section 33 – Arbitration

165. **Section 33** lays down the procedures applicable in cases where the Act provides for disputes (other than those to which the Lands Clauses Acts apply⁴⁴) to be settled by arbitration. The arbiter is to be agreed by the parties to the dispute or, failing agreement, by the President of the Institution of Civil Engineers. By subsection (3) the arbiter is entitled to obtain a ruling on points of law from the Court of Session. This is standard practice for resolving such disputes. It will cover disputes arising under sections 5, 9, 10, 11 and 29. These are all potentially matters of a technical nature for which arbitration is considered a more appropriate procedure than recourse to the courts.

Section 34 – Service of notices, etc.

166. **Section 34** lays down detailed procedures for the services of notices under the Act. The section allows notices to be served in person, by hand to someone's address or by post. It also specifies how notices and letters may be properly addressed.

Section 35 – Listed buildings

167. **Section 35** introduces **schedule 8**. The schedule makes special provisions as to the listed building (Glasgow Central Station) which will be affected by the railway works.

168. As explained in **paragraph 10** above, the Bill will grant planning permission for the authorised works. It is appropriate that all planning issues should be considered at the same time, but the way in which the legislation is framed means that, but for **section 35** and **schedule 8**, the authorised undertaker would have to obtain listed building consent separately from the Bill. This section and schedule 8 accordingly disapply this separate statutory requirement so that the Bill will, effectively, also grant these consents.

⁴⁴ Disputes under these Acts are referred to the Lands Tribunal for Scotland (see paragraph 65).

169. Paragraph 1 of **schedule 8** refers to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9) (in the schedule called “the Listed Buildings Act”). This is the Act that requires special consent (called listed building consent) for works and operations affecting buildings that are listed under the Act as being of special architectural or historic importance and conservation area consent for the demolition or alteration of the external appearance of buildings in areas that are listed under the Act as being of special architectural or historic importance.

170. Paragraph 1(1) of the schedule specifies the provisions in the Listed Buildings Act and the actions that may be taken under the Act which are not to apply. They are—

- section 6 (the requirement for listed building consent);
- any notice under section 34(1) (in the Listed Buildings Act called an enforcement notice) by which the local planning authority may require actions in relation to any of the buildings specified in the table which would render ineffective, or substantially ineffective, the works authorised by the Bill;
- in relation to an enforcement notice to which paragraph 1(1)(b) above applies, the power under section 38(1) of the Listed Buildings Act for the local planning authority to do the things required by an enforcement notice if the recipient of the notice fails to comply; and
- the ability under section 49 for the local planning authority to carry out urgent preservation works if those works would render ineffective, or substantially ineffective, the works authorised by the Bill.

171. The purpose of disapplying these statutory controls in relation to the building specified in the table is only to allow the construction of the authorised works. Accordingly, paragraph 1(2) of **schedule 8** makes clear that the only works that are not affected by the controls mentioned in paragraph 1(1) are the works described in column (4) of the table at the end of paragraph 1.

172. The purpose of **schedule 8** is to give listed building consent in all cases where it is needed. The building mentioned in the table is the only building that was listed as at 1st September 2004. Paragraph 1(3) ensures that if any further buildings are listed the schedule will apply to them, as well.

173. Paragraph 1(4) of **schedule 8** makes clear that objects or structures fixed to or within the curtilage of a building (for example, lamp brackets or door furniture) are to be treated as a part of the building for the purpose of this schedule.⁴⁵

174. The listed buildings and the works to which the schedule will apply are described in the table at the end of paragraph 1.

175. Paragraph 2 of **schedule 8** disapplies section 53 of the Listed Buildings Act in relation to the works authorised by Part 1 of the Bill. Section 53(1) of the Listed Buildings Act makes it a

⁴⁵ The Listed Buildings Act provides that these things are deemed to be part of a listed building, but only for the purposes of that Act (Listed Buildings Act, s.1(4)).

criminal offence to do or permit anything which causes or is likely to result in damage to a listed building. The works described in the table would amount to damage giving rise to an offence. Section 53(3) provides that subsection (1) does not apply (which means that the offence is not committed) to the execution of works authorised by a planning permission or for which listed building consent has been given. As the Bill amounts to an effective grant of planning permission, and the effect of **section 35** of and **schedule 8** to the Bill is effectively to grant listed building consent for the specified works, section 53 ought not to apply to the works.

176. Paragraph 3 of the schedule applies the definitions of “building”⁴⁶ and “listed building”⁴⁷ in the Listed Buildings Act.

177. In the absence of this section it would be necessary to obtain separate listed building consent and conservation area consent in respect of works affecting the specific listed buildings or certain works in the conservation areas in which they are situated. This section enables the principle of the listed building issues to be dealt with at the same time as the rest of the scheme. However the details of any modifications to listed buildings will require prior approval by the local planning authority in accordance with the conditions attaching to the permitted development rights which apply to development authorised by the Bill (see **paragraph 10** for an explanation of these permitted development rights).

Section 36 – Saving for Town and Country Planning

178. Subsection (1) provides for planning legislation to apply in relation to the works authorised by the Bill.

179. As explained in **paragraph 10** above, development authorised by the Bill is permitted development i.e. under class 29 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (in the Bill referred to as “the 1992 Order”). Subsection (2) imposes two restrictions on the planning permission conferred by the 1992 Order.

180. First, subsection (2) lays down a 10-year limit in respect of these permitted development rights. By subsection (3) the time limit does not apply to the alteration, maintenance or repair of the authorised works, or the substitution for those works of new works. The Bill therefore operates to grant planning permission for the works subject to a condition that development must be begun within 10 years.

181. Subsection (2)(b) imposes a restriction on the extent of the permission given for new fuel farm facilities at Glasgow Airport (the ancillary works identified in paragraph 2 of **schedule 2** to the Bill). The intention is that the Bill should authorise a replacement which is equivalent to the existing fuel farm facilities which will be displaced by the railway works, and that is all that has been assessed in the Environmental Statement accompanying the Bill. The purpose of this provision is to ensure that the permitted development conferred by the 1992 Order is consistent

⁴⁶ “Building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building (Town and Country Planning (Scotland) Act 1997 (c.8), s.277(1), applied by Listed Buildings Act s.81).

⁴⁷ “Listed building”: A building which is for the time being included in a list compiled by the Secretary of State under section 1 of the Listed Buildings Act (Listed Buildings Act, ss.1 and 81).

with what has been considered in the Environmental Statement. If the operators of the fuel farm decide that expanded facilities are in due course required an application would need to be made for planning permission in the normal way.

Section 37 – Blighted land

182. **Section 37** applies the planning blight provisions of sections 100 to 122 of the Town and Country Planning (Scotland) Act 1997 (c.8) (which applies in cases mentioned in Schedule 14 to the Act). These provisions ordinarily apply where compulsory purchase is authorised by a variety of legislative instruments, including a private Act of the UK Parliament, but on devolution this was not extended to apply automatically where the authorisation is by a private Act of the Scottish Parliament. This section is therefore needed to ensure that these provisions apply to the works authorised by the Bill.

183. The effect of **section 37** is that—

- a resident owner-occupier of a residential dwelling;
- an owner-occupier of land with an annual (i.e. in most cases rateable) value of (currently) £24,725;⁴⁸ or
- an owner-occupier of an agricultural unit,

whose land is subject to compulsory purchase under the Bill may require the authorised undertaker to purchase the land at market value if, having tried to sell the property, the landowner has been unable to sell except at a substantially lower price than might reasonably have been expected had the land not been subject to compulsory purchase.

Section 38 – Method of vesting land

184. The compulsory purchase procedures under the Lands Clauses Acts as outlined in **paragraphs 61 to 64** above provide for land to be vested in the acquiring authorised undertaker by means of a conveyance or in certain circumstances a notarial instrument executed by the authorised undertaker. **Section 38** applies a further procedure that is available generally to vest land that has been compulsorily acquired.

185. Section 195 of and Schedule 15 to the Town and Country Planning (Scotland) Act 1997 (c.8) apply to any Minister or any local or other public authority that is authorised to acquire land by means of a compulsory purchase order (called an acquiring authority). Where a compulsory purchase order has come into operation, the acquiring authority may execute a general vesting declaration (for which there is a prescribed form) vesting in themselves any of the land which they are authorised to acquire. A single declaration may relate to all or any of the land subject to compulsory purchase. Schedule 15 includes requirements as to the giving of prior notice and the date on which any declaration takes effect.

186. The effect of a general vesting declaration is to vest the land to which it relates in the acquiring authority. The making of the declaration has the same effect as service of a notice to treat in triggering the landowner's right to claim compensation.

⁴⁸ Town and Country Planning (Limit of Annual Value) (Scotland) Order 2001/164 designed to catch small businesses.

187. Subsection (1) applies this procedure to compulsory acquisition under the Bill.

188. Paragraph 2 of Schedule 15 makes detailed provision for the giving of notice to trigger the vesting declaration procedure. Subsection (2) adopts this for the Bill. The vesting declaration provisions will apply on publication of a notice that the Act has received Royal Assent, giving details about the general vesting declaration procedure and stating that compensation may be payable. Subsection (2) provides that such a notice may be given at any time after the Act comes into force. The requirements for publication and service referred to in subsection (2)(c) are for newspaper publication and service on landowners who previously received notice of the proposals.

Section 39 – Certification of plans, etc.

189. **Section 39** requires that the authorised undertaker shall as soon as practicable after the Act comes into force submit copies of the book of reference, Parliamentary plans and Parliamentary sections to the Clerk of the Parliament for certification. The certificate is that they are the documents referred to in the Act. Such certified copies will be admissible in proceedings as evidence of the contents of these documents. In the absence of this provision the authorised undertaker could be required to prove the authenticity of copy documents.

Part 4 – Supplementary

Section 40 – Incorporation of enactments

190. As explained in paragraphs 17 to 20, the legal machinery for compulsory acquisition is in Acts that only apply if they are specifically incorporated. **Section 40** accordingly incorporates the relevant legislation.

Section 41 – Disapplication of statutory and other restrictions on acquisition and use of certain land

191. Section 63 of the Paisley Improvement Act 1877 required the local Council to lay out the land of the former race-course as a public park for all time. The land to which this section refers is St James' Park. Some of the land will be permanently acquired for a viaduct to carry the new railway across the park and rights for access for maintenance will be required. During construction of the railway an area of the park will be occupied or used as a worksite. **Section 41** therefore disapplies section 63 of the 1877 Act in respect of the land which is permanently acquired for the railway, and the land which is temporarily occupied or used for maintenance during the time when it is so used.

192. This land is land which is held by local Council for the common good. Under section 75 of the Local Government (Scotland) Act 1975 (c.65) if there is any question as to the right of a local authority to dispose of such land the authority may apply to the Court of Session to authorise the disposal. For the avoidance of doubt and in order to remove any need for a subsequent reference to the sheriff of the Court to authorise its acquisition, **Section 41** also makes clear that any restriction arising from the status of the land as land held for the common good is not to prevent the authorised undertaker acquiring the land or rights over it.

Section 42 – Rights of Crown and Scottish Ministers

193. The purpose of this section is to ensure that the powers of the Bill cannot be used against land of the Crown or Scottish Ministers without their consent. The land to which this section relates includes the M8 motorway, over which the railway will pass on a new bridge and the bed of the river Clyde over which the works will be constructed on an existing bridge. Similar provisions are normally included in private legislation whenever Crown land is proposed to be affected.

Section 44 – Short title

194. **Section 44** does not make any special provision for the commencement of the Act once passed. It will come into force the day after the Bill receives Royal Assent.

ESTIMATE OF EXPENSE AND FUNDING STATEMENT

INTRODUCTION

195. This document relates to the Glasgow Airport Rail Link Bill introduced in the Scottish Parliament on 31 January 2006. It has been prepared by Strathclyde Passenger Transport Executive, to satisfy Rule 9A.2.3(c)(i) of the Parliament's Standing Orders and to assist in an understanding of the background to the Bill. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.

196. The document is divided into three parts, in accordance with the determinations of the Presiding Officer at Annexes E and L of the Parliament's Guidance on Private Bills. The first part sets out estimates of the cost of each element of the project. The second part sets out estimates of the anticipated sources of funding for the project. The third part sets out an estimate of when the costs and funding are expected to be incurred and received and what margin of uncertainty there is in such estimates.

ESTIMATED TOTAL COST OF THE PROJECT

197. It is estimated that the expense of the works or purposes proposed to be carried out under the Bill is:

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

Estimate of Expense of Capital Costs	
<i>Work or purpose</i>	<i>Amount (£)</i>
Works	
Civil Engineering (incl. earthworks, public utility diversions, drainage and site clearance)	5,339,000
Structures	24,797,000
Airport Station	12,593,000
Overhead Line Electrification	6,795,000
Signalling/Telecomms	10,546,000
Track	15,218,000
Sub total for works	75,288,000
General	
Implementation Costs (including fees for professional and other advisors, design, coordination and commissioning costs)	18,539,000
Land, Compensation and mitigation costs	22,641,000
Works Preliminaries	8,427,000
Sub total for general items	49,607,000
Contingency	35,105,000
Sub total for contingencies	35,105,000
GRAND TOTAL	160,000,000

Estimate of Expense of Running Costs (annual)	
<i>Item</i>	<i>Amount per Annum (£)</i>
Annual Running Costs	4,294,000

198. All capital costs are stated in 2004 (4th quarter) prices. The costs include the full extent of Glasgow Airport Rail Link as set out in the Bill.

199. The annual running costs for the Glasgow Airport Rail Link are expressed in 2004 (4th quarter) prices and are constant in real terms throughout the life of the project.

ANTICIPATED SOURCES OF FUNDING

200. It is proposed that for the project detailed in the Estimate of Expense, funding is sought from the following sources—

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

Funding statement for Capital Costs	
<i>Source of funding</i>	<i>Amount (£)</i>
the Scottish Executive; Strathclyde Passenger Transport (West of Scotland Regional Transport Partnership); other public sector funding (e.g City Region Fund); European Community Funding for transport projects (i.e. TENS Trans-European Networks); and BAA plc	(Detailed breakdown subject to ongoing discussions with all parties)
Total	160,000,000

Funding statement for Running Costs	
<i>Source of funding</i>	<i>Amount per annum (£)</i>
Fare Box and Franchise Agreement	4,294,000

201. The funding for capital costs is stated in 2004 (4th quarter) prices. The funding is for the full extent of Glasgow Airport Rail Link as set out in the Bill.

202. The anticipated source of funding for the running costs is presented as an annual average calculated over a 30 year period.

203. The funding for the capital costs is anticipated to be obtained from the parties listed in the above table and the Promoter is actively pursuing such funding sources. The detailed breakdown of contributions from each party is under detailed discussion with each of the parties. In addition certain applications for funding (e.g an application for TENS funding for construction works) cannot be made until a future date when the availability of such funds is known and commitment of the funding will not be achieved until such times that the Bill has gained Royal Assent.

204. The funding of running costs is estimated to be a combination of revenue sources directly from the fare box (ticket sales and other ancillary sources such as advertising) and, if required, funding from the ScotRail franchise agreement between First ScotRail Limited and Scottish Ministers dated 20th August 2004 (Franchise Agreement). The detailed breakdown of all sources of funding will be subject to a formal change to the Franchise Agreement at a later date, hence no commitment can be made by the Promoter at the time of Introduction of the Bill as to the detailed breakdown of such sources.

205. The formal commitment of funding is conditional upon the Bill achieving Royal Assent, and the project financial business case being approved by the key parties.

ESTIMATE OF TIMESCALES FOR COSTS AND FUNDING

206. The best estimate of the timescales over which the costs and funding are expected to arise is 2006-2009. The bulk of the construction, and hence the bulk of the costs and funding, is estimated to take place from 2007 to the end of 2009. These dates are provided on the basis that the Bill takes no longer than 14 months to be passed by the Parliament. The estimate of timing of the parliamentary process has a margin of uncertainty of plus four months and minus two months. The period of construction has a margin of uncertainty of plus nine months and minus six months. As a result the timescales over which the costs and funding would be expected to arise have the same margins of uncertainty.

Signed
[A O Donnell

**Director General
Strathclyde Passenger Transport Executive]**

PROMOTER'S STATEMENT

NOTIFICATION TO PERSONS WITH INTEREST IN HERITABLE PROPERTY

207. This statement is provided in compliance with Rule 9A.2.3(d) of the Standing Orders of the Scottish Parliament. It contains five sections, corresponding to Rules 9A.2.3(d)(i), (ii), (iv), (v) and (vi). Rule 9A.2.3(d)(i) applies to the Bill because it affects heritable property. Rule 9A.2.3(d)(ii) applies to the Bill because it is promoted by a body corporate. Rule 9A.2.3(d)(iii) does not apply to the Bill because it does not contain provision to confer powers upon or modify the constitution of any body corporate or unincorporated association of persons other than the promoter. Rules 9A.2.3(d)(iv), (v) and (vi) apply to every private Bill. The statement accords with the determinations of the Presiding Officer and recommendations at Annexes F, G and H of the *Guidance on Private Bills*.

208. The persons having an interest in heritable property that will be subject to compulsory purchase or use or subject to the right to carry out safeguarding works are the persons named in the book of reference. Notice of the proposal to introduce a Bill containing compulsory purchase powers was given by means of a letter posted by Recorded Delivery post on 30th January 2006 to each of the persons named in the book of reference. Four standard forms of notice were used to cater for different circumstances (outright acquisition, acquisition of rights only, temporary possession and safeguarding), so that every recipient received a notice in a form all of which was relevant to him or her. The texts of these four forms of notice are set out in Appendices 1 to 4 at the end of this Statement.

209. The persons having an interest in heritable property that may be otherwise affected by the Bill but which is not to be subject to compulsory purchase or use or subject to the right to carry out safeguarding works have been separately identified. They consist of:

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

- (a) all persons with an interest in land abutting the route i.e. sharing a common boundary with the railway or with land required for the proposed works; and
- (b) persons with an interest in heritable property close to the route which, in terms of the Environmental Statement, may be subject to significant environmental impacts.

Notice of the intention to introduce a Bill was given by means of a notification posted by Recorded Delivery post on 30th January 2006 to each of these persons. The standard notification is set out in Appendix 5 at the end of this Statement.

210. All letters to those persons named in the book of reference were personally addressed to the individual owner or occupier concerned.

The majority of letters to affected parties were personally addressed to the individual owner or occupier concerned. There are however five blocks of flats on land abutting the Bill limits where it has not been possible to ascertain the names of all the occupiers. In all cases full searches and site visits have been carried out as detailed in the referencing methodology below. The owners of the flats (Glasgow Housing Association) have not supplied a list of the tenants due to data protection concerns. 489 of the 787 tenants have not been identified and in these cases the letter was sent to "The Occupier".

211. A methodology setting out the steps taken to ensure all persons having an interest in heritable property subject to compulsory purchase or who are otherwise affected as mentioned above is set out in Appendix 6 at the end of this Statement.

212. Notice of the proposal to introduce the Bill was sent to Renfrewshire Council on 30th January 2006 drawing their attention to section 41 (Application of Paisley Improvement Act 1877) which disapplies section 63 of that Act and other restrictions in respect of the land required for the rail link. A copy of the letter is appended to this Statement as Appendix 7.

NOTIFICATION TO AND CONSENT FROM MEMBERS ETC

213. This part of the statement is provided under Rule 9A.2.3(d)(ii) of the Parliament's Standing Orders. That Rule applies to the Bill because the promoter is a body corporate.

214. The Promoter, Strathclyde Passenger Transport Executive, is a statutory body established under the Transport Act 1968, as the Passenger Transport Executive for the Strathclyde Passenger Transport area. It is under the general duty to secure the provision of public passenger transport services in its area in accordance with policies formulated by the Strathclyde Passenger Transport Authority.

215. The Strathclyde Passenger Transport Authority at its meeting of 7th October 2005 agreed to grant approval to Strathclyde Passenger Transport Executive to proceed to promote the Bill. Members of the Authority were sent the Agenda and reports for this meeting on 30th September 2005. A copy of said agenda is appended to this Statement as Appendix 8. The meeting was quorate and the decision was unanimous. The text of the relevant minute to that meeting is appended to this Statement as Appendix 9.

216. At a meeting on 5th December 2005 the Strathclyde Passenger Transport Executive resolved to promote the Bill in the Scottish Parliament having obtained the approval of the Strathclyde Passenger Transport Authority. The agenda and reports for this meeting were circulated to the members of the Strathclyde Passenger Transport Executive on 2nd December 2005. A copy of the agenda for said meeting is appended to this Statement as Appendix 10. The meeting was quorate and the decision was unanimous. The text of the minute to that meeting is appended to this Statement as Appendix 11.

NOTIFICATION TO AND CONSENT FROM BODIES AFFECTED

217. The Bill does not contain any provision conferring powers upon or modifying the constitution of any body corporate or unincorporated association named in the Bill but not being the promoters. Accordingly Rule 9A.2.3(d)(iii) does not apply.

ADVERTISEMENT OF INTENTION TO INTRODUCE THE BILL

218. This part of the statement is provided under Rule 9A.2.3(d)(iv) which applies to every private Bill.

219. Notice of the intention to introduce a Private Bill was published in the Paisley Daily Express, Glasgow Herald and Glasgow Evening Times newspapers of 11th and 18th January 2006 and has been displayed from 12th January 2006 in the following Scottish Parliament Partner and other Libraries:

Constituency	Library	Address
Paisley South	Paisley Central Library	High Street, Paisley PA1 2BB
Paisley North	Renfrew Library	103 Paisley Road, Renfrew PA4 8LJ
Glasgow Pollok	Cardonald Library	1113 Mossspark Drive, Glasgow G52 3BU
Glasgow Govan	Ibrox Library	1 Midlock Street, Glasgow G51 1SL
Glasgow Kelvin	Hillhead Library	348 Byres Road, Glasgow G12 8AP

220. The notices set out the information required by the relevant determination (set out in Annex H of the *Guidance on Private Bills*). In addition to information separately reproduced in this Statement, the concise summary of the Bill's purposes was as follows:

“The purpose of the Bill is to give statutory authority for the construction of works in the local government areas of Renfrewshire and the City of Glasgow to provide a new railway service between Glasgow Airport and Glasgow Central Station. The works comprise:

- the construction of a new railway spur from a new elevated station at Glasgow Airport, passing over the M8 motorway, across St James' Park and the Murray Industrial Area and joining with the existing railway east of Paisley St James Station;
- works to the existing railway including the remodelling of Wallneuk Junction east of Paisley Gilmour Street Station; additional track between Arkleston Junction and Shields Junction and at Elderslie; and additional track and a new platform at Glasgow Central Station; and

- the construction of road and other works, including the relocation of the existing fuel farm at Glasgow Airport, necessitated by the railway works.

The Bill will also include provision to authorise the temporary stopping up and diversion of roads for the purposes of the works; the compulsory acquisition of land required for the purposes of the intended works, including land to be used for the purposes of construction, access, accommodation works and landscaping and other purposes; acquisition of rights only; extinction of rights of way over land to be acquired; special provision as to entry on land, the carrying out of safeguarding works for the protection of buildings and compensation and temporary possession of specified land; provision for disposal or transfer of the railway or any of the powers in the Bill relating to the railway; and provision for other related ancillary matters including the discharge of water; powers to enter on land for the purpose of surveying and investigating land; and the disapplication or modification of controls relating to listed buildings in relation to the works.”.

OTHER ACCOMPANYING DOCUMENTS

221. This part of the statement is provided under Rule 9A.2.3(d)(v) which applies to every private Bill.

222. The documents listed in paragraph 2 of the Explanatory Notes above may be inspected at the Scottish Parliament Partner Libraries listed above. Copies of these documents are available for purchase from the GARL Project Office, SPT, Consort House, 12 West George Street, Glasgow G2 1HN (Tele Freephone 0800 085 2109)]

223. On 30th January 2006 the promoter made the following statement:

“We, Strathclyde Passenger Transport Executive, hereby undertake to send copies of the maps, plans, sections, book of reference and environmental statement accompanying the Glasgow Airport Rail Link Bill, together with any other documents relevant to the Bill submitted to the Parliament on or after introduction, to the premises determined by the Presiding Officer for the purpose of Rule 9A.4.2 and to the mandatory consultees determined for the purpose of Rule 9A.1.4B.”.

PROMOTER’S UNDERTAKING TO PAY COSTS

224. This part of the statement is provided under Rule 9A.2.3(d)(vi) which applies to every private Bill.

225. On 30th January 2006 the promoter made the following statement:

“We, Strathclyde Passenger Transport Executive, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the Glasgow Airport Rail Link Bill in respect of the matters determined by that Body under Rule 9A.2.3(d)(vi) of the Parliament’s Standing Orders.”.

APPENDICES

Appendix 1: Form of letter sent in cases of outright acquisition and extinguishment of rights over land

IF YOU ARE IN DOUBT ABOUT THE POSSIBLE EFFECT OF THIS LETTER YOU SHOULD SEEK LEGAL ADVICE AS SOON AS POSSIBLE.

Letter No.

To:

[A] This letter relates to plot numbers [], [] and [] in the local government area of [] described in the schedule to this letter.

[B] The purpose of this letter is to inform you that Strathclyde Passenger Transport Executive intends to introduce a Private Bill, the Glasgow Airport Rail Link Bill, into the Scottish Parliament on or around 31st January 2006, and of the procedures involved should you wish to seek further information regarding the Bill, the parliamentary process to which it will be subject, or how to lodge an objection.

[C] The purpose of the Bill is to authorise-

- the construction of a new railway spur from a new elevated station at Glasgow Airport, passing over the M8 motorway, across St James' Park and the Murray Industrial Area and joining with the existing railway east of Paisley St James Station;
- works to the existing railway including the remodelling of Wallneuk Junction east of Paisley Gilmour Street Station; additional track between Arkleston Junction and Shields Junction and at Elderslie; and additional track and new platform at Glasgow Central Station; and
- the construction of road and other works, including the relocation of the existing fuel farm at Glasgow Airport, necessitated by the railway works.

We understand that you have an interest in the property/properties described in the schedule to this letter and shown on the attached extract or extracts from the Bill plans (should you require further information or have any questions about the area of land referred to (e.g. identifying precise location, intended use) please contact the GARL helpline, Freephone 0800 085 2109).

[D] If the Bill is passed by the Parliament, you may be obliged to sell your property, or the promoter or a third party may be given the right to use it or to obtain access for the purpose of carrying out safeguarding works to buildings. This means that your interest in the property/properties described in the schedule to this letter could be taken from you. The Bill also provides for extinguishment of rights in that land. You may be entitled to compensation from the promoter if you are obliged to sell the property or the promoter or a third party gain a right to use it or gain access for safeguarding works.

[E]

The day after the Bill is introduced in the Parliament it will be published by the Parliament together with the following accompanying documents:

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

- Explanatory Notes;
- Promoter's Memorandum;
- Promoter's Statement;
- Estimate of Expense and Funding Statement; and
- Statement by the Presiding Officer of the Parliament on the legislative competence of the Bill.

The day after introduction the Bill and the above documents will be available, free of charge, on the Parliament's website (www.scottish.parliament.uk, go to 'Parliamentary Business' and then 'Bills' then click on 'bills in progress'). Copies of the map and plans and sections of the works and the environmental statement will be available on the project website, (www.spt.co.uk/garl). In addition, copies of the Bill and its accompanying documents, (including a book of reference, a map and plans and sections, the book of reference and the environmental statement that have been published by the promoter) will be available for inspection at the following Parliament partner libraries –

Paisley Central Library, High Street, Paisley PA1 2BB
Renfrew Library, 103 Paisley Road, Renfrew PA4 8LJ,
Cardonald Library, 1113 Mossbank Drive, Glasgow G52 3BU,
Ibrox Library, 1 Midlock Street, Glasgow G51 1SL,
Hillhead Library, 348 Byres Road, Glasgow G12 8AP.

If possible a copy of the environmental statement will be made available via the Parliament's website.

Copies of the Bill, and those accompanying documents published by the Parliament will be available for sale from any Blackwell's bookshop. Copies of the other accompanying documents will be available for sale from the GARL Project Office, SPT, Consort House, 12 West George Street, Glasgow G2 1HN (Tele Freephone 0800 085 2109).

The price of each document is:

Document	Paper copy	CD
ENVIRONMENTAL STATEMENT)
Volume 1 Non Technical Summary	£3.00)
Volume 2 Main Report	£20.00)£5.00
Volume 3 Figures	£25.00)
Volume 4 Appendices	£10.00)
Maps, plans and sections		£5.00
A1 size	£40.00	
A3 size	£5.00	
Book of Reference	£20.00	N/A
Copyright & licensing agreements	£1.00	N/A

Postage and packing: price on application.

Cheques should be made payable to Strathclyde Passenger Transport Executive.

[F] The Bill seeks to supersede section 90 of the Lands Clauses Consolidation (Scotland) Act 1845, and substitute for it a provision which, except in a case where the subsoil under or air-space or rights over land are being acquired –

- (a) restricts the power of acquiring compulsorily a part only of a house or building to cases where the part can be taken without material detriment to the house or building; and
- (b) restricts the power of acquiring compulsorily a part only of a park or garden belonging to a house to cases where the part can be taken without seriously affecting the amenity or convenience of the house.

Once the Bill has been introduced, it will be subject to a three Stage process where it will be considered in detail both by a specially established Private Bill Committee and by the full Parliament.

Should you wish to object to the Bill, you will have 60 days to do so. The objection period commences the day after the Bill is introduced and ends at 5.00 pm on the sixtieth day thereafter. Objections must be lodged with the Private Bills Unit, The Scottish Parliament, Edinburgh EH99 1SP (0131 348 6789, private.bills@scottish.parliament.uk). The enclosed leaflet gives information on the Private Bill process and, in particular, the objection process.

A copy of the Parliament's *Guidance on Private Bills* which explains in greater detail the Private Bill process, is available for inspection from the partner libraries listed above. The guidance is also available on the Parliament's website (www.scottish.parliament.uk, go to 'Parliamentary Business' and then 'Parliamentary Procedure').

If you are wishing to lodge an objection, you will require to conform to the admissibility criteria set out in the Parliament's Standing Orders (its rules of procedure). Objections are required to-

- be in English;
- be printed, typed or clearly hand-written;
- set out clearly the name, address and, where available, other contact details of the objector (telephone, email and fax);
- be signed (where applicable, by a person duly authorised and showing that person's position or designation) and dated;
- set out clearly the nature of the objection i.e. why the objector opposes the Bill, for example, the proposed acquisition of an objector's property, or noise and vibration;
- explain whether the objection is to the whole Bill and/or specified provisions in which case these should be clearly identified;
- specify how the objector's interests would be adversely affected by the Bill, for example, because of anticipated loss of earnings, or reduction in property values, adverse impact on employment or business; loss of amenity etc; and
- be accompanied by the lodging fee determined by the Scottish Parliamentary Corporate Body (currently £20.00).

It is important to emphasise **that an objection must state clearly whether it is against the whole Bill and/or specified provisions. In either case the objection must clearly show how the objector will be adversely affected by the provisions of the Bill.**

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

At the conclusion of the objection period, the clerks in the Private Bills Unit will check all objections for admissibility. Once this has been done, a letter will be issued to each objector and a copy of each admissible objection will be made available for inspection in each of the above partner libraries and posted on to the Parliament's website. Should you not wish all, or any, of your contact details to be made available on the website, then you must inform the clerks of this at the time you are objecting. They will then delete this from the web version of that objection but not from the copies placed in the partner libraries for inspection (this version will be useful to objectors in identifying each other should they wish to enter into dialogue where there are objections of a similar nature).

For further details on the Private Bill process and, in particular, the objection process, please contact the Private Bills Unit (0131 348 6789, private.bills@scottish.parliament.uk). For further details on the subject matter of the Bill please contact the GARL helpline, Freephone 0800 085 2109.

Signed: ***John Kennedy & Co***

On behalf of: Strathclyde Passenger Transport Executive

Date: [] 2006

Name and status of signatory: John Kennedy & Co, 35 Great Peter Street, Westminster,
London SW1P 3LR.

Parliamentary Agents for the promoter.

Appendix 2: Form of letter sent in cases of acquisition of rights only

The text of this letter is identical to that in Appendix 1, save that:

- **the heading is:**

NOTICE OF PROPOSAL TO ACQUIRE RIGHTS IN LAND COMPULSORILY

- **The paragraph marked [D] reads:**

If the Bill is passed by the Parliament, you may be obliged to sell a right in your property, or a right to use it or to allow access for the purpose of carrying out safeguarding works. This means that your interest in the property/properties described in the schedule to this letter could be made subject to particular rights. You may be entitled to compensation from the promoter if this occurs.

- **At point [E] there is included:**

The schedule to this letter gives details of the purposes for which rights are required.

Appendix 3: Form of letter sent in cases of temporary acquisition of land

The text of this notice is identical to that in Appendix 1, save that:

- **the heading is:**

NOTICE OF PROPOSAL TO TAKE TEMPORARY POSSESSION OF LAND

- **The paragraph marked [D] reads:**

If the Bill is passed by the Parliament, you may be obliged to give up possession of that property on a temporary basis. This means that your interest in the property/properties described in the schedule to this letter could be temporarily interfered with. You may also be obliged to allow access for the purpose of carrying out safeguarding works. You may be entitled to compensation from the promoter if this occurs.

- **At point [E] there is included:**

The schedule to this letter gives details of the purposes for which temporary possession is required.

- The paragraph at point F is omitted.

Appendix 4: Form of letter sent in case of safeguarding works only

The text of this letter is identical to that in Appendix 1, save that:

- **the heading is:**

NOTICE OF PROPOSAL FOR POWERS TO CARRY OUT PROTECTIVE WORKS TO BUILDINGS (“SAFEGUARDING WORKS”)

- **The paragraph marked [D] reads:**

If the Bill is passed by the Parliament, the promoter will have the power to carry out protective works (in the Bill called “safeguarding”) to the property/properties described in the schedule to this letter. You may be entitled to compensation from the promoter if it exercises this power over your property.

- The paragraph at point F is omitted.

Appendix 5: Form of letter to affected parties notifying intention to introduce the Bill

(not within appendices 1 to 4)

NOTIFICATION OF A PRIVATE BILL

Letter No.

To:

**Glasgow Airport Rail Link Bill
[general details of property]**

The purpose of this letter is to inform you that Strathclyde Passenger Transport Executive intends to introduce a Private Bill, the Glasgow Airport Rail Link Bill, into the Scottish Parliament on or around 31st January 2006 and of the procedures involved should you wish to seek further information regarding the Bill, the parliamentary process to which it will be subject, or how to lodge an objection to the Bill.

The purpose of the Bill is to authorise–

- the construction of a new railway spur from a new elevated station at Glasgow Airport, passing over the M8 motorway, across St James’ Park and the Murray Industrial Area and joining with the existing railway east of Paisley St James Station;
- works to the existing railway including the remodelling of Wallneuk Junction east of Paisley Gilmour Street Station; additional track between Arkleston Junction and Shields Junction and at Elderslie; and additional track and a new platform at Glasgow Central Station; and
- the construction of road and other works, including the relocation of the existing fuel farm at Glasgow Airport, necessitated by the railway works.

The day after the Bill is introduced in the Parliament, it will be published by the Parliament together with the following documents –

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

- Explanatory Notes;
- Promoter's Memorandum;
- Promoter's Statement;
- Estimate of Expense and Funding Statement;
- Statement by the Presiding Officer of the Parliament on the legislative competence of the Bill.

The day after introduction, the Bill and the above documents will be available on the Parliament's website (www.scottish.parliament.uk, go to 'Parliamentary Business' and then 'Bills' then click on 'Bill in Progress'). Copies of the maps and plans and sections of the works and the environmental statement will be available on the project website, (www.spt.co.uk/garl). In addition, copies of the Bill and its accompanying documents (including a book of reference, a map and plans and sections of the proposed works, and the environmental statement, that have been published by the promoter) will be available for inspection at the following Parliament partner libraries –

Paisley Central Library, High Street, Paisley PA1 2BB
 Renfrew Library, 103 Paisley Road, Renfrew PA4 8LJ,
 Cardonald Library, 1113 Mossbank Drive, Glasgow G52 3BU,
 Ibrox Library, 1 Midlock Street, Glasgow G51 1SL,
 Hillhead Library, 348 Byres Road, Glasgow G12 8AP.

(If possible a copy of the environmental statement will be made available via the Parliament's website.)

Copies of the Bill, and those accompanying documents published by the Parliament will be available for sale from any Stationery Office bookshop. Copies of the other accompanying documents will be available for sale from the GARL Project Office, SPT, Consort House, 12 West George Street, Glasgow G2 1HN (Tele Freephone 0800 085 2109).

The price of each document is:

Document	Paper copy	CD
ENVIRONMENTAL STATEMENT)
Volume 1 Non Technical Summary	£3.00)
Volume 2 Main Report	£20.00)£5.00
Volume 3 Figures	£25.00)
Volume 4 Appendices	£10.00)
Maps, plans and sections		£5.00
A1 size	£40.00	
A3 size	£5.00	
Book of Reference	£20.00	N/A
Copyright & licensing agreements	£1.00	N/A

Postage and packing: price on application.

Cheques should be made payable to [Strathclyde Passenger Transport Executive].

Once the Bill has been introduced into the Parliament, it will be subject to a three Stage process where it will be considered in detail both by a specially established Private Bill Committee and by the full Parliament.

Should you wish to object to the Bill, you will have 60 days to do so. The objection period commences the day after the Bill is introduced and ends at 5.00 pm on the sixtieth day thereafter. Objections must be lodged with the Private Bills Unit, The Scottish Parliament, Edinburgh EH99 1SP (0131 348 6789, private.bills@scottish.parliament.uk). The enclosed leaflet gives information on the Private Bill process and, in particular, the objection process

A copy of the Parliament's *Guidance on Private Bills*, which explains in greater detail the procedures involved in the Private Bill process, is available for inspection from the partner libraries listed above. The guidance is also available on the Parliament's website (www.scottish.parliament.uk, go to 'Parliamentary Business' and then 'Parliamentary Procedure').

If you wish to lodge an objection, you will require to conform to the admissibility criteria set out in the Parliament's Standing Orders (its rules of procedure). Objections are required to-

- be in English;
- be printed, typed or clearly hand-written;
- set out clearly the name, address and, where available, other contact details of the objector (telephone, email and fax);
- be signed (where applicable, by a person duly authorised and showing that person's position or designation) and dated;
- set out clearly the nature of the objection i.e. why the objector opposes the Bill for example, the proposed acquisition of an objector's property, or noise and vibration ;
- explain whether the objection is against the whole Bill or only to certain provisions (in which case these should be clearly identified) (see below for additional information in relation to this);
- specify how the objector's interests would be adversely affected by the Bill, for example, because of anticipated loss of earnings or reduction in property values adverse impact on employment or business; loss of amenity etc;
- be accompanied by the lodging fee determined by the Scottish Corporate Body (currently £20).

It is important to emphasise **that an objection must state clearly whether it is against the whole Bill or to certain identified provisions. In either case the objection must clearly show how the objector will be adversely affected by the provisions on the Bill.**

At the conclusion of the objection period, the clerks in the Private Bills Unit will check all objections for admissibility. Once this is done, a letter will be issued to each objector and a copy of each admissible objection will be made available for inspection in each of the above partner libraries and on the Parliament's website. Should you not wish all, or any, of your contact details to be made available on the website, then you must inform the clerks of this at the time you are objecting. They will then delete this from the web version of that objection but not from the copies placed in the partner libraries for inspection (this version will be useful to objectors in identifying each other should they wish to enter into dialogue where there are objections of a similar nature).

For further details on the Private Bill process and, in particular, the objection process, please contact the Private Bills Unit (0131 348 6789, private_bills@scottish.parliament.uk). For further details on the subject matter of the Bill please contact the GARL helpline, Freephone 0800 085 2109.

Appendix 6: Land Referencing Methodology

It is necessary to carry out land referencing enquiries to identify all persons with an interest in land which may be acquired or used, or who may be affected, and to ensure that each of them is properly notified.

Annex G of the *Guidance on Private Bills* (Revised December 2005) states that the persons who are to be notified by the promoter are those whose interests are;

- registered in the Sasines Register held by Registers of Scotland; or
- registered on the Land Register; or
- on the latest version of the valuation roll; or,
- as ‘the owner’, ‘the lessee’ or, as the case may be, ‘the occupier’ of any land or buildings (other than the owner, lessee or occupier of which cannot be ascertained after reasonable inquiry)

Professional land referencers were appointed by SPT to carry out the land referencing exercise. An outline of the methodology adopted is as follows:

1. Ordnance Survey mapping was obtained covering the extent of the proposals. The extent of the referencing required was agreed with Strathclyde Passenger Transport Executive, FaberMaunsell, the engineering consultants, and LandAspects, the land referencing consultants.
2. At the start of the project LandAspects contacted Registers of Scotland to obtain all land titles for the properties deemed affected by the project. LandAspects have a number of processes in place with the Registers of Scotland that enables them to conduct complete searches against both the Land Register and the Sasines Register.
3. To identify interests in registered land a project boundary was provided to the Registers extending wider than the draft Limits of Deviation and all properties within this corridor were included in the search request made to the Registers of Scotland digitally in Geographical Information System (GIS) format. The Registers of Scotland were able to use this spatial boundary against their system to retrieve all Land Titles that fall within or touch the boundary limit. This ensured complete coverage. As further assurances Registers of Scotland also searched for titles at a set buffer (2-3m) around the boundary limit. Title boundaries were then provided in digital format and all the accompanying title certificates provided in PDF format.
4. Title certificates were then examined and relevant data extracted. Title certificates were obtained for all registered land required to be referenced.
5. In the case of land that was not registered on the Land Register, the Sasines Register was accessed after site investigations had been carried out to obtain full address details which are needed to make the necessary searches. The information provided consists of a description of the property and ownership details. The information was examined and checked against

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

other data. The Sasines Register is based on the address of the property and is not plan based.

6. In the case of this Bill all unregistered land comprises land forming the existing rail corridor owned by Network Rail. Network Rail were asked to examine their records and to confirm details of their ownership and any third party rights existing in the corridor. Such details were supplied in digital form and the relevant information extracted. Further title checks were carried out by the Promoter to verify this information.
7. LandAspects, with the Registers of Scotland, have put in place a methodology that allows checks to be made for any updates to Titles that have previously been issued. Shortly before formal notification is posted, a check is made so that changes notified to Registers of Scotland can be incorporated.
8. The electoral roll was searched for entries against all residential addresses included in the project's scope and the details were recorded.
9. The valuation roll was checked for all commercial properties.
10. Site enquiries were conducted and every property within the project scope was visited. Where possible interviews with landowners and others were undertaken and the information provided recorded. Interviewed parties were asked to confirm interests held or known about and indicate property boundaries. They were requested to sign completed Land Interest Questionnaires. Potential major landowners were also approached for details relating to their wider landed interests. These included Network Rail, Renfrewshire Council, Glasgow Council, Glasgow Housing Association and Glasgow Airport. Follow-up enquiries were also carried out to complete all referencing details.
11. All ownership boundaries were drawn onto land ownership plans. This covered all land which may be acquired or used or land affected by the Bill as described in paragraph 3 of this Statement. These created control plans that record the progress of site enquiries and served to highlight areas where any further enquiries were required. Ownership boundaries were superimposed on digital background mapping and cross referenced to the parcels numbers in the database and in the land ownership schedule. This ensured that data could be readily accessed, checked and updated throughout the referencing period.
12. The referencing information is processed so appropriate details were recorded, in the case of land which may be acquired or used, in the Book of Reference and in the case of other interests affected by the proposal in a separate schedule.
13. In order to verify the information, Confirmation Schedules were issued to the landowners (or their agents) asking them to again confirm details shown and provide any additional relevant information.
14. Rigorous quality procedures were undertaken by LandAspects to ensure all details collected are properly reflected in the documentation.

Appendix 7: Letter To Renfrewshire Council

As you are aware, Strathclyde Passenger Transport Executive intend to introduce the above Private Bill into the Scottish Parliament on or around 31 January 2006.

The purpose of this letter is to draw your attention to section 41 (Application of Paisley Improvement Act 1877) of the Bill which disapplies section 63 of that Act in respect of the land required for the rail link. It also removes for the avoidance of doubt any restriction arising from the status of such land as land held for the common good. A copy of section 41 of the draft Bill is enclosed, together with a copy of the newspaper notice of the introduction of the Bill which contains details of how to petition and other information.

Appendix 8: Agenda for PTA meeting 30 September 2005

30 September 2005

To all members of the
Strathclyde Passenger Transport Authority

Dear Councillor

Strathclyde Passenger Transport Authority – 7 October 2005.

I have to request your attendance at a meeting of the Strathclyde Passenger Transport Authority to be held at 11.00 am on Friday, 7 October, 2005 in the committee room, third floor, Consort House, 12 West George Street, Glasgow, for the purpose of considering the undernoted business.

Yours sincerely

John F Anderson
Secretary

Business

1. Minute of previous meeting (copy herewith).
2. Committee minutes:
 - (a) Strategy and Programmes Committee of 19 August 2005 (copy herewith);
 - (b) Operations Committee of 2 September 2005 (copy herewith); and
 - (c) Performance Monitoring Committee of 16 September 2005 (copy herewith).
3. Membership update - Oral report by Secretary.
4. Glasgow Airport Rail Link – Approval for the introduction of the Private Bill to Parliament - Report by Interim Director General (copy herewith).

Appendix 9: Minute of PTA meeting 30 September 2005

Strathclyde Passenger Transport Authority
Minute of meeting
7 October 2005

held in Consort House, Glasgow

Glasgow Airport Rail link – Approval for the introduction of a Private Bill to the Scottish Parliament

With reference to the minute of 5 August 2005 (page 3, paragraph 5) when the Authority had agreed, inter alia, that the Private Bill for the construction of the Glasgow Airport Rail Link be introduced into the Scottish Parliament in October, there was submitted a report (issued) of 15 September 2005 by the Interim Director General,

- (1) advising members
 - (a) that due to the delay in the consideration stage of the Edinburgh Tram Line Two Bill, the next available slot in the Parliamentary timetable, which was contingent on the Edinburgh Tram Line Two Bill, would now not be available in October; and
 - (b) that efforts were being made to confirm the position with a view to clarifying a firm date for the next available opportunity;
- (2) explaining
 - (a) that, following requests from members for information on a detailed programme for implementation and associated risk assessment, a report would be submitted to a Strategy and Programmes Committee once the timetable for introduction was firmed up; and
 - (b) that although a copy of the Bill and accompanying documents, which were required in terms of the Standing Orders of the Scottish Parliament, would be available for inspection at this meeting, these might be subject to some stylistic changes prior to the introduction of the Bill;
- (3) outlining the key purpose and content of each of the documents;
- (4) informing members
 - (a) that a separate exercise had been undertaken to prepare the scope of the work, timescale and budget to process the next stages for the development of the work and a report would be submitted to the Authority on this; and
 - (b) that it would be essential to advance the design and preparatory work in parallel with the Bill process through Parliament to maintain the work programme; and
- (5) concluding that, as the preliminary design and necessary Parliamentary documentation was complete, it was appropriate that the Private Bill be considered for submission to the Scottish Parliament at the earliest opportunity.

After considerable discussion and having heard Messrs Ferguson and Halliday in answer to members' questions, the Authority agreed that the Executive proceed to promote the Bill in the Scottish Parliament at the earliest opportunity.

Appendix 10: Agenda for PTE meeting 5 December 2005

Strathclyde Passenger Transport Executive Management Meeting

Agenda for meeting

At 1.00pm on Monday 5 December 2005

1. Minutes of previous meetings held on
 - (a) 15 November (special); and
 - (b) 21 November 2005 (copies herewith).
2. Matters arising.
3. Staffing, etc. issues -
4. Finance, etc. issues -
5. Performance Management and planning, etc. issues -
6. Legal, Admin, etc. issues -
7. IT, etc. issues -
8. Marketing, etc. issues -
9. Rail Franchise Management etc. issues -
10. Subway, etc. issues -
11. Bus, etc. issues -
12. Policy and Development, etc. issues -
13. Transport Planning & Integration etc. issues -
 - (a) Glasgow Airport Rail Link - Introduction of Private Bill to the Scottish Parliament - Report of November 2005 by the Head of Transport Planning & Integration (copy herewith); and
 - (b) Glasgow Airport Rail Link - Progress Update #13 - Report of December 2005 by the Head of Transport Planning & Integration (copy herewith).

DISTRIBUTION OF PAPERS

Agenda and supporting papers

A. O'Donnell, Interim Director General

D. Ferguson, Director of Operations

W.I. Wylie, Director of Corporate Services

J Anderson, Non-Executive Director

All Heads

Appendix 11: Minute of PTE meeting 5 December 2005

- (a) **Glasgow Airport Rail Link – Introduction of Private Bill to the Scottish Parliament**

There was submitted a report (issued) of 30 November 2005 by the Head of Transport Planning and Integration seeking formal approval to proceed with the submission of a Bill to the Scottish Parliament for the promotion of the Glasgow Airport Rail Link (GARL).

Following discussion, the Executive formally agreed to proceed with the submission of a Bill for the Glasgow Airport Rail Link (GARL) to the Scottish Parliament.

Action – Director of Operations (re Head of Transport Planning and Integration) and Director of Corporate Services (re Head of Legal and Administrative Services).

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

**PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE
COMPETENCE**

226. On 25 January 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Glasgow Airport Rail Link Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Glasgow Airport Rail Link Bill (SP Bill 54) as introduced in the Scottish Parliament on 31 January 2006

GLASGOW AIRPORT RAIL LINK BILL

EXPLANATORY NOTES

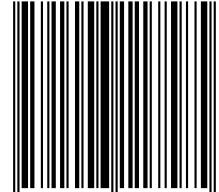
(AND OTHER ACCOMPANYING DOCUMENTS)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary
Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

ISBN 1-4061-1758-7



9 781406 117585