These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

STIRLING-ALLOA-KINCARDINE RAILWAY AND LINKED IMPROVEMENTS 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 Stirling-Alloa-Kincardine Railway and Linked Improvements Bill introduced in the Scottish Parliament on 21 March 2003:
   • 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 73–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 and a book of reference under Rule 9A.2.3(c)(ii);
   • an Environmental Statement under Rule 9A.2.3(c)(iii); and
   • an Assignation of Copyright/Licensing Agreement under Rule 9A.2.3(e).
INTRODUCTION

3. These Explanatory Notes have been prepared by John Kennedy & Co, Parliamentary Agents, on behalf of the promoter, Clackmannanshire Council, in order to assist the reader of the Stirling-Alloa-Kincardine Railway and Linked Improvements 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 the Council and its successors (for an explanation of successors to the Council see the notes on section 29 of the Bill). In the Bill the body exercising the powers is called “the authorised undertaker”. The Bill will enable the authorised undertaker to reconstruct the former railway from Stirling to Kincardine via Alloa. All the other powers in the Bill, including the other works described below, are necessitated by the reconstruction of the railway. 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 reconstructed and operated. Paragraphs 6 to 9 below outline the purpose of the Bill in greater detail.

6. The principal purpose of the Bill is to give statutory authority to the Council and its successors (in the Bill called “the authorised undertaker”) for the construction of—

- a railway along the former railway route from Stirling to Kincardine via Alloa (in the Bill called “the railway works”); and
- a new link road to allow access to eastern Alloa for cross town traffic following the closure of Hilton Road level crossing, Alloa, necessitated by the railway works (in the Bill called “the major road works”).

7. In connection with these principal works the Bill also provides for the closure of six of the 12 crossings along the route between Stirling and Kincardine and the upgrading of the remaining six crossings, and for the stopping up¹ of lengths of some roads where they cross the route. Two new footbridges will be provided. In the Bill the works that will enable these things to be done are called “the ancillary works”.

8. The works proposed in the Bill form the major part of an overall scheme two aspects of which are not dealt with in the Bill itself. One of these is signalling. The signalling system for

¹ “Stopping up” a road is the technical expression for closing the road to traffic and terminating public rights of way over it.
the re-opened route must operate as an integral part of the signalling system for the national rail network to which it connects at either end. In order to achieve this, modifications in existing signalling equipment are required at Stirling Station, Kincardine and Longannet. The other aspect is track improvements. So as to enable freight traffic to take advantage of the re-opened route it will be necessary to upgrade the existing freight railway between Kincardine and Longannet. The Promoter’s Memorandum explains how these works are to be carried out by Network Rail Infrastructure Limited (“Network Rail”) and why they are not included in the Bill. The Bill includes provisions to facilitate these works.

9. Provision is also included for the compulsory acquisition of land for the scheme, including land for a new station at Alloa, which is to be built as part of the scheme, and land adjoining Network Rail’s operational land which is required in connection with the provision of signalling equipment and the protection of Network Rail’s existing freight railway.

RECIPIENTS OF THE POWERS

10. The powers of the Bill will be conferred initially on the Council. Provision is made for the Council 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. The intention is that the railway powers will eventually be transferred to another undertaker, expected to be Network Rail, while the major road works will eventually vest in the Council as the local roads authority. At the construction phase, the Bill is framed so as to facilitate both railway works and major road works forming part of the one construction contract so as to achieve cost savings.

RELATIONSHIP WITH PLANNING AND RAILWAYS REGULATION

11. As explained in paragraph 9 of the Promoter’s Memorandum the development authorised by the Bill will be permitted development, 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 34 (see paragraphs 211 and 212 below).

12. The Bill does not state that the authorised undertaker may operate the railway and related facilities. This is because under section 6 of the Railways Act 1993 (c.43) the operation (including management) of a railway asset (which includes track and other infrastructure and stations) requires a licence under section 8 of that Act.

THE BILL AND RELATED DOCUMENTS

13. 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 and the 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.

14. 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 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

15. Before commenting on the individual sections it may be helpful to explain how the Bill operates. Part 1 confers the powers relating to the works themselves. It distinguishes between—

- those works that are specifically described (the railway works described in schedule 1 and the major road works described in schedule 2), and
- works carried out under general powers (the ancillary works as described in schedule 3).

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. 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.

3 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.
18. In theory this might be done either by writing the relevant provisions at length in the Bill or by apply the existing public Acts as if they had been included in the Bill. Section 37 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.\(^4\)

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 84 to 173 and 217 explaining Part 2 of the Bill and section 37. The Acts applied by section 37 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.\(^5\)

20. The Bill accordingly incorporates provisions of the Acts referred to in section 37. 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 Acts\(^6\),
- the Railways Clauses Consolidation (Scotland) Act 1845 (c.33),
- the Railways Clauses Act 1863 (c.92).

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\(^4\) Recent Scottish examples of provisions similar to section 37 are 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 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).

\(^5\) In fact, the law on compulsory purchase throughout the UK is recognised as being ripe for reform and there are current government proposals on the subject. See Compulsory Purchase and Compensation – the Government Proposals for Change, Office of the Deputy Prime Minister, June 2002, paras 1.1 and 3.1; and the Planning and Compulsory Purchase Bill, a Government Bill pending in the UK Parliament which proposes a number of reforms relating to compensation.

\(^6\) 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.)
21. 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 Scotland 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 14, 17, 21 and 25 of the Bill.

COMMENTARY ON SECTIONS

Part 1 - Works

22. The meaning of “the railway works”, “the major road works” and “the ancillary works” is explained in paragraphs 23 to 45 below. They are collectively described as “the authorised works” (defined in section 38).

Section 1 – Authority to construct works

23. Subsection (1) gives the specific statutory authority for the works which is required. In the absence of this subsection 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.

24. Subsection (2) makes clear the extent of the works for which authority is given. Sections 2 and 3 refer to the railway works and the major road 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 5.) Subsection (2) accordingly provides that the extent of the authorised works is the works as constructed within the permitted deviation.

Section 2 – The railway works

25. Section 2 gives effect to schedule 1, which contains the detailed description of the works comprised in the railway and related physical structures (access roads and footbridges).

26. The main railway work is the Stirling-Alloa-Kincardine railway itself (Work No. 1). It is shown on Sheets Nos. 1 to 29 of the Parliamentary plans. The railway follows the route of the former railway between Stirling and Kincardine via Alloa. The western end of the railway will join the national rail network (the Stirling and Forth Viaduct railway operated by Network Rail) at a point where the southern approach to the Forth Viaduct passes over Lovers’ Walk, Stirling. The railway will then continue for 17.8 km through Alloa to Kincardine, where its eastern end will join the national rail network (the Clackmannan and Kincardine railway operated by Network Rail) at a point close to Kincardine Power Station. The construction of the railway will include the following structural works—

7 “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, volume 5, article on “Compulsory Acquisition”, para. 13.

8 The need for such authority is explained in paragraph 7 of the Promoter’s Memorandum.
These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

- Strengthening the eastern viaduct of the existing Forth railway bridge (see Sheet No. 2). This is required so that the structure has sufficient load carrying capacity. In addition, railway safety requirements call for the provision of new access walkways and refuges. The superstructure also requires repairs with strengthening of the riverbank piers, scour protection of the river piers and remedial works to the arches.

- Raising the deck of the existing footbridge carrying Erskine Street, Alloa, over the railway (see Sheet No. 17). This is necessary because the existing structure is in poor condition and does not provide sufficient headroom for the proposed rail traffic to pass safely beneath the structure. As a result the existing deck is to be removed and the north support abutment is to be strengthened. A new steel girder pedestrian bridge will be installed spanning across the position of the original deck.

- The reconstruction of the existing Helensfield bridge carrying the railway over the A907 Clackmannan Road at Helensfield (Sheet No. 21). This is required because the existing structure is in poor condition and requires replacement. Minor reconstruction of the bridge abutments will be required prior to the installation of a new single span, steel girder bridge in the position of the existing bridge.

27. Work No. 1A is shown on Sheet No. 4 of the Parliamentary plans. At Causewayhead, Stirling, there is an existing private crossing where the former railway crosses a private road. The road and the crossing provide access to the east end of a site to the south of the former railway, adjoining the length of railway between Causewayhead and Waterside. At present this private road is the only access into the site.

28. The sole user of the crossing is the single business occupier of the site. Use of the crossing is less than 100 movements per day. In view of this low usage it is not economical to maintain the Causewayhead crossing. The site owner has agreed to its closure with alternative access to his site being obtained via Ladysneuk Road and a new road access to be constructed, as Work No. 1A, from Ladysneuk Road and the refurbished Waterside level crossing into the west end of the site.

29. Work No. 1B is shown on Sheet No. 5 of the Parliamentary plans. At Abbeycraig, Stirling there is an existing crossing where the former railway crosses Grange Road, Stirling. The crossing provides access to Broom Farm and five other residential properties south of the corridor with an existing public path link from south of the level crossing via a track to Ladysneuk Road. Due to the close proximity of the Alloa Road it is not technically viable to provide a grade-separated crossing without significant impact. Work No. 1B will provide an alternative road access to Ladysneuk Road. Due to the low usage of the crossing it is not viable to provide a footbridge crossing. The new road access will accommodate pedestrians in addition to vehicles.

30. Works Nos. 1C and 1D are shown on Sheet No. 15 of the Parliamentary plans. At Alloa, near St John’s primary school there is an existing crossing where the former railway crosses Grange Road, Alloa. The level crossing currently provides vehicular and pedestrian access to and from Stirling Road at Grange Road. Housing, St. John’s Primary School, the Church of Jesus Christ of Latter Day Saints and the ABC Nursery & Kids Zone are all located within 500 metres of the south of the proposed railway. Existing alternative vehicular access is available via the
new Alloa West road overbridge/Smithfield Loan for current Grange Road vehicular users. The provision of a pedestrian/disabled user/cyclist footbridge, as Work No. 1C, will maintain access (including safe crossing) over the crossing to residences and key community facilities.

31. The provision of the bridge (Work No. 1C) and the closure of the Grange Road level crossing necessitates the stopping up of the section of Grange Road, Alloa between Stirling Road and a point south of the former level crossing. The closure of the road will result in loss of the access to No. 25 Stirling Road. Work No. 1D will provide a new access road from Stirling Road.

32. Work No. 1E is shown on Sheet Nos. 16 and 17 of the Parliamentary plans. It is a siding facility to be constructed clear of the main line (Work No. 1) for the purpose of providing a station halt at the proposed Alloa Station. The siding will be located parallel to Work No. 1.

33. Work No. 1F is shown on Sheet No. 17 of the Parliamentary plans. It is a new road which will provide an access to the proposed Alloa Station. The access road will lead from a new roundabout on the Alloa Ring Road. On the south side of Alloa Ring Road improved access will be provided to the existing car park.

34. Work No. 1G is shown on Sheet No. 18 of the Parliamentary plans. Adjacent to Alloa Athletic football ground there is an existing crossing where the former railway crosses Hilton Road. Hilton Road provides direct pedestrian and vehicular access to the east Alloa suburbs from Clackmannan Road. Through consultation with local residents and The Gaberston Residents Committee, there was general agreement to the road closure if a ramped footbridge was provided. This footbridge will be provided as Work No. 1G.

Section 3 – The major road works

35. Section 3 gives effect to schedule 2 which describes the major road works. These comprise the Alloa Eastern Link Road and associated works, including a bridge over the proposed railway (Work No. 1), which are required to provide alternative routes to the east of Alloa as a result of the closure of Hilton Road level crossing.

36. The link road, Work No. 2, is shown on Sheets Nos. 19 and 20 of the Parliamentary plans. The road commences at a roundabout to be constructed south of the railway forming a junction with the A907 Clackmannan Road which will be realigned (Work No. 1D) in order to provide the necessary clearance over the railway by means of a bridge. After crossing the railway northwards the road then links in to the existing road network at the existing Whins Road/Corsebridge Road/Hilton roundabout which will be upgraded.

37. Work No. 2A is shown on Sheet No. 19 of the Parliamentary plans. As part of the upgrading of the existing Whins Road/Corsebridge Road/Hilton Roundabout a short section of Hilton Road will be stopped up. Work No. 2A will form a new access from Hilton Road to the proposed link road.

38. Work Nos. 2B and 2C are shown on Sheet No. 20 of the Parliamentary plans. Current access to Hilton Farm and Jellyholme Farm is via Hilton Farm Level Crossing. As a result of the
reconstruction of the railway (Work No. 1) the level crossing is to be closed and alternative access is required. The alignment of the new Alloa Eastern Link Road (Work No. 2) also severs the existing access road to Jellyholme Farm. Works Nos. 2B and 2C provide new accesses to the farms off the southern section of the new Alloa Eastern Link Road.

39. Work No. 2D is shown on Sheet Nos. 19 and 20 of the Parliamentary plans. It is a realignment of the A907. As mentioned above, in order to carry the proposed link road over the proposed railway and form a junction with the A907 Clackmannan Road south of the railway, the A907 needs to be realigned to the south to provide the necessary clearance.

40. The construction of new roads by local roads authorities such as the Council is normally carried out under section 20 of the Roads (Scotland) Act 1984 (c.54). When this happens any necessary compulsory acquisition is authorised by compulsory purchase order made by the Scottish Ministers on application by the local roads authority under section 104 of that Act. It would be open to the Council to proceed in this way in relation to the major road works. However, as explained above the major road works will become a necessity because of the railway works. The new link road therefore becomes an essential element of the railway proposals. For this reason, the major road works have been included in the Bill so that the Bill contains a complete and coherent scheme for the Parliament, and so that the public can have its say in relation to the whole scheme rather than fragmented proposals.

Section 4 – The ancillary works

41. Section 4 gives effect to schedule 3, which describes the types of works which may be provided in connection with the railway works or the major road works. Works of this nature will only be authorised by the Bill if they are necessary or expedient\(^9\) in connection with the construction of the railway works or the major road works, or are required as a consequence of those works being constructed.

42. Schedule 3 catalogues types of works and operations that are normally necessary for the operation of a railway. The “railway” itself is only the railway track as laid along the route.\(^10\) The ancillary items accordingly range from the provision of stations and platforms to operations such as discharging water during construction\(^11\) and moving utility apparatus\(^12\). The ancillary works will accordingly form an essential part of the authorised works. They include flood prevention and coast protection works for the benefit of Network Rail’s railway between Kincardine and Longannet where Network Rail lacks the necessary powers.

43. Unlike the specifically authorised railway works and major road works, which are a known quantity and the position of which is certain within a margin, section 4 does not need to prescribe any limits within which the ancillary works may be constructed. Also, as the nature of the ancillary works is known but at this stage not the precise ancillary works or their positions, the Bill does not identify any land to be compulsorily purchased for the purposes of ancillary works. Accordingly, the places where ancillary works can be carried out will be limited by the

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\(^9\) I.e. advantageous; suitable, appropriate (Concise Oxford English Dictionary).
\(^10\) 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).
\(^11\) E.g. when pumping away water from a site so as to be able to lay track on dry ground.
\(^12\) E.g. water mains and power supply cables.
need for the works to be ancillary to the railway works or the major road works. As there are no compulsory purchase powers for land to accommodate ancillary works, the location of these works will be further limited by the fact that they can only be constructed on land which the authorised undertaker has been able to acquire, or in which it has acquired appropriate rights.

44. By way of example of ancillary works, it will be necessary to alter some of the signalling equipment at Stirling Station so as to provide for the Stirling-Alloa-Kincardine railway to be properly signalled as an integral part of the main line at either end. This will call for the provision of cable routes, internal trunking, the installation of equipment and structural improvements to the Stirling Middle and Stirling North signal boxes. The Bill does not authorise this as a specific numbered work. What is required falls within the categories of works described in schedule 3, and will therefore be carried out as ancillary works. There are no compulsory purchase powers relating to the two signal boxes because Network Rail will be carrying out the works on its own land. (There are compulsory purchase powers relating to some land required for construction access at Stirling Station – plot no. 1, see schedule 8 – but that is to override third party access rights, not to allow works to be constructed on that plot.) As another example, platforms at stations and landscaping will be ancillary works.

45. The authorised works will necessitate some apparatus belonging to utility undertakers being moved away from the works, or in the case of any sewers protected from the works. Such accommodation works are usually conduits or other similar apparatus. Section 4(2) accordingly authorises the authorised undertaker to construct these works for the benefit of others e.g. utility undertakers whose apparatus is moved.

Section 5 – Permitted deviation within limits

46. The Parliamentary plans show the centre lines of the works and also show limits of deviation around those centre lines. Sections 2 and 3 specifically state that the railway works and the major road works are situated within the limits of deviation. The Bill will not accordingly permit the construction of those works outside these lateral limits.

47. 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 5.

48. Section 5 allows for a degree of flexibility. It permits movement or variance from the precise lines and sections. In the Bill this is described as “deviation”. 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.

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13 Utilities are gas, electricity, water and telecommunications. Sewers are also treated as utilities. Utility undertakers are suppliers of these utilities, or in the case of sewers, the providers of sewerage services. Utility undertakers normally own their apparatus.

14 Sewers are protected rather than moved because moving them would involve a change in their levels. Sewers usually rely on gravity and so their levels cannot readily be altered. The works to provide alternative apparatus for utility apparatus that is being moved, or to protect sewers, are called “accommodation works”.
49. 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. If it came to light that at any point along the route the ability to deviate downwards created an impact that should be catered for, that could be dealt with by way of amendment to the Bill, if appropriate, or agreement with any person affected.

Section 6 – Access to works

50. It will be necessary for the authorised undertaker to provide access from existing roads to land to be used for the authorised works. Section 6 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 7 – Construction and maintenance of new or altered roads

51. The roads associated with the railway works and the roads other than the private accesses comprising the major road works are all to become public roads. In accordance with standard arrangements when a new road is built, section 7 provides for the relevant works 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 8 – Level crossings

52. A level crossing is a place where a railway crosses a public road or a road to which the public has access, and the crossing is on the same level as the road. Express statutory authority is needed to provide, maintain and alter level crossings since without this authority the crossing would be an unlawful interference with a public road.

53. There are six existing level crossings between Stirling and Kincardine, all of them statutorily authorised in legislation relating to the former railway. Three of these crossings are to be refurbished so that they will function with the new railway in place to a standard that is both efficient and fully complies with modern safety standards. This is provided for in subsection (1) and Part 1 of schedule 4, which details the level crossings in question.

54. Subsection (2) enables the authorised undertaker to alter or interfere with road levels in connection with the refurbishment of level crossings under subsection (1). This is required to enable the authorised undertaker where necessary to raise or lower the level of the road so as to ensure that road and rail are maintained at the same levels.
55. Subsection (3) is a power for the authorised undertaker to install barriers, lights and other level crossing equipment. A specific power is needed so as to authorise such equipment to be installed on land that does not belong to the authorised undertaker.

56. Subsection (4) requires that level crossing equipment placed in exercise of these powers must conform to the standards generally prescribed for such equipment.

57. Three of the level crossings are to be closed with the rights of way over them being extinguished. This is provided for in subsection (5) and Part 2 of schedule 4, which details the level crossings in question. Part 2 also includes a further level crossing, the status of which is uncertain, in case public rights over it have been established. The rights of way need to be extinguished to ensure that no one is entitled to cross the railway at these points as it would be dangerous for them to do so.

58. The footbridges at Grange Road, Alloa and Hilton Road, Alloa are to provide pedestrian access to replace the Grange Road and Hilton Road level crossings. Subsection (6) prevents closure of the Grange Road level crossing until the new footbridge (Work No. 1C) is open to pedestrians. The same provision is not possible in the case of the Hilton Road level crossing because the new footbridge cannot be constructed while the level crossing remains open. Instead the subsection requires that the crossing is not to be closed until the land is needed to construct the new footbridge (Work No. 1G). This will minimise the period when there is no pedestrian crossing of the railway at that point.

59. Section 8 is concerned with the closure of crossings over which there are public rights. However, there may also be private rights over such crossings. Subsection (7) accordingly provides for compensation to be payable to any person who suffers loss as the result of the extinguishment of any right of way under subsection (5). The effect of applying the Land Compensation (Scotland) Act 1963 (c.51) (in the Bill called “the 1963 Act”) is that the amount of compensation will be assessed on the same basis as compensation is assessed on compulsory acquisition. This is explained further in paragraphs 93 and 94 below.

60. Section 8 makes up to date provision for level crossings conflicting with modern design and safety standards. Subsection (8) accordingly disapplies the legislation listed in Part 3 of schedule 4 in relation to the level crossings. This legislation makes detailed, specific and outmoded provision for gates, lights, watchmen and other facilities at level crossings. These requirements will be replaced by the modern provisions included in the Bill.

Section 9 – Private crossings

61. There are two categories of private crossing, namely—

- those where the railway crosses a private road; and
- those where a person (generally a landowner) has private rights to cross the railway.

Such crossings may be above, beneath or on the level with the railway. The arrangements governing such crossings have their genesis in the legislation authorising the former railway.
They may be detailed in private agreements. They are frequently obscure. The Bill offers the opportunity to make the position clear as regards the re-opened railway.

62. There are five private crossings between Stirling and Kincardine. Three of these are to be upgraded so that they can be used, with the new railway in place, with equipment that is both appropriate to their current use and compliant with modern safety standards. This is provided for in subsection (1) of section 9 and Part 1 of schedule 5, which details the private crossings in question. The arrangements proposed at the continuing private crossings reflect both consultation with those entitled to use them and H. M. Railway Inspectorate’s Guidance on Level Crossings.¹⁵

63. Subsection (2) provides that the use of these continuing crossings is to be on the same terms as govern the use of the existing crossings at those points. Existing private rights are therefore protected.

64. Subsection (3) enables the equipment provided at a private crossing to be varied by agreement between the authorised undertaker and the person entitled to use the crossing.

65. Subsection (4) is concerned with section 60 of the Railways Clauses Consolidation (Scotland) Act 1845 (c.33) (in the Bill called “the 1845 Act”) which is incorporated in the Bill.¹⁶ Section 60 requires a railway undertaker when building a railway to provide, among other things, means of crossing the railway for owners and occupiers of land adjoining (and divided by) the railway. Some of the existing private crossings will have been constructed by way of discharging the section 60 obligation when the original railway was built.

66. Conditions have changed considerably since the former railway was constructed. In particular, land that was then in single ownership and divided by the railway has now been divided for many years. The existing private crossings therefore reflect the needs and patterns of ownership existing today. Those will not change by reason of the route being re-opened.

67. The purpose of subsection (4) is accordingly to ensure that the section 60 obligation is discharged in relation to the railway by the continuing private crossings, and that the re-opening of the route does not enable landowners to seek crossings for the benefit of land that has long been divided by a railway at that point.

68. Two of the private crossings are to be closed with private rights across them being extinguished. This is provided for in subsection (5) and Part 2 of schedule 5, which details the private crossings in question.

69. Subsection (6) provides for compensation to be payable to any person who suffers loss as the result of the extinguishment of rights over a private crossing under subsection (5). It operates in the same way as section 8(8) (see above).

¹⁵ Railway Safety Principles and Guidance, Part 2, Section E.
¹⁶ Section 60 is included in the provisions incorporated by section 37.
Section 10 – Permanent stopping up of roads

70. Section 10 authorises the permanent stopping up of the eight lengths of road detailed in schedule 6. These are—

- the three lengths of public road within the Abbeycraig, Grange Road and Hilton Road level crossings closed by section 8;
- three crossings of the railway at Grangehall, Stirling, New Mills, Clackmannanshire and Devon Way, Alloa, Clackmannanshire, over which there is the possibility that public rights of way may exist; and
- two defined lengths of Hilton Road, and the A907 Clackmannan Road, both in Alloa, the stopping up of which is necessitated by, and which will be replaced by, the major road works.

71. Subsection (2) prevents the stopping up of a length of road under the section unless the conditions in paragraphs (a) to (d) are satisfied as regards that length of road. These conditions ensure that owners and occupiers who use the road are not left without reasonably convenient means of access.

72. Where a road is closed, subsection (3) extinguishes all rights of way over it and allows the undertaker to use the site for the purposes of the authorised works. In the event that there are private rights of way over any length of stopped up road, subsection (4) provides for the payment of compensation to any person who suffers loss by the extinguishment or suspension of such rights. This subsection operates in the same way as section 8(7) (see above).

Section 11 – Temporary stopping up, alteration or diversion of roads

73. 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 authority 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 would be determined by arbitration. (Section 31 provides for the way in which any arbiter is appointed.)

74. 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 premises abutting on the temporarily stopped up road.

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17 For explanation see paragraph 7 above and footnote.
18 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)). The road works authorities for public roads potentially affected by this section will therefore be Stirling, Clackmannanshire and Fife Councils in their respective areas and the Secretary of State for Scotland as regards roads for which he is responsible.
19 “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
75. One necessary temporary stopping up has been identified at this stage in Dirleton Gardens, Alloa to allow construction of the Grange Road footbridge over the railway. It is a known necessity. For this reason subsection (3) authorises it and, specifically unlike the unspecified closures, subsection (4)(a) requires consultation with the road works authority but not consent.

Section 12 – Discharge of water

76. Section 12 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 stream or 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 used the authorised undertaker may lay down, take up or alter pipes or make openings into or connections with the stream, watercourse, public sewer or drain.

77. Under subsection (2) water may not be discharged into a public sewer or drain without the consent of the authority to which it belongs (the water authority or the roads authority), but although consent may be given subject to reasonable terms and conditions, it cannot be unreasonably withheld.

78. 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.

79. 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 ponds to separate out such matter from clean water before the water is discharged into a stream, 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.

80. Subsection (5) provides that any disagreement between the authorised undertaker and an authority owning a public drain or sewer shall be resolved by arbitration. (Section 31 provides for the way in which any arbiter is appointed.)

81. Subsection (6) ensures that the normal pollution control regime will apply to discharges of water authorised by section 12. It does this by applying section 30A of the Control of Pollution Act 1974 (c.40) (“the 1974 Act”) to those discharges. Section 30A makes it an offence

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20 For explanation of this expression see paragraph 88 below and footnote and paragraph 99 below.
21 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.
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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 Act. 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) is required to achieve that aim.

82. 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.

83. In the absence of section 12 effective drainage of the works would be subject to the risk of legal action for nuisance in respect of discharge, and subject also to successful private negotiation as regards the use of public sewers or drains. The section will 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.

Part 2 – Land

Introduction

84. 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 such as the new Alloa Station, or to acquire rights in land e.g. for the purpose of installing level crossing equipment. Provisions are therefore required in the Bill to confer appropriate compulsory purchase powers.

85. The principal purposes for which compulsory purchase powers are needed are for the acquisition of—

(a) land and rights to access land to construct and then maintain the railway;
(b) land to construct the Alloa Eastern Link Road and associated road improvements;
(c) land for signalling and level crossing equipment;
(d) land for the new Alloa Station and car park;
(e) land for road improvements and landscaping at Abbeycraig level crossing, Stirling;
(f) land for pedestrian and vehicular access to premises;

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.
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(g) land to provide a turning area for vehicles in Hilton Road, Alloa, once the level crossing there is closed;

(h) land for the construction of footbridges over Grange Road and Hilton Road, Alloa;

(i) rights to undertake scour and bank protection in the River Forth at the Forth Viaduct and coast protection works at Kincardine;

(j) rights to relocate utility apparatus (overhead power lines and associated equipment) between Manor Powis and Black Grange level crossings;

(k) rights to install and maintain closed circuit television equipment and lighting at Station Road level crossing, Cambus;

(l) rights to undertake ground stabilisation work; and

(m) rights to install and maintain drainage.

86. 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”.)

87. 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.

88. 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 land to be acquired or used23 and some of the land within the limits of deviation.24

89. The Bill does not apply compulsory purchase powers to all the land within the limits of deviation. In particular, the powers do not apply to the major part of the railway corridor in which Work No. 1 is to be built. This reflects Network Rail’s role in the scheme. The land that is not subject to compulsory acquisition is land in which the only landowning interest is Network Rail’s. On the basis that Network Rail expects to take over the railway when it is built (see paragraph 10 above), it is content to allow entry onto its land for the purpose of constructing

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23 I.e. land situated outside the limits of deviation which is required to be acquired or used for specific purposes — see sections 13(b), 14, 15 and 17 and schedules 7 and 8.

24 For an explanation of “limits of deviation” see notes on section 5.
the railway works. It is intended that this will be recorded in a binding agreement which is to be concluded by the time the Bill reaches its Consideration Stage. In relation to this land, therefore, the need for compulsory purchase powers does not arise.

90. Coupled with the Network Rail agreement, the compulsory purchase powers of the Bill will enable the authorised undertaker to acquire the land necessary to construct the works to be 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 to 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

91. 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. An outline of this applied legislation is given below.

Compulsory purchase procedures

92. After the Bill has passed, 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. A notice to treat will create a contract between the authorised undertaker and the landowner.

93. 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.

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

95. 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

25 For an explanation of the reason for applying other Acts see paragraphs 18 to 21 above.
26 “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.
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

96. 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, part in the Lands Clauses Acts and partly 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.27

97. 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.

Commentary

Section 13 – Authority to acquire land

98. Section 13(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 described28 in the book of reference and it must be land that may be required for the purposes of the authorised works. These powers are subject to the time limit in section 26 of the Bill.

99. Section 13(b) relates to the 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 7 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 7 lists specific plots of land within that limits of land to be acquired or used and specifies against each entry the purpose for which the land may be acquired. Examples are acquisition for the purpose of installing signalling equipment, providing access and provision of the new station and car park at Alloa. This is only some of the land within the limits of land to be acquired or used. The rest

27 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).

28 See paragraph 88 above.
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of the land within those limits is not to be acquired and is dealt with in separate sections of the Bill. These powers are also subject to the time limit in section 26 of the Bill.

100. As explained in paragraph 89 above, some land within the limits of deviation is not to be compulsorily acquired, and so is not described in the book of reference. This is land in which the former railway was laid and which is owned by Network Rail. Network Rail having agreed that entry on the land will be allowed in order for the railway works to be constructed, compulsory purchase powers in respect of this land are not required except in respect of parcels of this land where people other than Network Rail have an interest. Examples are the land that is crossed by road bridges along the route.

Section 14 – Acquisition of subsoil or rights

101. Section 14 applies to any land that is authorised to be compulsorily acquired under section 13. Section 13 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 14 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 or some right over the land.

102. Subsection (1) accordingly enables the authorised undertaker to acquire only the subsoil beneath land or servitudes or other rights in relation to land.

103. By subsection (2) rights acquired under subsection (1) may be heritable or moveable in nature. Subsection (2) also 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.

104. Subsection (3) provides that by exercising the powers of section 14 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 be required to buy land outright, even though all that is required for the authorised works is the subsoil (e.g. because the authorised undertaker will only need to dig a culvert under the land, or some right of access to the railway).

105. This anomaly is the result of the rules in the 1845 Lands Act, which reflect land ownership and compensation rules as existing at that time. The modern compensation code is well developed so as to provide proper compensation including where the property interest acquired is less that the whole of the land. As a result, it is now unnecessary for outright purchase automatically to be the norm where a less disruptive approach is possible. Subsection

29 See sections 14, 15 and 17.
30 “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.
31 Heritable rights are rights connected with land e.g. leases, or which will yield periodical profits e.g. annuities. All other rights are moveable.
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(4) accordingly provides that section 90 of the 1845 Lands Act (which states that landowners cannot be required to sell part of any house or building or manufactory) does not apply to the acquisition of subsoil or rights under this section. This modernises the 19th century compulsory purchase law in a way that is standard in legislation of this sort.32

106. Subsection (5) applies the other provisions of the Lands Clauses Acts to the compulsory acquisition of new rights under section 14. In subsection (5)(c), the modifications in the 1845 Lands Act reflect similar provision in the Land Compensation (Scotland) Act 1973 (c.56).

Section 15 – Purchase of specific new rights under land

107. In addition to section 14, 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 7, section 15 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 and the Alloa Eastern Link Road. Rights that have been specifically identified also include ground stabilisation, scour and coastal protection works and installation of closed circuit television and lighting. These powers are subject to the time limit in section 26 of the Bill.

Section 16 – Rights in roads or public places

108. Section 16 applies to any road or public place that is included in the land that may be compulsorily acquired under section 13. In relation to such land, where there is no loss the section allows subsoil or airspace to be used for the works without the need for compulsory purchase.

109. Subsection (1) enables the authorised undertaker to enter and use the subsoil under 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.

110. 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.

111. 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.33 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.

112. The section enables the public works authorised by the Bill to occupy the public space under and over roads and public places on the same basis as the usual public use of those places,

32 See e.g. British Railways (No. 2) Order Confirmation Act 1994 (c.ii) (the BR precursor to the present scheme), section 13, City of Edinburgh (Guided Busways) Order 1998 (c.iii), section 7.
33 See Land Registration (Scotland) Act 1979 (c.33) s.28(1), definition of “overriding interest” paragraph (h).
34 Land Registration (Scotland) Act 1979 (c.33) s.3(1)(a).
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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).

113. Subsection (5) 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. Accordingly, subsection (5) obliges the authorised undertaker to acquire the relevant land, or an appropriate servitude or right, before using it for the authorised works.

Section 17 – Temporary use of land for construction of works

114. Where the authorised undertaker only needs to occupy land for a temporary period, purchase of the land cannot be justified (see paragraph 86 above). Section 17 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.

115. By subsection (1) the authorised undertaker may take temporary possession of the land specified in columns (1), (2) and (3) of schedule 8 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.

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

117. 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 8. The authorised undertaker is allowed to remain in possession for this further year so that he 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’.

118. 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.\textsuperscript{35}

119. 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.

120. 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 17 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.

121. Subsection (8) provides that the authorised undertaker is not required to acquire the land which is used temporarily under this section, or any interest in it, but may acquire new rights over it under section 14 or section 15.

122. An example of the operation of section 17 is the temporary use of land between Manor Powis level crossing and Black Grange level crossing (Clackmannanshire) (plot no. 120) for a construction compound\textsuperscript{36} for the purposes of Work No. 1, and the acquisition of rights to place utility apparatus in that land. At Cambus Viaduct and New Mills level crossing, Clackmannanshire plots nos. 144, 148 to 150, 152 to 154, 157 to 160 and 165 will be used as a construction compound and working space in connection with Work No. 1 and permanent access rights will be acquired so as to allow access to the new railway for maintenance purposes.

\textit{Section 18 – Disregard of certain interests and improvements}

123. Under the rules applicable to the assessment of compensation land is valued at its market value. The purpose of section 18 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 will increase market value.

\textsuperscript{35} 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 it 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.

\textsuperscript{36} I.e. land where the contractors can park vehicles, store materials and construct temporary accommodation.
Section 19 – Set-off of betterment against compensation

124. Development may enhance the value of adjoining or nearby land. Section 19 accordingly provides for compensation to be reduced by an amount equivalent to any enhanced value of other contiguous\(^{37}\) or adjacent\(^{38}\) land of the person seeking the compensation.

Section 20 – No double recovery

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

Section 21 – Acquisition of part of certain properties

126. 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 manufactory 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 detriment\(^{39}\) to the rest of the property and, in the case of a house with a park or garden, without also seriously affecting the amenity and convenience of the house\(^{40}\). These replacement provisions reflect the modernised state of the law in England and Wales (under section 8 of the Compulsory Purchase Act 1965 (c.56)). Their application in legislation of this sort is standard.\(^{41}\)

127. Subsection (1) applies this section to any case where a notice to treat\(^{42}\) 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.

128. 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.

129. 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.

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

38 "Adjacent" includes land that is not contiguous, but which is close to or near other land.

39 "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).

40 "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).

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

42 For an explanation of this expression see paragraph 92 above.
130. Under subsection (4) if the authorised undertaker does not agree to acquire the whole of the land the issue is referred to the Lands Tribunal. The Lands Tribunal is required to determine whether or not part of the land can be taken without material detriment to the remainder or (in the case of a house with a park or garden) without seriously affecting the amenity or convenience of the house.

131. Under subsection (5) if the Lands Tribunal decides that the part subject to the notice to treat can be taken without material detriment or, in the case of a house with a park or garden, seriously affecting the amenity or convenience of the house, the owner is obliged to sell the land the authorised undertaker wishes to acquire.

132. Under subsection (6) the Lands 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.

133. Subsection (7) provides for the case where the Lands 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.

134. Under subsection (8), where the authorised undertaker agrees to acquire the land the subject of a counter-notice, or the Lands 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 all the land subject to the counter-notice, the notice to treat is deemed to apply to all the land included in the counter-notice.

135. Under subsection (7) or (8) a notice to treat can be deemed to include other land whether or not that land is subject to compulsory acquisition under the Bill.

136. Subsection (9) covers the situation where the Lands 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. Where the Lands Tribunal determination can exclude land that is essential to the scheme, the authorised undertaker might re-start the process so as to acquire the whole of the property in question.

137. By subsection (10), where this section results in an owner being required to sell only part of—

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43 Where material detriment extends to only part of the land subject to the counter-notice subsection (7) applies.
• 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.\(^{44}\)

### Section 22 – Extinguishment or suspension of private rights of way

138. The Bill provides for necessary public and private means of access.\(^{45}\) The authorised works cannot accommodate further rights of way over the land that may be compulsorily acquired under the Bill. Section 22 accordingly extinguishes\(^{46}\) 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.

139. 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.

140. 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. This suspension is subject to the provisions of subsection (7) (see below).

141. Under subsection (3) a person who suffers loss as a result of the extinguishment or suspension is entitled to compensation. Any dispute as to the amounts is determined by the Lands Tribunal under the Land Compensation (Scotland) Act 1963 (c.51).

142. Subsection (4) 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 30 and schedule 9.)

143. Subsection (5) 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. For example, 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.

\(^{44}\) I.e. diminution in value of the remaining land due to the loss of the compulsorily acquired land.

\(^{45}\) See explanation of Works Nos. 1, 1A, 1B, 1C, 1D, 1G, 2B and 2C and the public level crossings and private railway crossing authorised by sections 8 and 9 and schedules 4 and 5.

\(^{46}\) I.e. terminates the rights, so that they cease to exist.
144. By subsection (6) the authorised undertaker may determine that particular rights of way can be exercised compatibly with the use of the land under the Act. In such cases the right will continue. A determination under this subsection must be made before the land is acquired or (if sooner) before temporary possession is taken.

145. Subsection (7) is a similar provision relating to rights of way that may be suspended under subsection (2). Where the statutory undertaker determines that the right of way can be exercised compatibly with the temporary use of the land under the Act, the rights of way are not suspended. A determination under this subsection may be that the right of way may be used, but only to a limited extent. In that case the suspension will relate to the right of way only so far as the right is incompatible with the temporary use.

146. Subsection (8) provides for notice of a determination under section 22 to be posted on the land to which the determination relates.

147. The object of subsections (5) to (7) 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.

148. 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. This protection is unnecessary on land where the authorised undertaker is only acquiring rights. Accordingly, under subsection (9) the automatic extinguishment effected by subsection (1) or (2) will not apply on land where the authorised undertaker is only acquiring rights.

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

149. 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.

150. 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.

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

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47 See section 15 and Part 2 of schedule 7.
48 See e.g. 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.
152. 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.

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

154. Subsection (5) requires the authorised undertaker to pay compensation for damage caused to owners and occupiers.

Section 24 – Further powers of entry

155. Section 24 is also a standard provision. The 1845 Lands Act permits entry on land under compulsory purchase powers only after full payment has been made (1855 Lands Act, s.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 (s.84). Sections 85 and 86 require the money to remain in the bank as a security to be distributed as directed by the sheriff. Section 87 imposes financial penalties on entering land without complying with the procedures, and in the event of a landowner refusing entry even after full payment has been made, the only recourse is to apply to the sheriff for a possession order. The procedures are cumbersome and time consuming. In England and Wales they have been simplified and modernised so as to allow entry after the landowner has been given notice. The purpose of section 24 of the Bill is to allow this modern procedure to apply.

156. 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.

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

158. Subsection (3) enables the authorised undertaker to exercise these powers without complying with sections 83 to 89 of the 1845 Lands Act, which prevent taking entry in this way.

159. 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.

160. The object of section 24 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.

49 See e.g. 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.
50 See Compulsory Purchase Act 1965 (c.56), s.11.
Section 25 – Persons under disability may grant servitudes, etc.

161. 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 15 of the Bill.

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

163. By subsection (2), rights cannot be granted in relation to water in which others have an interest.

164. Subsection (3) ensures that all the associated provisions of the Lands Clauses Acts relating to the conveyancing treatment of land and feu duties or ground annuals relating to land are also applied to the grant of new rights under this section.

Section 26 – Period for compulsory acquisition of land

165. Subsection (1) provides that the compulsory purchase powers of the Act will expire on 31st December 2009. Subsection (2) provides that for the purposes of this deadline the powers are deemed to have been exercised if notice to treat has been served before that date.

166. 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 35 provides for the situation where a landowner needs to sell land that is affected in this way.

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

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51 “Privileges”: rights that are of benefit to the person entitled to exercise them, for example fishing rights.
52 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.
53 The references to land and feu duties and ground annuals are simply to describe which are the relevant sections of the 1845 Lands Act. They are feudal duties on land which have been superseded by the Land Tenure Reform (Scotland) Act 1974 (c.38).
54 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.
Section 27 – Compensation for depreciation in value of interest in land subject to standard security

168. Section 27 applies where compensation is payable in respect of the depreciation in value of an interest in land and the land is mortgaged. This is described as being subject to a standard security.\(^{55}\)

169. Subsection (1)(a) deals with the value of the interest in land in respect of which compensation is payable. This value is calculated as if the land were not subject to the standard security. This means that it is taken at its full value before deducting the outstanding secured loan.

170. Subsection (1)(b) enables a claim for compensation for the depreciation in value of the interest in land to be made by the lender (in the Bill called the “heritable creditor”) provided the security was granted before the event giving rise to the depreciation in value (and hence the compensation). A claim by a lender does not preclude a claim by another person, the landowner, for example.

171. Subsection (1)(c) provides that, where this section applies, the compensation payable is paid to the lender, or where there is more than one first mortgagee (“the first ranking heritable creditor”). The compensation is treated as if it were proceeds of sale of the land. This means that it goes to the first mortgagee to pay that lender’s debt, with any surplus being passed to the next lender down (if any) and ultimately to the landowner.

172. A lender has a direct interest in the value of mortgaged land as providing adequate security for the secured loan. If the value of the land is reduced, the security may no longer be sufficient. The landowner might then be called upon to repay the whole debt. This section provides for the compensation for that reduction (“depreciation”) in value to be applied to reduce the loan so that there is no risk of the security becoming insufficient.

173. Subsection (2) deals with the transition from older forms of security for loans to the modern standard security. A bond and disposition in security is a personal bond for the repayment of a loan which is also secured on property. The property can include land. Since the reforms effected by the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) this form of security cannot be granted, but those still in existence can be enforced. There may potentially be other rights in land (“real rights”) that provide security for a loan. It is therefore necessary for section 27 to apply to these other forms of security for debt, as well as to the modern standard security.

Part 3 – Miscellaneous and General

Section 28 – Power to fell, etc. trees or shrubs

174. 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

\(^{55}\) “Standard security”: the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) introduced a single form of “standard security” replacing a number of forms of documents creating security over land to secure capital debts, annual payments and other obligations.
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.

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

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

177. Subsection (4) disappplies any tree preservation order or prohibition on interfering with trees in conservation areas which might otherwise apply.

Section 29 – Powers of disposal, agreements for operation, etc.

178. Section 29 is required because, although the Council is the promoter of the Bill, there has never been any intention for the Council to operate the railway. The intention is to transfer the powers or the completed railway to Network Rail as the national rail infrastructure operator. The Council as the local roads authority will adopt the Alloa Eastern Link Road but transfer powers are needed to ensure that the road can be built as part of the same contract as the railway, thus achieving cost savings. Section 29 therefore gives effect to the intention that the Council will be no more than the procurer of the powers. In the absence of section 29 the powers in the Bill would not be transferable.

179. Subsection (1) makes clear that each of the subsections gives a free-standing power which may be exercised with the others or separately.

180. Subsection (2) 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 includes the transfer of the powers relating to the major road works so as to allow for the possibility of the railway works and the major road works being included in a single construction contract. The powers cease to have effect once the final transfer is made (of the railway to Network Rail and of the major road works to the Council (see subsections (12) and (13) below)). This subsection would, for example, allow for the transfer to Network Rail of the powers in the Bill to construct the railway and the compulsory purchase powers relating to the railway; or for all the powers to be transferred to a special purpose vehicle which would be responsible for acquiring the land, procuring the construction of the authorised works and, finally, transferring them once they are completed.
181. Subsection (3) will operate after construction. It authorises transfer agreements relating to the authorised works once they have come into existence. Agreements authorised by subsection (3) 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. Possible examples are agreements making future revenues security for loan capital or (as is contemplated) an agreement transferring the completed railway and the statutory powers (“the undertaking”) to Network Rail.

182. Subsection (4) 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 (4) 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.

183. Subsection (5) 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 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.

184. Subsection (6) deals with the position where an authorised undertaker is subject to an obligation or liability arising from an undertaking or agreement it has given (as distinct from a statutory obligation under the Bill). In the absence of section 29 the law of contract would leave the liability with the authorised undertaker making the transfer. Subsection (5) ensures that the transferee takes on the same liability. Subsection (6) ensures that the authorised undertaker making the transfer is not liable for so long as, and to the extent that, the obligation is assumed by the transferee.

185. Subsection (7) provides for the Act to be read as referring to any transferee under a transfer agreement. Section 29 allows for the transfers to be of some functions only, so that there might be more than one authorised undertaker. This subsection ensures that the Act can be read as referring to any person who is an authorised undertaker at the time.

186. Subsection (8) allows for a transfer agreement to be time limited.

187. Subsection (9) allows for a transfer agreement to include any necessary related provisions that follow from the main provisions of the agreement.

188. The effect of a transfer agreement may be to transfer statutory functions in which there is a public interest. Subsection (10) accordingly ensures that the transfer is notified to the Scottish

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56 This includes, in addition to transfer, sale, lease and similar disposals, a power to charge the undertaking as security for borrowings.
Ministers as custodians of the public interest in transport. Under subsection (11) failure to notify is a criminal offence attracting a maximum level 3 penalty (currently £1,000).

189. The principal object of section 29 is to assist in the procurement of the authorised works. Ultimately, it is the expectation that the railway works will vest in, and be operated by, Network Rail as an integral part of the national rail network, and that the major road works will vest in the Council as the local roads authority. At the point at which the railway works and the major road works are transferred to, respectively, Network Rail and the Council, that object will have been achieved and section 29 will have served its purpose. Subsections (12) and (13) accordingly provide that when that transfer occurs in relation to each set of works, the section is to cease to have effect.

190. Subsection (14) 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 (3), (4) or (5). 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 30 – Statutory undertakers, etc.

191. Section 30 introduces schedule 9 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.

192. 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 9 accordingly applies the code in sections 224 to 227 to the authorised works.

193. Paragraph 1 of schedule 9 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.

194. Paragraph 4 of schedule 9 allows affected undertakers to recover compensation from the authorised undertaker in respect of expenditure incurred in moving apparatus.
195. Sewers are not susceptible to being moved in the same way as other undertakers’ apparatus. As a result, paragraph 5 of schedule 9 provides that where a public sewer is moved, compensation is payable to the persons who will have to make different drainage arrangements, namely the owner or occupier of premises drained by the sewer, or the owner of a private sewer that connected with the public sewer that has been moved.

196. Part IV of the New Roads and Street Works Act 1991 (c.22) (in the Bill called “the 1991 Act”) is a separate code governing works in public roads. It covers works involving the removal or laying of undertakers’ apparatus in roads, and it applies automatically. Accordingly, paragraph 7 of schedule 9 provides that this schedule will not apply to cases that are governed by Part IV.

197. Schedule 9 is well preceded. 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 9 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.

Section 31 - Arbitration

198. Section 31 lays down the procedures applicable in cases where the Act provides for disputes (other than those to which the Lands Clauses Acts apply) 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 (2) 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.

Section 32 – Service of notices, etc.

199. Section 32 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 33 – Listed buildings and conservation areas

200. Section 33 introduces schedule 10. The schedule makes special provisions as to the listed buildings at Stirling station (which are also in a conservation area) which will be affected by the railway works.

201. As explained in paragraph 11 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.
time, but the way in which the legislation is framed means that, but for section 33 and schedule 10, the authorised undertaker would have to obtain listed building consent and conservation area consent separately from the Bill. This section and schedule 10 accordingly disapply this separate statutory requirement so that the Bill will, effectively, also grant these consents.

202. 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 (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.

203. The purpose of disapplying these statutory controls in relation to the buildings specified in the table is only to allow the construction of the authorised works. Accordingly, paragraph 1(2) of schedule 10 makes clear that the only works that are not affected by the controls mentioned in paragraph 2(1) are the works described in column (4) of the table at the end of paragraph 1.

204. The purpose of schedule 10 is to give listed building consent in all cases where it is needed. The buildings mentioned in the table are the only buildings that were listed as at 1st December 2002. Paragraph 1(3) ensures that if any further buildings are listed the schedule will apply to them, as well.

205. Paragraph 1(4) makes similar provision as regards conservation area consent. It disapplies section 66 of the Listed Buildings Act (requirement for conservation area consent) in relation to the things specified in column (4) of the table.

206. Paragraph 1(5) of schedule 10 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.59

207. The listed buildings and the works to which the schedule will apply are described in the table at the end of paragraph 1. They are all at Stirling station, which is in a conservation area and where the station buildings and structures are listed. The need for these works arises

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59 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)).
because the re-opened route can only be operated satisfactorily if it is signalled as part of the adjoining rail network. This calls for the installation of additional signalling equipment at either end of the re-opened route, with the main equipment at the western end being at Stirling station.

208. Section 59 of the Listed Buildings Act requires that a local planning authority exercising its functions in relation to a listed building must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223) the local planning authority has the function of approving the detailed design of works authorised by private Act, in this case the works authorised by the Bill. Consistent with the Bill granting all necessary consents, paragraph 3 disapplies this obligation as regards the local planning authority’s (Stirling’s) detailed design approval (if needed) of any of the works specified in column (4) of the table in schedule 10.

209. Paragraph 3 of the schedule 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.

210. 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 listed building issues to be dealt with at the same time as the rest of the scheme.

Section 34 – Saving for Town and Country Planning

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

212. As explained in paragraph 11 above, development authorised by the Bill is permitted development. Subsection (2) lays down a 10-year limit in respect of these permitted development rights. By section (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.

Section 35 – Blighted land

213. Section 35 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.
214. The effect of section 35 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) £21,500;\(^{60}\) 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 36 – Application of existing enactments, etc.

215. This section deals with the Acts (in the Bill called “the existing enactments”) that authorised the railways and the former railways which the new railway will replace. In common with other private legislation authorising railways, the existing enactments include numerous obligations between individual landowners on the one hand and the former railway undertakers on the other. The most common examples are obligations by the railway undertaker to maintain crossings of the railway. The original legislation is still in force and many of its obligations are still relevant. They apply, now, to Network Rail and benefit the current owners of the land to which they relate.

216. The Bill needs to ensure that the existing enactments will continue to apply so far as still relevant and consistent with the Bill. It must also transfer the obligations to the authorised undertaker (other than Network Rail). Accordingly, subsection (1) provides that the existing enactments continue to have effect in relation to the existing railways as defined in section 38. Subsection (2) provides for the existing enactments to apply to the authorised undertaker, while that is someone other than Network Rail, and during that time for Network Rail to be released from any obligations under the existing enactments. As the existing enactments should only apply so far as consistent with the present scheme, subsection (3) provides for them to apply subject to the provisions of the Bill.

Part 4 – Supplementary

Section 37 – Incorporation of enactments

217. As explained earlier in these Explanatory Notes, the legal machinery for compulsory acquisition is in Acts that only apply if they are specifically incorporated. Section 37 accordingly incorporates the relevant legislation.

Section 39 – Short title

218. Section 39 does not make any special provision for the commencement of the Act once passed. It will come into force when the Bill receives Royal Assent.

\(^{60}\) Designed to catch small businesses.
ESTIMATE OF EXPENSE AND FUNDING STATEMENT

INTRODUCTION

219. This statement is provided under Rule 9A.2.3(c)(i) of the Parliament’s Standing Orders. That Rule applies because the Bill seeks to authorise the construction or alteration of works which fall into the categories determined by the Presiding Officer under that Rule and the compulsory acquisition or use of lands or buildings. It was prepared by Babtie Group Ltd and Scott Wilson Railways (Scotland) Ltd on behalf of Clackmannanshire Council (the promoter).

ESTIMATED TOTAL COST OF THE PROJECT

220. “I estimate the expense of the works or purposes proposed to be carried out under the Bill to be as follows:

<table>
<thead>
<tr>
<th>Work or purpose</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Railway works</strong></td>
<td></td>
</tr>
<tr>
<td>Work No. 1</td>
<td></td>
</tr>
<tr>
<td>Permanent way</td>
<td>7,850,000</td>
</tr>
<tr>
<td>Earthworks</td>
<td>550,000</td>
</tr>
<tr>
<td>Stations, buildings &amp; other structures</td>
<td>3,740,000</td>
</tr>
<tr>
<td>Electrical &amp; other equipment</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Signalling systems</td>
<td>6,250,000</td>
</tr>
<tr>
<td>Civils &amp; other works</td>
<td>1,410,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>20,800,000</strong></td>
</tr>
<tr>
<td>Work No. 1A</td>
<td></td>
</tr>
<tr>
<td>Earthworks</td>
<td>5,000</td>
</tr>
<tr>
<td>Civils &amp; other works</td>
<td>14,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>19,000</strong></td>
</tr>
<tr>
<td>Work No. 1B</td>
<td></td>
</tr>
<tr>
<td>Earthworks</td>
<td>12,000</td>
</tr>
<tr>
<td>Civils &amp; other works</td>
<td>38,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>50,000</strong></td>
</tr>
<tr>
<td>Work No. 1C</td>
<td></td>
</tr>
<tr>
<td>Stations, buildings &amp; other structures</td>
<td>335,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>335,000</strong></td>
</tr>
<tr>
<td>Work No. 1D</td>
<td></td>
</tr>
<tr>
<td>Earthworks</td>
<td>11,000</td>
</tr>
<tr>
<td>Civils &amp; other works</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>26,000</strong></td>
</tr>
<tr>
<td>Work No. 1E</td>
<td></td>
</tr>
<tr>
<td>Permanent way</td>
<td>200,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>200,000</strong></td>
</tr>
<tr>
<td>Work No. 1F</td>
<td></td>
</tr>
<tr>
<td>Civils &amp; other works</td>
<td>355,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>355,000</strong></td>
</tr>
</tbody>
</table>
These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

<table>
<thead>
<tr>
<th>Work No. 1G</th>
<th>Earthworks</th>
<th>2,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Stations, buildings &amp; other structures</td>
<td>348,000</td>
</tr>
<tr>
<td></td>
<td>Civils &amp; other works</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td><strong>365,000</strong></td>
</tr>
</tbody>
</table>

**Railway works sub-total** 22,150,000

**Major road works**

<table>
<thead>
<tr>
<th>Work No. 2</th>
<th>Earthworks</th>
<th>345,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Stations, buildings &amp; other structures</td>
<td>600,000</td>
</tr>
<tr>
<td></td>
<td>Electrical &amp; other equipment</td>
<td>55,000</td>
</tr>
<tr>
<td></td>
<td>Civils &amp; other works</td>
<td>655,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td><strong>1,655,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work No. 2A</th>
<th>Earthworks</th>
<th>10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Electrical &amp; other equipment</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>Civils &amp; other works</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td><strong>35,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work No. 2B</th>
<th>Earthworks</th>
<th>20,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Civils &amp; other works</td>
<td>15,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td><strong>35,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work No. 2C</th>
<th>Earthworks</th>
<th>20,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Civils &amp; other works</td>
<td>25,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td><strong>45,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work No. 2D</th>
<th>Earthworks</th>
<th>445,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Electrical &amp; other equipment</td>
<td>25,000</td>
</tr>
<tr>
<td></td>
<td>Civils &amp; other works</td>
<td>260,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td><strong>730,000</strong></td>
</tr>
</tbody>
</table>

**Major road works sub-total** 2,500,000

**General**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees of professional and other advisors</td>
<td>1,700,000</td>
<td></td>
</tr>
<tr>
<td>Surveying, drilling and soil sampling</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td>Acquisition of land and rights over land</td>
<td>700,000</td>
<td></td>
</tr>
<tr>
<td><strong>General Sub-total</strong></td>
<td></td>
<td><strong>2,600,000</strong></td>
</tr>
</tbody>
</table>

**Contingency costs**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Public utilities diversions</td>
<td>1,600,000</td>
<td></td>
</tr>
<tr>
<td>Mine working remediation measures</td>
<td>2,400,000</td>
<td></td>
</tr>
<tr>
<td>Environmental mitigation measures</td>
<td>1,400,000</td>
<td></td>
</tr>
<tr>
<td>Contingency cost</td>
<td>4,500,000</td>
<td></td>
</tr>
<tr>
<td>Contingency costs sub-total</td>
<td>9,900,000</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL** £37,150,000
221. The best estimate of the timescales over which such costs are expected to arise is 2001 to 2006, with the majority of the costs being incurred during the construction stage. This is currently programmed for Spring 2004 to Winter 2005/2006, and is dependant on the Bill procedure being concluded by Spring 2004. All costs are exclusive of tax, and assume that “lift and shift” legal agreements between Network Rail and various public utilities companies can be implemented.

222. The margin of uncertainty of such costs is estimated to be in the region of +/- 15%.

ANTICIPATED SOURCES OF FUNDING

223. It is proposed that the project detailed in the Estimate of Expense is funded as follows:

- Scottish Executive public transport fund £6.5 m

224. In addition, funding is being sought from the following sources:

- Scottish Executive Integrated Transport Fund £23.50 m
- Strategic Rail Authority £3.00 m
- English, Welsh & Scottish Railway Ltd £0.25 m
- Local public sector partnership contribution £3.90 m


________________________

PROMOTER’S STATEMENT

NOTIFICATION TO PERSONS WITH INTEREST IN HERITABLE PROPERTY

226. This part of the statement is provided under Rule 9A.2.3(d)(i) of the Parliament’s Standing Orders. That Rule applies because the Bill contains provisions which affect heritable property.

227. The persons having an interest in heritable property that will be subject to compulsory purchase 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 notice posted by Special Delivery post on Thursday 20 March 2003 to each of the persons named in the book of reference. Three standard forms of notice were used to cater for different circumstances (outright acquisition, acquisition of rights only and temporary possession), so that every recipient received a notice in a form all of which was relevant to him or her. The texts of these three forms of notice are set out in Appendices 1 to 3 at the end of this Statement.
These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

228. The persons having an interest in heritable property that will be otherwise affected by the Bill but which is not to be subject to compulsory purchase have been separately identified. They mainly consist of all persons with an interest in land abutting the route i.e. sharing a common boundary with the railway. Notice of the intention to introduce a Bill was given by means of a notification posted by Special Delivery post on Thursday 20 March 2003 to each of these persons. The standard notification is appended to this Statement as Appendix B1.

NOTIFICATION TO AND CONSENT FROM MEMBERS ETC.

229. 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.

230. Section 82 of the Local Government (Scotland) Act 1973 (as amended) requires that a local authority promoting private legislation must pass a resolution to promote the legislation and a further confirmatory resolution after the Bill has been introduced. At least ten clear days’ notice of each of the meetings at which these resolutions are voted on and of the purpose of the meetings must be given by advertisement in one or more newspapers circulating in the local authority’s area. Such notice must be given in addition to the ordinary notice required to be given for convening a meeting of the local authority. Both resolutions require to be passed by a majority of the whole number of the members of the local authority.

231. For compliance with section 82 a meeting of Clackmannanshire Council was held on 18 December 2002 when a resolution to approve the promotion of the Bill was proposed. 19 members attended the meeting, and by a vote of 14 For, 3 Deferrals and 2 Abstentions the resolution was passed by a majority of all members. Notice of the meeting was published in the Wee County News on 6th December 2002. The resolution as passed was as follows:

“That Clackmannanshire Council do promote a private Bill in the Scottish Parliament to authorise the following amongst other purposes:

The construction of works in the districts of Stirling, Clackmannanshire and Fife comprising the reconstruction of a railway from Stirling to Kincardine.

The carrying out in connection with the proposed railway of ancillary works, including new and altered highways.

The construction by the Council of an Eastern Link Road at Alloa linking the Whins Road roundabout and the A907, together with associated access roads.

The permanent stopping up of specified roads and the temporary stopping up of roads for the purpose of the works, and provision of new and upgraded level crossings carrying the railway over roads.

Provision for the acquisition of land required for the purposes of the intended works, including land to be used for the purposes of construction, the provision of stations, access, accommodation works and landscaping and other purposes; acquisition of rights
These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

only; extinction of rights of way over land to be acquired; and special provision as to entry on land and compensation and temporary possession of specified land.

Provision for outright or partial disposal or transfer of the railway or any of the powers in the Bill relating to the railway.

Powers to carry out flood prevention and coast protection works on land adjoining Railtrack’s connecting freight railway from Kincardine to Longannet and land acquisition to facilitate the improvement of that railway.

Provision for other related ancillary matters including the discharge of water; powers to enter on land for the purpose of surveying and investigating land; lopping of trees; and the alteration or removal of listed structures carrying signalling equipment at Stirling Station.”

232. For compliance with section 82 a second meeting of Clackmannanshire Council will be held at least 14 days after the Bill has been introduced when a second resolution to approve the promotion of the Bill will be proposed. If this resolution is not passed by a majority of all members the Bill may be withdrawn.

NOTIFICATION TO AND CONSENT FROM BODY AFFECTED

233. 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

234. Notice of the intention to introduce a Private Bill was published in the Stirling Observer on 7 March 2003 and 14 March 2003 and in the Wee County News on 7 March 2003 and 14 March 2003 and has been displayed from 3 March 2003 in the following Scottish Parliament Partner Libraries:

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Library</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dunfermline East</td>
<td>Dalgety Bay Library</td>
<td>Regents Way, Dalgety Bay KY11 5UY</td>
</tr>
<tr>
<td>Dunfermline West</td>
<td>Dunfermline Central Library</td>
<td>1 Abbot Street, Dunfermline KY12 7NL</td>
</tr>
<tr>
<td>Ochil</td>
<td>Alloa Library</td>
<td>26/28 Drysdale Street, Alloa FK10 1JL</td>
</tr>
<tr>
<td>Stirling</td>
<td>Central Library</td>
<td>Corn Exchange Road, Stirling FK8 2HX</td>
</tr>
</tbody>
</table>

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 a railway in the local government areas of Stirling, Clackmannanshire and Fife along the former railway route from Stirling to Kincardine via Alloa, and to facilitate the linked
These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

improvement of the existing freight railway between Kincardine and Longannet and the carrying out of necessary signalling improvements. The Bill will also authorise the construction of a new link road to allow local traffic to divert following the closure of Hilton Road, Alloa, necessitated by the railway works. The Bill will also authorise the permanent stopping up of specified roads and the temporary closure of roads for the purposes of the works, and provision for new and upgraded level crossings carrying the railway over roads; the acquisition of land or rights over land required for the purposes of the intended works, including land to be used for the purposes of construction, the provision of a station, access, accommodation works and landscaping and other purposes; extinction of rights of way over land to be acquired; special provision as to entry on land and compensation and temporary possession of specified land; provision for outright or partial disposal or transfer of the railway or any of the powers in the Bill relating to the railway; powers to carry out flood prevention and coast protection works on land adjoining Network Rail’s connecting freight railway from Kincardine to Longannet and land acquisition to facilitate the improvement of that railway; and provision for other related ancillary matters including the discharge of water; powers to enter and for the purpose of surveying and investigating land; lopping of trees; and the alteration or removal of listed structures carrying signalling equipment at Stirling Station.”

OTHER ACCOMPANYING DOCUMENTS

235. The documents listed in paragraph 2 above may be inspected at the Scottish Parliament Partner Libraries listed above. Copies of these documents are available for purchase from Tara Whitworth, Project Manager, Babtie Group, 95 Bothwell Street, Glasgow G2 7HX. It should be noted that some of the documents show a slightly different short title, having been prepared before the short title of the Bill was finally settled.

236. On 20 March 2003, the promoter made the following statement:

“We, Clackmannanshire Council, hereby undertake to send copies of the maps, plans, sections, book of reference and Environmental Statement accompanying the Stirling-Alloa-Kincardine Railway and Linked Improvements 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.”

PROMOTER’S UNDERTAKING TO PAY COSTS

237. On 21 March 2003, the promoter made the following statement:

“We, Clackmannanshire Council, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill in respect of the matters determined by that Body under Rule 9A.2.3(d)(vi) of the Parliament’s Standing Orders.”
APPENDICES: FORM OF LETTERS SENT TO PERSONS AFFECTED

Appendix 1: Form of letter sent in cases of outright acquisition

Warning: If you are in doubt about the possible effect of this notice you should seek legal advice as soon as possible.

NOTICE OF PROPOSAL TO ACQUIRE LAND COMPULSORILY

Notification No: [     ]
20 March 2003

[A] This Notice relates to the following land:

[                           ] [A]

Stirling-Alloa-Kincardine Railway and Linked Improvements Bill

[B] We write to inform you that Clackmannanshire Council intends to introduce a Private Bill, the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, into the Scottish Parliament around 21st March 2003. The purpose of the Bill is to authorise:

- the reconstruction of a railway from Stirling to Kincardine via Alloa;
- the construction of the road works necessitated by the railway to provide alternative road links between Whins Road roundabout and A907 at Alloa; and
- the carrying out of flood prevention and coast protection works on land adjoining Network Rail’s connecting freight railway from Kincardine to Longannet and land acquisition to facilitate the improvement of that railway. [B]

[C] We understand that you have an interest in the property comprising [                     ] fully described in the schedule to this notice and shown on the attached extract from the Bill plans. If the Bill is passed, you may be obliged to sell your property, or a right to use it. This means that your interest in the property comprising [                     ] could be taken from you. You may be entitled to compensation from the promoter if you are obliged to sell the property or the promoters gain a right to use it. [C]

[D]

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

- 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.
These documents relate to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 March 2003

From the day after introduction, the Bill and the above documents will also be available, free of charge, on the Parliament’s website (www.scottish.parliament.uk). In addition, copies of the Bill and all of its accompanying documents (including, in addition to those listed above, maps, plans and sections of the proposed works, a Book of Reference, an Environmental Statement and agreements with the Scottish Parliamentary Corporate Body relating to the assignment of copyright and licensing) will be available for inspection at the following Scottish Parliament Partner Libraries:

- Dalgety Bay Library, Regents Way, Dalgety Bay KY11 5UY
- Dunfermline Central Library, 1 Abbot Street, Dunfermline KY12 7NL
- Alloa Library, 26/28 Drysdale Street, Alloa FK10 1JL
- Stirling Central Library, Corn Exchange Road, Stirling FK8 2HX

Copies of the maps, plans, sections, Environmental Statement, Book of Reference and copyright agreement can be purchased from Tara Whitworth, Project Manager, Babtie Group, 95 Bothwell Street, Glasgow G2 7HX. The other documents will be published by the Parliament and will be available for sale from The Stationery Office bookshops and free of charge on the website mentioned above.

The price of each document is:

- Environmental Statement £150.00
- Non-technical summary £4.25
- Environmental Statement and Non-technical summary on CD-ROM £50.00
- Maps, plans and sections £62.50
- Book of Reference £9.00

[E] It is intended that the Bill shall exclude section 90 of the Land Clauses Consolidation (Scotland) Act 1845, and shall substitute for it a provision:

(a) restricting 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) restricting 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. [E]

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. During the Bill’s consideration by the Committee, it can hear evidence directly from objectors to the Bill.

Should you wish to object to the Bill, you will have 60 days from the date of the introduction of the Bill to lodge objections. Please note that the objection period will be suspended on 31 March 2003 when the Parliament dissolves for the elections, and will not recommence until the Bill is re-introduced into the new Parliament (after 1 May 2003).

Objections must be lodged with the Non-Executive Bills Unit, The Scottish Parliament, Edinburgh, EH99 1SP (0131 348 6789), (nebu@scottish.parliament.uk) accompanied by a
lodging fee of £20. A copy of the Scottish Parliament’s Private Bill Guidance, which explains in 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. A copy of the Parliament’s guidance for objectors is enclosed with this notice.

Any questions relating to the parliamentary procedures involved in the processing of this Bill should be directed to the Non-Executive Bills Unit clerks. Any other questions relating to the Bill should be directed to Mrs. A M H Gorlov, John Kennedy & Co (020 7593 5005).

John Kennedy & Co

35 Great Peter Street, Westminster, London SW1P 3LR
Parliamentary Agents for Clackmannanshire Council

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

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

- the heading is:
  
  NOTICE OF PROPOSAL TO ACQUIRE RIGHTS IN LAND COMPULSORILY

- the paragraph marked [C] reads:

  We understand that you have an interest in the property comprising [ ] fully described in the schedule to this notice and shown on the attached extract from the Bill plans. If the Bill is passed, you may be obliged to sell your property, or a right to use it. This means that your interest in the property comprising [ ] could be made subject to particular rights. You may be entitled to compensation from the promoter if this occurs.

- at point [D] there is included:

  The schedule to this notice 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 [C] reads:
We understand that you have an interest in the property comprising [ ] fully described in the schedule to this notice and shown on the attached extract from the Bill plans. If the Bill is passed, you may be obliged to give up possession of that property on a temporary basis. This means that your interest in the property comprising [ ] could be temporarily interfered with. You may be entitled to compensation from the promoter if this occurs.

- at point [D] there is included:

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

Appendix 4: Form of letter sent in cases of acquisition of rights only

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

- the warning at the top is not included
- the heading is:

    NOTICE OF INTENTION TO INTRODUCE A PRIVATE BILL

- the paragraphs marked [A], [C] and [E] are not included
- the paragraph marked [B] reads:

    We write to inform you that Clackmannanshire Council intend to introduce a Private Bill, the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, into the Scottish Parliament on or around 21st March 2003. The purpose of this notification is to inform you of this intention and of the procedures involved should you wish to seek further information regarding the Bill or the Parliamentary process to which it will be subject.

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

238. On 21 March 2003, the Presiding Officer (Sir David Steel) made the following statement:

    “In my view, the provisions of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill would be within the legislative competence of the Scottish Parliament.”