AIRDRIE-BATHGATE 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 Airdrie-Bathgate Railway and Linked Improvements Bill introduced in the Scottish Parliament on 30 May 2006:

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

   A Promoter’s Memorandum is printed separately as SP Bill 64–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).
EXPLANATORY NOTES

INTRODUCTION

3. These Explanatory Notes have been prepared by John Kennedy & Co, Parliamentary Agents, on behalf of the promoter, Network Rail Infrastructure Limited (“Network Rail”) in order to assist the reader of the Airdrie-Bathgate 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 construction of new railway infrastructure requires specific statutory authorisation. Following devolution the requisite legislative procedure is by way of a Private Bill.¹

6. The Bill will grant powers to Network Rail and its successors (for an explanation of successors to Network Rail see the notes on section 37 of the Bill). In the Bill the body exercising the powers is called “the authorised undertaker”. The Bill will enable the authorised undertaker to build a new railway between Drumgelloch and Bathgate and undertake related improvements to the existing railways between Airdrie and Drumgelloch and between Bathgate and Edinburgh. The works, which are described in detail in paragraphs 33 to 40 of the Promoter’s Memorandum, include the following:

- new railway from Drumgelloch to Bathgate (Work No. 1)
- associated railway works, in particular sidings at a relocated Bathgate Station (Work No. 1AA) and Boghall (Work No. 1G)
- footbridges at Airdrie Station (Work No. 1B) a relocated Drumgelloch Station (Work No. 1C), the new station at Caldercruix (Work No. 1D), the new station at Armadale (Work No. 1E), the relocated Bathgate Station (Work No. 1F) and Uphall Station (Works Nos. 52 and 52A)
- road works along the route to replace or raise existing bridges over the railway so as to allow sufficient height for overhead electrification
- replacement private accesses to replace accesses severed by the works
- a series of works to provide cyclepaths re-routeing National Cycle Path 75, which currently runs along the solum of the former railway between Drumgelloch and Bathgate.

All the other powers in the Bill are required in connection with the construction of the new railway. In particular, the Bill grants compulsory purchase powers. This will ensure that the

¹ Further background details are in paragraph 23 of the Promoter’s Memorandum.
authorised undertaker will be able to acquire the land or rights in land that are required for the works to be constructed and operated. Paragraphs 7 to 12 below further outline the purpose of the Bill.

7. The principal purpose of the Bill is to give statutory authority to Network Rail and any successors (in the Bill called “the authorised undertaker”) for the construction of the railways and other specific works that are fully described in schedule 1 to the Bill (“the scheduled works”).

8. In connection with these works the Bill also provides for the stopping up\(^2\) of lengths of some roads and other rights of way where they cross or are on the route. Diversions and substituted roads will be provided and are included as scheduled works. In addition, the Bill enables the authorised undertaker to construct miscellaneous works and do other things that are required in connection with or in consequence of the scheduled works. In the Bill, the works that will enable these miscellaneous things to be done are called “the ancillary works”.

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

**RECIPIENT OF THE POWERS**

10. The powers of the Bill will be conferred on Network Rail. Provision is made to enable Network Rail to transfer the railway undertaking and related powers in whole or in part.

**RELATIONSHIP WITH PLANNING AND RAILWAYS REGULATION**

11. The development authorised by the Bill will be permitted development,\(^3\) 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 40 (see paragraphs 213 to 215 below).

12. The Bill does not state that the authorised undertaker may operate the railway and related facilities. This is because statutory authority to operate the railway will be conferred in another way. Under section 6 of the Railways Act 1993 (c.43) the operation (including maintenance) of a railway asset (which includes track and other infrastructure and stations) requires a licence under section 8 of that Act, and section 122 of the Act confers the benefits of statutory authority on a licensed operator.

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\(^2\)“Stopping up” a road is the technical expression for closing the road to traffic and terminating public rights of way over it.

\(^3\)“Permitted development” means development which is permitted by article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992/223) to be carried out without the need to apply for planning permission. The precise scope of the different classes of permitted development and the conditions subject to which it is permitted are set out in Schedule 1 to the 1992 Order. The relevant class in this case is Class 29 (development authorised by private Act, etc.).
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 acquired or otherwise 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 all the scheduled 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 acquired or extinguished, or interests in the rights that would be acquired or 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 (5th Edition, 2005). 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.

16. Part 1 confers the powers relating to the works themselves. It distinguishes between:
   - those works that are specifically described (the scheduled works described in schedule 1); and
   - works carried out under general powers (the ancillary works as described in schedule 2).

17. 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 schemes e.g. for roads.

18. Fairness demands that compulsory purchase under the Bill must be on the same standardised basis as any other compulsory purchase in Scotland. 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.\textsuperscript{4} 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.\textsuperscript{5}

19. In theory this might be done either by writing the relevant provisions at length in the Bill or by applying the existing public Acts as if they had been included in the Bill. Section 46 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 19\textsuperscript{th} century and which continues to be utilised.\textsuperscript{6}

20. 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 78 to 90 and 226 explaining Part 2 of the Bill and section 46. The Acts applied by section 46 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 19\textsuperscript{th} 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.

21. The Bill accordingly incorporates provisions of the Acts referred to in section 46. 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\textsuperscript{7};

\textsuperscript{4} 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.

\textsuperscript{5} Property rights are protected by article 1 of the First Protocol to the European Convention on Human Rights. This protection is “subject to the conditions provided for by law”, so that compulsory purchase legislation is permitted by the Convention.

\textsuperscript{6} Recent Scottish examples of provisions similar to section 50 are the British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.3 of the Order (authorising an upgrading of the part of the present route between Cambus and Alloa), the British Railways (No. 3) Order Confirmation Act 1994 (c.iii), s.3 of the Order (authorising an upgrading of the railway between Hamilton and Larkhall) and the City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c. iii), s.4 of the Order. 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 3 and 10 of the Heathrow Express Railway Extension Order 2002 (SI 2002/1064) and article 4 of The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (SI 2005/927).

\textsuperscript{7} 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’ (4\textsuperscript{th} 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
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- the Railways Clauses Consolidation (Scotland) Act 1845 (c.33);
- the Railways Clauses Act 1863 (c.92).

The Bill makes a number of adjustments to the incorporated Acts for the purpose of streamlining the 19th century procedures so as to bring them more nearly into line with the more modern legislative improvements that have been made in England and Wales, but not in 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 18, 21, 26 and 30 of the Bill.

COMMENTARY ON SECTIONS

Part 1 – Works

22. The meaning of “the scheduled works” and “the ancillary works” is explained in paragraphs 24 to 32 below.

Section 1 – Power to construct works

23. Section 1 gives the specific statutory authority which is required for the works. In the absence of this section the activities permitted by the Bill would potentially be liable to challenge in the courts e.g. on the ground that the railway constituted a legal nuisance. Such an action could potentially result in an order preventing the nuisance by stopping the works (called an interdict). The protection of statutory authority is therefore important to the viability of the scheme.

Section 2 – The scheduled works

24. Section 2 introduces schedule 1, which contains the detailed descriptions of the works comprised in the railway and related physical structures.

25. The railways are the works comprising Works Nos. 1, 1A, 1AA and 1G. They are shown on the Parliamentary plans and the Parliamentary sections. Brief descriptions of those works are in paragraph 6 above.

26. The scheduled works also include the other works briefly described in paragraph 6 above. All these works are required as a result of the construction of the railways.

27. Subsection (2) limits the area within which the works may be constructed to the limits prescribed by section 4 (see paragraphs 33 to 36 below).

an Interpretation Act is by the use of labelling definitions to shorten the language which needs to be used in legislation”. Bennion, p. 491.)

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

9 The need for such authority is explained in paragraph 23 of the Promoter’s Memorandum.
Section 3 – The ancillary works

28. Section 3 introduces schedule 2, which describes the types of works which may be provided in connection with the scheduled works. Works of this nature will only be authorised by the Bill if they are necessary or expedient\(^{10}\) in connection with the construction of the scheduled works or as a consequence of those works being constructed.

29. Schedule 2 catalogues types of general incidental 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.\(^{11}\) The ancillary items accordingly range from the provision of stations and platforms to operations such as discharging water during construction\(^{12}\) and moving or protecting utility apparatus.\(^{13}\) The ancillary works will accordingly form an essential part of the authorised works.

30. The authorised works will necessitate some apparatus belonging to utility undertakers\(^{14}\) being moved away from the works (or in some cases protected from them). Paragraph 4 of schedule 2 accordingly makes clear that these works may be for the benefit of others whose apparatus is moved.

31. At this stage the nature of the ancillary works is known but not the precise works themselves nor, in some cases, their precise positions. Accordingly, they do not appear on the Parliamentary plans. What is known at this stage is that they will only be required within the limits of deviation and the limits of land to be acquired or used.\(^{15}\) These restrictions are in section 3(2).

32. Examples of ancillary works that have already been identified as being required are stations, platforms and overhead line equipment.

Section 4 – Permitted deviation within limits

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

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

\(^{10}\) Expedient: advantageous; suitable, appropriate (Concise Oxford English Dictionary).

\(^{11}\) 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).

\(^{12}\) e.g. when pumping away water from a site so as to be able to lay track on dry ground.

\(^{13}\) e.g. water mains and power supply cables.

\(^{14}\) 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.

\(^{15}\) These terms are defined in section 47.
35. Section 4 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.

36. 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 a need to provide for mine workings or other geological conditions.

Section 5 – Access to works

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

Section 6 – Construction, maintenance and vesting of new or altered roads and vesting of bus lay-by, car parks and cycle path

38. The roads associated with the railway works (other than private access roads) are all to become public roads. In accordance with standard arrangements when a new road is built, section 6 provides for the relevant works (listed in Part 1 of schedule 10) to be completed to the reasonable satisfaction of the roads authority (subsection (1)), and to be maintained by the authorised undertaker for an initial 12-month maintenance period (subsection (2)). 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.

39. Subsection (3) provides for the vesting and times of vesting of all the authorised works specified in Part 2 of schedule 10. Each road referred to in subsection (1) vests in the roads authority at the end of the maintenance period for that road. The vesting includes the land on which the road is built (ownership of the road on the surface does not necessitate ownership of the subsoil, which roads authorities frequently do not own), together with any land that has been acquired for the purpose of constructing the road in question. This ensures that if any land is left after construction, for example small strips of land adjoining the road, it also passes to the roads authority.

40. As part of the improvements to Uphall station, land is being acquired for a station car park. It is intended that the car park should belong to the local roads authority. In addition, in order to minimise interference with private land at Blackridge which is crossed by the cyclepath, the Bill provides for the authorised undertaker to acquire rights to construct and maintain the
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cyclepath rather than outright purchase. So that the cyclepath itself can be maintained with the rest of the cycle route it, too, should become the responsibility of the roads authority.

41. Subsection (3) accordingly also applies to the car park, bus lay-by and cyclepath specified in Part 2 of schedule 10. Unlike the roads, they will vest on completion of construction. The land beneath the cyclepath will not vest in the roads authority.

42. This vesting is subject to the exceptions in subsection (4). The railway structures specified in column (3) of Part 1 of schedule 10 and any operational land held by Network Rail (e.g. the railway solum beneath a road bridge) do not vest. The precise extent of what is vested may be determined by the authorised undertaker. In addition, the vesting is subject to such rights as may be required for the benefit or protection of the authorised works or, more generally, Network Rail’s railway undertaking.

43. Subsection (5) caters for the possibility that Network Rail is not the authorised undertaker. It provides for the railway structures specified in column (3) of Part 1 of schedule 10 to vest in Network Rail, if it does not already own them.

44. Subsection (6) provides for any dispute regarding the standard of construction of a road, bus lay-by or car park to be determined by arbitration.

45. Subsections (7) and (8) deal with the application to these roads of provisions in the New Roads and Street Works Act 1991 (c.22) (in the Bill called “the 1991 Act”).

Section 7 – Vesting of private roads

46. There is a number of authorised access roads which will be constructed for the benefit of individual landowners to replace existing private accesses. The works (listed in Part 3 of schedule 10) will not therefore become public roads. Section 7 accordingly makes provision similar to section 6, but with the roads vesting in particular landowners under subsection (1). Some of the existing accesses are subject to rights enjoyed by third parties or the general public. Subsection (1) accordingly provides for these rights to be reflected in rights, specified by the authorised undertaker, to which the newly vested roads would be subject. Subsection (2) makes the vesting subject to the same exclusions and limitations as in section 6(4) (see paragraph 42 above).

47. Subsection (3) makes the same provision as in section 6(5) providing for the vesting of railway bridges.

Section 8 – Vesting of freight depot and associated facilities

48. Work No. 1G is a railway forming sidings at a site in Boghall. The site will provide a replacement depot for the rail freight and car stabling facilities that are to be displaced by the authorised works. Work No. 46 is an access road into the site. The existing depot is owned by English Welsh and Scottish Railway Limited and the purpose of section 8 is to vest the replacement depot in that company.
Section 9 – Registration of vested land

49. The vesting of the title to land is normally effected by a transfer, deed or similar document. The title must be registered in the Land Register of Scotland or, if the land is in an area where land is not registered, the deed can be recorded in the Register of Sasines. Vesting under sections 6, 7 and 8 will be by virtue of the powers to be conferred on the authorised undertaker, not by a separate deed. Section 9 accordingly provides for registration to take place following production to the Keeper of the Registers of Scotland of a copy of the Act and details of the land vested and any rights for which the authorised undertaker has provided.

Section 10 – Permanent stopping up of roads

50. Subsection (1) authorises the permanent stopping up\textsuperscript{16} of 135 lengths of road, cycleway, track and other areas over which there are or may be public rights of way, all of which have the status of roads. They are detailed in Part 1 of schedule 3.

51. All but 10 of these stopped up roads, cycleways and tracks will be replaced by the substitutes specified in column (4) of Part 1 of schedule 3, including two where the existing road network provides an alternative. Subsection (2) prevents any stopping up until the substitute has been completed to the reasonable satisfaction of the roads authority and is open for public use.

52. 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. 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 89 and 90 below.

53. Existing rights of statutory undertakers and others (who will be predominantly utilities) with apparatus in stopped up roads are protected by paragraph 2 of schedule 7, which is applied by subsection (6).

Section 11 – Private crossings

54. 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. Level crossings are also a hazard and are inconsistent with the modern use of a railway by large numbers of fast trains. The Bill offers the opportunity to remove the uncertain status of crossings as regards the re-opened railway.

\textsuperscript{16} For explanation see paragraph 8 above and footnote.
55. 63 known or apparent private crossings have been identified between Drumgelloch and Bathgate. Some are formal crossings of known status. Others are apparent from survey but their legal status is uncertain. 10 of these crossings are to be upgraded as bridges so that they can be used with the new railway in place. This is provided for in subsection (1) of section 11 and Part 1 of schedule 4, which details the private crossings in question.

56. 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.

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

58. 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. 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.

59. 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. Subsection (4) therefore ensures 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.

60. 52 of the identified legally established and status uncertain crossings are to be closed with private rights across them being extinguished. This is provided for in subsection (5) and Part 2 of schedule 4, which details the private crossings in question.

61. Subsection (6) recognises that there may be other legal private crossings that still exist legally but which have not been identified despite extensive survey. All the reasons for closing the crossing apply equally to any other crossings there may be. Subsection (6) extinguishes all rights over these crossings, too, and removes any obligation to maintain the crossing.

62. Subsection (7) 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).

Section 12 – Power to execute road works

63. The carrying out of works authorised by the Bill at a junction with a road is likely to make it necessary or desirable for the authorised undertaker to go on that road for the purposes of the Bill works, and possibly also to do works in the road for the purpose of e.g. making good the
junction, providing for drainage or doing other works necessitated by the road works authorised by the Bill. Section 12 enables the authorised undertaker to do this.

Section 13 – Works to be major works for road purposes

64. Section 13 provides that works to provide roads that are to become public roads (listed in section 6(1)) and works having a junction with a road are to be treated as major works for road purposes within the meaning in Part IV of the 1991 Act. The practical effect of this is that the cost of what the 1991 Act calls “necessary measures” in relation to statutory undertakers’ apparatus in the road is shared between the authorised undertaker and the undertakers concerned in accordance with regulations made under section 144 of the Act.\(^\text{17}\)

65. This provision is precedent in relation to comparable schemes.\(^\text{18}\)

Section 14 – Agreements with roads authorities, etc.

66. Section 14(1) permits the authorised undertaker to enter into agreements with roads authorities, or others responsible for any roads, regarding the alteration of, or provision of a new road in substitution for, an existing road. Agreements could provide for contributions towards construction costs. In addition, the roads authority or other persons responsible for the road may prefer to carry out the works themselves. Section 14(2) enables the authorised undertaker by agreement to delegate its relevant powers to them. These include powers to maintain roads because of the requirement under section 6 (see above) for the authorised undertaker to maintain a road which has been substituted or altered for a period of 12 months before the roads authority takes up its maintenance responsibilities.

Section 15 – Temporary stopping up, alteration or diversion of roads

67. 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\(^\text{19}\) under subsection (5). By subsection (6) consent could not be unreasonably withheld but could be given subject to conditions. Under subsection (7) disputes as to the reasonableness of any condition would be determined by arbitration (unless the parties agree to use other form of dispute resolution). Section 44 provides for the way in which any arbiter is appointed.

\(^{17}\) Currently the Road Works (Sharing of Costs of Works)(Scotland) Regulations 2003 (SSI 2003/509).

\(^{18}\) See e.g. Channel Tunnel Rail Link Act 1996, Schedule 3, paragraph 8 and the Crossrail Bill (promoted by the Government and currently before the UK Parliament), Schedule 3, paragraph 8.

\(^{19}\) 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 North Lanarkshire Council, West Lothian Council and City of Edinburgh Council in their respective areas and the Scottish Ministers as regards trunk roads.
68. In addition to any condition imposed by the road works authority, the authorised undertaker will be obliged by subsection (4) to provide continued pedestrian access to premises\textsuperscript{20} abutting on the temporarily stopped up road.

69. Subsection (3) enables the authorised undertaker to make use of any temporarily stopped up road as a working site.

70. 61 necessary temporary stoppings up have been identified at this stage as being required at the locations specified in Part 2 of schedule 3. For this reason subsection (2) authorises these temporary closures and, unlike the unspecified closures, subsection (5)(a) requires consultation with the road works authority but does not require consent.

Section 16 – Discharge of water

71. Section 16 ensures that the authorised undertaker can effectively drain its works, both during construction and thereafter. Subsection (1) enables the authorised undertaker to use any available watercourse or any public sewer or drain for drainage purposes. It provides that within the limits of deviation or the limits of land to be acquired or 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.

72. Under subsection (2) water may not be discharged into an artificial watercourse or a public sewer or drain without the consent of the person to whom it belongs, but although consent may be given subject to reasonable terms and conditions, it cannot be unreasonably withheld or delayed.

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

74. 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\textsuperscript{21} 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.)

\textsuperscript{20}“Premises” is used in its ordinary meaning i.e. places, landholdings (including buildings). Except where it is especially defined, as in some legislation, it is not a technical term. ““Premises” is an ordinary word of the English language which takes colour and content from the context in which it is raised … it has, in my opinion, no recognised and established primary meaning.” Maunsell v Olins [1975] 1 All ER 16 at 19, HL, per Viscount Dilhorne.

\textsuperscript{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.
75. Subsection (5) provides that any disagreement between the authorised undertaker and the owner of an artificial watercourse or a public sewer or drain shall be resolved by arbitration (unless the parties agree to some other form of dispute resolution). Section 44 provides for the way in which any arbiter is appointed.

76. Subsection (6) provides for the continued operation of Part IV of the 1991 Act 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 (6), 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.

77. In the absence of section 16 effective drainage of the works would be subject to the risk of legal action for nuisance in respect of discharges, and subject also to successful private negotiation as regards the use of public sewers or drains. The section 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

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

79. Purposes for which compulsory purchase powers are needed include the acquisition of:

- land and rights to access land to construct and then maintain the railways;
- land for and rights to access land to construct bridge improvements and the installation of equipment;
- land and access to land for construction of replacement roads;
- land for provision of replacement cyclepath;
- land for provision of footpaths;
- land for pedestrian and vehicular access to premises;
- land for road improvements and landscaping.

The promoters have also identified land which the authorised undertaker will not need to acquire permanently but which will need to be used to allow temporary access or to be occupied temporarily during the construction period e.g. as construction sites. (In the Bill temporary occupation is referred to as “temporary possession”.)
80. In many cases (roads and housing are examples) compulsory purchase powers are conferred on acquiring authorities by compulsory purchase orders made by the authorities themselves, 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 which are in Part 2 of the Bill, either set out in full or apply 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.

81. The land affected by the compulsory purchase powers in the Bill is the land described in the book of reference. On the Parliamentary plans it is all the land within the limits of deviation\(^\text{22}\) and within the limits of land to be acquired or used.\(^\text{23}\)

82. The compulsory purchase powers conferred by the Bill will enable the authorised undertaker to acquire the land necessary to construct the works authorised by the Bill. In the absence of compulsory purchase powers this would not be possible if landowners refused to make their land available. The acquisition of land under compulsory powers (including 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

83. 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.\(^\text{24}\) An outline of this applied legislation is given below. As with compulsory purchase generally, it provides for two separate procedures, one by way of notice to treat and the other using general vesting declarations.

Compulsory purchase procedures

84. After the Bill has been enacted, the first stage of the notice to treat procedure 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

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\(^{22}\) For an explanation of “limits of deviation” see notes on section 4.

\(^{23}\) i.e. land situated outside the limits of deviation which is required to be acquired or used for specific purposes - see sections 17(1)(b), 18, 19 and 21 and schedules 5 and 6.

\(^{24}\) For an explanation of the reason for applying other Acts see paragraphs 19 to 21 above.
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

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.

85. 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.

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

87. As an alternative to serving a notice to treat and following the procedures outlined in paragraphs 84 to 86 above, the Bill authorises the authorised undertaker to acquire land by making one or more general vesting declarations (on this see paragraphs 172 to 176 below).

88. In practice an authority having compulsory purchase powers will often be able to buy land by agreement without having to resort to the formal statutory procedures. When this happens the Lands Clauses Acts give powers of sale to landowners (such as trustees) who otherwise might not be at liberty to sell. Although land may be purchased by agreement, the compensation rules will be the same as if the land had been purchased compulsorily.

Compensation

89. 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.

90. 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

25 “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.

26 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).
apply the authorised undertaker may be required to pay compensation to the person with the right to work the mine.

Section 17 – Power to acquire land

91. Section 17(1)(a) is the power for the authorised undertaker to acquire land within the limits of deviation. The land that may be acquired must be within those limits and it must be land that may be required for the purposes of the authorised works.

92. Section 17(1)(b) authorises the permanent outright acquisition of land within the limits of land to be acquired or used. The authorised undertaker is authorised to acquire the land within those limits if (a) it is specified in columns (1), (2) and (3) of Part 1 of schedule 5 to the Bill and (b) it may be required for the purposes specified in relation to that land in column (4). Part 1 of schedule 5 lists specific plots of land within the limits of land to be acquired or used and specifies against each entry the purpose for which the land may be acquired. This is only some of the land within the limits of land to be acquired or used. The rest of the land within those limits is not to be acquired permanently and is dealt with in separate sections of the Bill.27

93. Section 17(1)(c) enables Network Rail, if necessary, to complete its title to any part of its operational land28 which is to be used for works connected with the authorised works. In the course of preparing this Bill it has come to light that there may be some subsisting third party interests that may not have been acquired when the railway was built. This is a technical matter as the land in question is now part of the railway.

94. The powers of section 17 are subject to the 10-year time limit in section 32 of the Bill.

Section 18 – Acquisition of subsoil or rights

95. Section 18 applies to any land that is authorised to be compulsorily acquired under section 17. Section 18 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 18 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.

96. Subsection (1) accordingly enables the authorised undertaker to acquire only the subsoil beneath land or servitudes29 or other rights in relation to land.

97. By subsection (2), the rights required by the authorised undertaker may be created if they do not already exist. The subsection expressly allows for the creation of new rights, which will then be compulsorily acquired by the authorised undertaker.

27 See sections 18, 19 and 21.
28 i.e land used for the operational railway defined in section 47 by reference to the 1997 Act.
29 “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.
98. Subsection (3) provides that by exercising the powers of section 17 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 could be required to buy the 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.

99. 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 (3) 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.  

100. Subsection (4) applies the other provisions of the Lands Clauses Acts to the compulsory acquisition of new rights under section 17. In subsection (6), the modifications in the 1845 Lands Act reflect similar provision in the Land Compensation (Scotland) Act 1973 (c.56).

Section 19 – Purchase of specific new rights over land

101. Section 19 applies in addition to section 17, in relation to the land within the limits of land to be acquired or used which is specified in columns (1), (2) and (3) of Part 2 of schedule 5. Section 19 enables the authorised undertaker to acquire new permanent 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 access for the purpose of carrying out permanent bridge improvements. Necessary rights also include ground stabilisation and installation of electrical equipment, such as closed circuit television and lighting.

102. In some cases it can be ascertained at this stage that the rights required are no more than temporary. Subsection (2) accordingly allows for the acquisition of the rights specified in columns (1), (2) and (3) of Part 3 of schedule 5, for the purposes specified in column (4). These temporary rights are for access and the provision of a footpath.

103. The powers in section 19 are subject to the time limit in section 32 of the Bill.

Section 20 – Rights in roads or public places

104. Section 20 applies to any road or public place that is included in the land that may be compulsorily acquired under section 17. In relation to such land, the section allows subsoil or airspace to be used for the works without the need for compulsory purchase. Such use might, for example, include the laying of underground drains or the occupation of airspace by a bridge.

30 See e.g. British Railways (No. 2) Order Confirmation Act 1994 (c.ii) (the BR precursor to the present scheme), s. 13 of the Order, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s. 7 of the Order.
31 i.e. a place to which the public have or are permitted to have access – see e.g. Public Order Act 1936 (c.6) s.9.
105. Subsection (1) enables the authorised undertaker to enter and use the subsoil of or airspace over such land for the purposes of the authorised works. The subsection permits the authorised undertaker to do this without serving notice on the roads authority or other owner of the land involved.

106. 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.

107. Subsection (3) 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 (3) has the effect of obliging the authorised undertaker to acquire the relevant land, or an appropriate servitude or right, before using it for the authorised works.

108. 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, 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 that compensation is not payable to a roads authority in respect of a public road or to the authority that owns a public place. But subsection (5) 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).

109. Subsection (6) 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, which will be an overriding interest.\(^\text{32}\) An overriding interest takes effect as against the registered owner of land even though it is not registered.\(^\text{33}\) Thus the effect of subsection (6) is to ensure that the powers in subsection (1) will be binding on anyone who owns land to which this section applies.

\textit{Section 21 – Temporary use of land for construction of works}

110. Where the authorised undertaker only needs to occupy land for a temporary period, purchase of the land cannot be justified. Section 21 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.

111. By subsection (1) the authorised undertaker may take temporary possession of the land specified in columns (1), (2) and (3) of schedule 6 for the various purposes mentioned in column (4) of that schedule. (These are purposes such as the provision of construction compounds, working spaces and access.) On exercising these powers the authorised undertaker may remove

\(^{32}\) See Land Registration (Scotland) Act 1979 (c.33) s.28(1), definition of “overriding interest” paragraph (h).

\(^{33}\) Land Registration (Scotland) Act 1979 (c.33) s.3(1)(a).
buildings and vegetation and construct temporary works (including means of access) and temporary buildings on the land.

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

113. Subsection (3) provides that, except with the landowner’s agreement, the authorised undertaker may not remain in temporary possession for more than one year after the date of completion of the works for the purposes of which entry was made. The relevant work is specified, in relation to each plot, in column (5) of schedule 6. The authorised undertaker is allowed to remain in possession for this further year so that it can do all the work required during the 12-month maintenance period immediately after construction has been completed. It is normal in construction contracts for contractors to be liable to maintain works for a given period (usually 12 months) after the works have been completed. This makes the contractor responsible to rectify any defects that come to light while the works are ‘bedding in’.

114. 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.\(^{34}\)

115. 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.

116. 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 this section 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. That other compensation will continue to be payable except in so far as it duplicates compensation payable under section 21.

117. Subsection (8) provides that the authorised undertaker may not compulsorily acquire the land which is used temporarily under this section, or any interest in it, except subsoil, new rights over the land or land required for environmental mitigation.

118. Subsection (9) provides that the authorised undertaker cannot be required to acquire the land which is used temporarily under this section, or any interest in it.

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\(^{34}\) This is standard in provisions of this sort – see e.g. City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s.8(4)(b). It reflects the legal rule that where land that has been compulsorily acquired outright for a particular authorised purpose is no longer needed for that purpose and is to be sold, the original owner has no right to be given first refusal if the character of the land has fundamentally changed as the result of its use for the authorised purpose.
Section 22 – Disregard of certain interests and improvements

119. Under the rules applicable to the assessment of compensation, land is valued at its market value. The purpose of section 22 is to ensure that landowners do not act to enhance the value of their land solely for the purpose of obtaining compensation or increased compensation. Subsection (1) accordingly provides that when assessing compensation payable on the acquisition of the land, the Lands Tribunal for Scotland shall not take into account the creation of any interest in land, the erection of buildings or the carrying out of works, improvements or alterations which was undertaken for this purpose.

120. Subsection (2) makes clear that this section applies to works or improvements undertaken both on the land to be acquired and on any other land in which the claimant has an interest (a claim for compensation will take into account the impact on land which has been retained by the claimant as well as on the land which is being acquired).

Section 23 – Set-off of betterment against compensation

121. Development may enhance the value of adjoining or nearby land. Section 23 accordingly provides for compensation to be reduced by an amount equivalent to any enhanced value of other contiguous or adjacent land of the person seeking the compensation.

Section 24 – Application of legislation relating to certificates of appropriate alternative development

122. The provisions relating to a certificate of appropriate alternative development under sections 25 and 26 of the Land Compensation (Scotland) Act 1963 (c.51) apply (as provided by section 30(2)(a) of the 1963 Act) to an interest in land subject to compulsory purchase where a notice to landowners has been served as part of the requirements of the UK Parliament’s standing orders for a Bill when it is first introduced.

123. The effect of the certificate is that where an interest in land is subject to compulsory acquisition under an Act, the person in whom that interest is vested or the authorised undertaker may apply to the planning authority for a certificate of appropriate alternative development in respect of that land. If the planning authority issues such a certificate stating that, in the absence of the promoter’s proposal, planning permission would have been granted for specified development, then it is assumed for compensation valuation purposes that such planning permission would have been granted.

124. Section 30(2)(a) of the 1963 Act was not extended on devolution to refer also to the standing orders of the Scottish Parliament. The purpose of section 24 is to amend section 30(2)(a) so that when (in accordance with the Scottish Parliament’s standing orders) a notification is given of the proposal to acquire land compulsorily, the provisions relating to a certificate of appropriate alternative development (sections 25 and 26) will apply.

35 “contiguous”: touching or immediately next to, sharing a common boundary with (in this case) other land.
36 “adjacent” includes land that is not contiguous, but which is close to or near other land.
Section 25 – No double recovery

125. Section 25 ensures that those entitled to compensation under the Bill and any other enactment, contract or rule of law are not compensated twice in respect of the same item of compensation.

Section 26 – Acquisition of part of certain properties

126. Section 26 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\(^{37}\) to the rest of the property and, in the case of a house with a park or garden, without also seriously affecting the amenity or convenience of the house.\(^{38}\) 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.\(^{39}\)

127. Subsection (1) applies this section to any case where a notice to treat\(^{40}\) 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.

130. Under subsection (5), if the authorised undertaker does not agree to acquire the whole of the land, the issue is referred to the Lands Tribunal for Scotland. The 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.

\(^{37}\) “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.

\(^{38}\) “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).

\(^{39}\) See e.g. City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s.6 of the Order.

\(^{40}\) For an explanation of this expression see paragraph 84 above.
131. Under subsection (6), if the 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, without 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 (7), the Tribunal may make a similar decision in relation to part of the land subject to the notice to treat. In that case the notice is deemed to apply only to that part, which can then be acquired.

133. Subsection (8) provides for the case where the Tribunal finds that there is material detriment or serious effect on amenity or convenience, but limited to part of the land subject to the counter-notice. The notice to treat is then deemed to apply to both the land referred to in that original notice and, in addition, the land affected by the material detriment.

134. Under subsection (9), where the Tribunal determines that there will be material detriment or an adverse effect on amenity or convenience, and also determines that any material detriment extends to 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 (8) or (9), a notice to treat can be deemed to include other land, whether or not that land is subject to compulsory acquisition under the Bill.

136. Subsection (10) covers the situation where the Tribunal determines that the authorised undertaker should acquire either more or less land than was included in the original notice.

137. A determination of the Tribunal that a notice to treat should have an effect other than that intended by the authorised undertaker could have serious implications for the design or operation of the authorised works. By subsection (11), 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. Under subsection (12), 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.

138. By subsection (13), where this section results in an owner being required to sell only part of:

- a house, building or factory; or
- land with a house and a park or garden,

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41 Where material detriment extends to only part of the land subject to the counter-notice subsection (7) applies.
the authorised undertaker is not required to buy the whole property. However, the authorised undertaker must in addition to paying compensation for the value of the interest acquired, pay compensation for any loss resulting from severance of the land.\textsuperscript{42}

\textit{Section 27 – Extinction or suspension of private rights of way}

139. The Bill provides for necessary public and private means of access. The authorised works cannot accommodate further rights of way over the land that may be compulsorily acquired under the Bill. Section 27 accordingly extinguishes\textsuperscript{43} private rights of way over this land or, where the land is subject only to temporary possession, suspends the rights of way while the authorised undertaker remains on the land. In relation to compulsory purchase orders, servitudes over the land are extinguished automatically by virtue of section 106 of the Title Conditions (Scotland) Act 2003 (asp 9), but that provision may not apply to land acquired under the powers of the Bill. Section 27 is consistent with the general law in this regard.

140. Subsection (1) provides for the extinguishment of private rights of way over land which may be compulsorily acquired under the powers to be conferred by the Bill. 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 29 of the Bill, the extinguishment or suspension takes place instead as from the date on which possession is taken.

141. 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.

142. Under subsections (3) and (4), a person who suffers loss as a result of the extinguishment or suspension is entitled to compensation. Any dispute as to the amount is determined by the Lands Tribunal for Scotland under the Land Compensation (Scotland) Act 1963 (c.51).

143. Subsection (5) provides that the section does not apply to rights of way of statutory undertakers to which section 224 or 225 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply. (The position of statutory and utility undertakers is separately dealt with in section 38 and schedule 7.)

144. Subsection (6) allows for the extinction or suspension of private rights of way under the section to be subject to agreement between the authorised undertaker and the person entitled to the right of way or to a unilateral determination by the authorised undertaker. The authorised undertaker might be able to agree to a right of way continuing between the date of acquisition and the commencement of construction works, or to a diversion of the route used. Alternatively, the authorised undertaker may itself determine that the continuation of a right of way over the

\textsuperscript{42} i.e. diminution in value of the remaining land due to the loss of the compulsorily acquired land.

\textsuperscript{43} i.e. terminates the rights, so that they cease to exist.
land is not incompatible with the construction and maintenance of the scheme, and need not therefore be extinguished or suspended.

145. Subsections (7) and (8) spell out that any determination that a right of way is not to be extinguished must be made before the extinguishment would have taken place, while a determination that a suspension is not required can take place at any time. This reflects the fact that an extinction of a right of way is a single event while a suspension is an ongoing process which can be terminated.

146. Subsection (9) provides for notice of a determination not to extinguish or suspend a right to be given to the person entitled to the right.

147. The object of subsections (6) to (9) 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 27 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 (10) the automatic extinguishment effected by subsection (1) or (2) will not apply on land where the authorised undertaker is only acquiring rights.

Section 28 – 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 28 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 Act limits of deviation or 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.

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.

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44 See section 19 and Parts 2 and 3 of schedule 5.
45 See e.g. British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.21 of the Order, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), ss. 12 and 13 of the Order.
153. By subsection (4), no trial holes may be made in a carriageway or footway without the consent of the road works authority, which consent may not be unreasonably withheld. By subsection (5) any dispute as to whether withholding consent is unreasonable is determined by arbitration (unless the parties agree to some other form of dispute resolution). Section 44 provides for the way in which any arbiter is appointed.

154. Subsection (6) requires the authorised undertaker to pay compensation for damage caused to owners and occupiers. Under subsection (7), any dispute concerning compensation is determined under the 1963 Act by the Lands Tribunal for Scotland.

**Section 29 – Further powers of entry**

155. Section 29 is also a standard provision. The 1845 Lands Act permits entry on land under compulsory purchase powers only after full payment has been made (1845 Lands Act, section 83) or after the body with the compulsory purchase powers has deposited in a bank as security either the compensation claimed by the landowner or a sum representing the value of the land as valued by a valuer appointed by the sheriff (section 84). Sections 85 and 86 require the money to remain in the bank as a security to be distributed as directed by the sheriff. Section 87 imposes financial penalties on entering land without complying with the procedures, and in the event of a landowner refusing entry even after full payment has been made, the only recourse is to apply to the sheriff for a possession order. The procedures are cumbersome and time consuming. In England and Wales they have been simplified and modernised so as to allow entry after the landowner has been given notice. The purpose of section 29 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 28 days’ 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 29, subsection (4) provides that the authorised undertaker must pay compensation as though sections 83 to 89 had been complied with. Section 29 does not therefore alter a landowner’s right to compensation.

160. The object of section 29 is to ensure that the works are not delayed by negotiations with landowners about compensation. 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.

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46 See e.g. British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.22 of the Order, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s. 14 of the Order.

47 See Compulsory Purchase Act 1965 (c.56), s.11.
Section 30 – Persons under disability may grant servitudes, etc.

161. Section 30 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 17 or 19 of the Bill.

162. Subsection (1) accordingly allows persons under a disability to grant to the authorised undertaker servitudes, rights or privileges\textsuperscript{48} over their land. If they remained unable to do this, such people 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. 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 30 being used to override these general property rights.

Section 31 – Correction of errors in Parliamentary plans and book of reference

164. Section 31 provides a procedure to enable the correction of any inaccurate description of any land, or its ownership or occupation, in the Parliamentary plans or the book of reference. The authorised undertaker must apply to the sheriff under subsection (1), giving notice of the application to the owner, lessee or occupier of the land in question. Subsection (2) enables a recipient of a notice to give a counter-notice disputing that there is an inaccuracy which may be amended. On being satisfied that there was a mistake, the sheriff certifies to that effect under subsection (3). Subsection (4) requires the sheriff to indicate the nature of the mistake, i.e whether it is a misstatement or an incorrect description. If the application has been the subject of a counter-notice, subsection (5) requires the sheriff to hold a hearing before making any decision. Under subsection (6), the certificate is deposited with the Clerk of the Parliament. By subsection (7), following such deposit the document requiring correction is deemed to be corrected according to the certificate. Subsection (8) obliges the Clerk to keep the certificate with the Parliamentary plans and book of reference to which it relates.

165. By subsection (9), an application under section 31 may only relate to land that is identified in the book of reference and on the Parliamentary plans. The section ensures that implementation of the Act (when passed) is not prevented by mistaken misdescriptions in those documents. The Bill authorises the compulsory acquisition of land as shown on the Parliamentary plans. A minor mistake in a description in one document might result in its being inconsistent with the other, which might in turn prevent proper identification of land to be compulsorily acquired. In the absence of this procedure to correct the position, the compulsory purchase powers in the Act could not be used in relation to that land.

166. This section, for which there are numerous precedents, is an extension of the procedure in section 43 for certifying the book of reference and the Parliamentary plans and sections.

\textsuperscript{48} “Privileges”: rights that are of benefit to the person entitled to exercise them, for example fishing rights.
Section 32 – Period for compulsory acquisition of land

167. Subsection (1) provides that the compulsory purchase powers of the Act will expire ten years from the date on which the Act comes into force (i.e. ten years after the date on which it receives Royal Assent). Subsection (2) provides that for the purposes of this deadline, the powers are deemed to have been exercised before that date if either notice to treat has already been served or the authorised undertaker has executed a general vesting declaration under paragraph 1 of Schedule 15 to the Town and Country Planning (Scotland) Act 1997 (c.8), the effect of which is to vest the land in the authorised undertaker (see paragraphs 172 to 176 below).

168. 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 41 provides for the situation where a landowner needs to sell land that is affected in this way.

169. It is normal for legislation authorising the construction of works to impose time limits on the exercise of compulsory purchase powers.\(^49\)

170. Subsection (3) makes clear that the expiry of the ten-year time limit does not result in the authorised undertaker having to give up temporary possession of any land under section 21 so long as such possession was taken before the time limit expired.

Section 33 – Time limit on validity of notices to treat

171. Section 17 of the 1845 Lands Act, which requires an acquiring authority to give notice of its intention to take land (that is, to serve a notice to treat), is incorporated by virtue of section 46 of the Bill. In relation to compulsory purchase orders, section 78 of the Planning and Compensation Act 1991 (c.34) limits the life of a notice to treat served under section 17 of the 1845 Lands Act to three years from the date on which it is served. The effect of section 33 is to apply the three-year limit under section 78 of the 1991 Act to a notice to treat served under this Act. Without this provision there would be a degree of uncertainty as to whether or when a notice to treat should be treated as having been abandoned.

Section 34 – General vesting declarations

172. The compulsory purchase procedures under the Lands Clauses Acts as outlined in paragraphs 84 to 86 above provide for land to be vested in the acquiring authorised undertaker by means of a conveyance or in certain circumstances a notarial instrument executed by the authorised undertaker. Section 34 applies a further procedure that is available generally to vest land that has been compulsorily acquired.

173. Section 195 of and Schedule 15 to the Town and Country Planning (Scotland) Act 1997 (c.8) apply to any Minister or any local or other public authority that is authorised to acquire land by means of a compulsory purchase order (called an acquiring authority). Where a compulsory

\(^{49}\) See e.g. British Railways (No.2) Order Confirmation Act 1994 (c.ii), s.15 of the Order; City of Edinburgh (Guided Busways) Order 1998 (c.iii), s.20 of the Order.
purchase order has come into operation, the acquiring authority may execute a general vesting declaration (for which there is a prescribed form) vesting in themselves any of the land which they are authorised to acquire. A single declaration may relate to all or any of the land subject to compulsory purchase. Schedule 15 includes requirements as to the giving of prior notice and the date on which any declaration takes effect.

174. The effect of a general vesting declaration is to vest all interests in the land to which it relates in the acquiring authority. This procedure can be speedier and more efficient than conveyances of individual properties and interests. For that reason, it is frequently adopted in preference to the Lands Clauses Acts procedures. The making of a general vesting declaration has the same effect as service of a notice to treat in triggering the right to claim compensation.

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

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

Part 3 – Miscellaneous and general

Section 35 – Registration of new rights

177. A servitude acquired under the compulsory powers in the Bill e.g. to gain access to the railway, will be a positive servitude. Such a servitude is likely to benefit parts of the railway distant from the burdened property (e.g. the access point) itself. Section 75 of the Title Conditions (Scotland) Act 2003 (asp 9) requires that for a positive servitude to be effective, the deed creating it must be registered against both the burdened and the benefited property. This creates obvious difficulties where the burdened property is linear. This position is recognised in relation to servitudes allowing the laying of pipes, cables, wires and similar apparatus, where registration is not required (see section 77 of the 2003 Act). Subsection (1) accordingly specifically provides that servitudes acquired under the compulsory powers in the Bill benefit all land held for the purpose of the authorised works.

178. Section 75 of the 2003 Act requires that for a deed creating a positive servitude to be effective, the deed itself must be registered against both the benefited and the burdened property. Since by virtue of subsection (1), servitudes acquired under the Bill will benefit all land held for the authorised works, section 75 would call for registration against a multiplicity of titles. If any of them was missed, the servitude could not benefit the title in question, notwithstanding the clear intention of the powers in the Bill.

179. Subsection (2) accordingly provides that a servitude will be effective whether or not it is registered against the benefited property. The requirement to register against the burdened property remains unaffected.
Section 36 – Power to fell, etc. trees or shrubs

180. Section 36 enables the authorised undertaker to take steps to prevent the hazards that can be caused by vegetation. The section applies to any tree or shrub that is near either any part of the authorised works or any land proposed to be used for the authorised works.

181. Subsection (1) enables the authorised undertaker to fell or lop, or cut back the roots of, any tree or shrub to which the section applies. In order to exercise the power, the authorised undertaker must be satisfied that the action to be taken is necessary to prevent obstruction or interference with the maintenance or operation of the railway infrastructure or danger to those using it. 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 or the limits of land to be acquired or used.

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

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

184. Under subsection (4), any dispute as to compensation will be determined by the Lands Tribunal for Scotland under the Land Compensation (Scotland) Act 1963 (c.51).

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

Section 37 – Powers of disposal, agreements for operation, etc.

186. Section 37 is required to provide maximum flexibility. It is not anticipated that any body other than Network Rail will construct the railway as infrastructure owner (the Bill is not concerned with operation). However, it is prudent to provide for the possibility that the functions to be conferred by the Bill might wholly or partly be exercised by another authorised undertaker. In the absence of section 37, the powers in the Bill would not be transferable.

187. Subsection (1) provides that the authorised undertaker is competent to (i.e. lawfully can) make and implement agreements connected with the authorised works that provide for the things described in subsection (2). The matters listed in subsection (2) are:

- the transfer of any of the authorised undertaker’s functions under this Act,
- the disposal of the railway undertaking that the authorised works make up, including land and rights, and
- the creation of charges and similar encumbrances secured on that statutory undertaking.

188. The authorised undertaker does not need powers to transfer or dispose of non-statutory assets, but the matters described in subsection (2) all relate to interference with the statutory powers of the Act and so require legislation to authorise them.
189. Subsection (3) relates to any restrictions, liabilities or obligations that bind the authorised undertaker, either under this Act or under an undertaking or commitment relating to the authorised works given (before or after the Act passes) by Network Rail or any other authorised undertaker. Any such thing will be equally binding on any subsequent authorised undertaker.

190. Subsection (4) requires that where there is an agreement under subsection (1) to transfer functions, the authorised undertaker making the transfer must serve a notice on the Scottish Ministers stating the name and address of the transferee and the date when the transfer is to take effect. The notice must be served within 21 days after such an agreement has been completed. The purpose is to ensure that the Scottish Ministers have a record of who is entitled to exercise statutory functions and, reflecting the importance of the notice requirement, subsection (5) makes it a criminal offence to fail without reasonable excuse to comply with the requirement. The maximum fine is level 3 on the standard scale.

191. Subsection (6) makes clear that an agreement under subsection (1) made in connection with the authorised works can include any agreement relating to funding, construction, maintenance and operation of the authorised works or any supplementary or ancillary matters.

Section 38 – Statutory undertakers, etc.

192. Section 38 introduces schedule 7 to the Bill. This schedule is concerned with the rights of the providers of water, gas, electricity, sewerage and telecommunications services to maintain their supplies through apparatus that will or may be affected by the Bill. These providers (frequently described in legislation as “undertakers”) have historically been legislated for as “statutory undertakers”. In particular, “statutory undertakers” is the expression used in sections 224 to 227 of the Town and Country Planning (Scotland) Act 1997 (c.8) (in the Bill called “the 1997 Act”). Sections 224 to 227 provide a statutory code that applies in certain cases where the use of land for planning purposes makes it necessary to extinguish undertakers’ rights to maintain apparatus.

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

194. 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. Paragraph 1 of schedule 7 accordingly applies the code in sections 224 to 227 to the authorised works.

195. Paragraph 1(1) of schedule 7 provides for those sections to apply. Paragraph 1(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 and paragraph 1(3) makes necessary cross-references.
196. Paragraphs 1(4) and 1(5) provide for compensation to be payable to owners and occupiers of premises who have to make alternative connection arrangements because of the removal of apparatus in accordance with the code. Paragraph 1(4) deals with connections in order to retain a supply of water, electricity, gas or electronic communications services and paragraph 1(5) deals with connections with sewers.

197. Part IV of the New Roads and Street Works Act 1991 (c.22) is a separate code governing works in roads. It covers works involving the removal or laying of undertakers’ apparatus in roads, and it applies automatically. Accordingly, paragraph 1(6) of schedule 7 provides that paragraph 1 of this schedule will not apply to cases that are governed by Part IV.

198. Paragraph 2 of schedule 7 makes comparable provision regarding apparatus belonging to statutory undertakers which is in roads that are stopped up under section 10 of the Bill.

199. Paragraph 2(1) applies where under section 10 the authorised undertaker stops up a road in which a statutory undertaker has apparatus. It provides that the statutory undertaker retains its existing powers and rights in respect of the apparatus, as if the Act had not been passed, but subject to the restrictions in the rest of paragraph 2.

200. Paragraph 2(2) obliges the statutory undertaker to move its apparatus or provide and place substitute apparatus if reasonably so requested by the authorised undertaker. By paragraph 2(3), the costs of these relocation works are assessed in accordance with criteria formulated under the New Roads and Street Works Act 1991 (c.22) and the costs are shared between the authorised undertaker and the statutory undertaker concerned using a cost sharing formula provided for in the 1991 Act.

201. Paragraph 2(4) adopts a statutory definition of “apparatus” that includes sewers, drains, tunnels and structures to house apparatus; “relocation works” as works carried out (or apparatus provided) under paragraph 2(2); and “statutory undertakers” adopts a statutory definition that includes utility, rail and tramway apparatus.

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

Section 39 – Listed buildings

203. Section 39 introduces schedule 8. The schedule makes special provisions as to the listed buildings which will be affected by the authorised works.
204. 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, but the way in which the legislation is framed means that, but for section 39 and schedule 8, the authorised undertaker would have to obtain listed building consent separately from the Bill. This section and schedule 8 accordingly disapply this separate statutory requirement so that the Bill will, effectively, also grant such consent. As set out in the table in schedule 8, the Bill would authorise the attachment of overhead line equipment to Birdsmill Viaduct.

205. Paragraph 1 of schedule 8 refers to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9) (in the schedule called “the Listed Buildings Act”). This is the Act that requires special consent (called “listed building consent”) for works and operations affecting buildings that are listed under the Act as being of special architectural or historic interest.

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

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

207. 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 8 makes clear that the only works that are not affected by the controls mentioned in paragraph 1(1) are the works described in column (4) of the table at the end of paragraph 1.

208. The purpose of schedule 8 is to give listed building consent in all cases where it is needed. The buildings mentioned in the table were listed as at 17th January 2006. Paragraph 1(3) ensures that if any further buildings are listed, the schedule will apply to them as well.

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

210. The listed buildings and the works to which the schedule will apply are described in the table at the end of paragraph 1 of the schedule.
211. Paragraph 2 of schedule 8 disapplies section 53 of the Listed Buildings Act in relation to
the works authorised by Part 1 of the Bill. Section 53(1) of the Listed Buildings Act makes it a
criminal offence to do or permit anything which causes or is likely to result in damage to a listed
building. The works described in the table would amount to damage giving rise to an offence.
Section 53(3) provides that subsection (1) does not apply (which means that the offence is not
committed) to the execution of works authorised by a planning permission or for which listed
building consent has been given. As the Bill amounts to an effective grant of planning
permission, and the effect of section 39 of and schedule 8 to the Bill is effectively to grant listed
building consent for the specified works, section 53 ought not to apply to the works.

212. Paragraph 3 of the schedule applies the definitions of “building”50 and “listed building”51
in the Listed Buildings Act.

Section 40 – Saving for town and country planning

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

214. As explained in paragraph 11 above, development authorised by the Bill is permitted
development i.e. under class 29 of Schedule 1 to the Town and Country (General Permitted
Development) (Scotland) Order 1992. Subsection (2) imposes a restriction on the planning
permission conferred by the 1992 Order.

215. 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 41 – Blighted land

216. Section 41 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
that 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.

217. The effect of section 41 is that:

• a resident owner-occupier of a residential dwelling;

50 “Building” includes any structure or erection, and any part of a building, as so defined, but does not include
plant or machinery comprised in a building (Town and Country Planning (Scotland) Act 1997 (c.8), s.277(1),
applied by Listed Buildings Act s.81).
51 “Listed building”: A building which is for the time being included in a list compiled by the Secretary of State
under section 1 of the Listed Buildings Act (Listed Buildings Act, ss.1 and 81).
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

- an owner-occupier of land with an annual (i.e. in most cases rateable) value of (currently) £28,000; 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 42 – Limits of existing railways

218. In the course of the preparation of the Bill, Network Rail carried out an audit of the existing railways which are affected by the proposed new railway. This looked at, among other things, the railways as existing as against the legislation by which they were authorised. This revealed a number of possible discrepancies between the two. Whether they are indeed discrepancies may be difficult to determine because old plans drawn when the Acts were passed cannot readily be overlaid on modern plans showing the areas concerned as now developed.

219. If there are discrepancies, it could mean that the existing railways were built outside the limits of deviation that are referable to those railways. This has an effect on the nature of the permitted development rights exercisable by Network Rail in respect of these railways. That, in turn, potentially has a bearing on the works forming part of, or connected with, the authorised works, some of which are being carried out using permitted development rights. There is also the (at least theoretical) possibility of action for nuisance.

220. The land in question has been occupied by Network Rail and its predecessors as railway operational land for, in some cases, nearly 170 years. The railways are established in their present positions with development around them. In substance, from the planning point of view they are no different from any other established railway. For much the same reason, if any railway is in the wrong position, the fact that all those affected have come to the site after the railway was built seems likely to remove any question of action for nuisance. However, the risk remains.

221. Section 42 accordingly deems the relevant railways to have been constructed within the limits of deviation specified in those Acts. The railways affected by the proposed new railway were authorised by the Acts specified in schedule 9. Some of those Acts also authorised other railways that are not connected with the proposals in the Bill. The Bill does not attempt to distinguish between the two categories. Section 42 accordingly applies to all the authorised railways.

Section 43 – Certification of plans, etc.

222. Section 43 requires that the authorised undertaker shall as soon as practicable after the Act comes into force submit copies of the book of reference, Parliamentary plans and Parliamentary sections to the Clerk of the Parliament for certification. The certificate is that they are the documents referred to in the Act. Such certified copies will be admissible in

52 Designed to catch small businesses.
proceedings as evidence of the contents of these documents. In the absence of this provision, the authorised undertaker could be required to prove the authenticity of copy documents.

Section 44 – Dispute resolution

223. Section 44 lays down the procedures applicable in cases where the Act provides for disputes (other than those to which the Lands Clauses Acts apply\(^\text{53}\)) to be settled by arbitration unless the parties agree to adopt some other dispute resolution procedure. Where arbitration is used, 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.

224. Section 108 of the Housing Grants, Construction and Regeneration Act 1996 (c.53) requires that every building contract is subject to a dispute resolution procedure which satisfies certain requirements and in default applies a statutory procedure. The dispute resolution procedure required by the 1996 Act is designed for building contracts as commonly understood and is not appropriate for the approval of statutory undertakers’ diversionary or protective works in circumstances such as envisaged by the Bill. However, the definition in the 1996 Act is so wide as to be of uncertain application. If it applied to disputes which the Bill refers to arbitration, the arbitration procedure provided in section 44 could be overridden. So as to be sure that this could not happen, subsection (3) expressly disapplies section 108. Subsection (4) makes clear that the disapplication does not catch any contract for the construction of the authorised works.

Section 45 – Service of notices, etc.

225. Section 45 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.

Part 4 – Supplementary

Section 46 – Incorporation of enactments

226. 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 46 accordingly incorporates the relevant legislation.

Section 48 – Rights of Scottish Ministers

227. The purpose of this section is to ensure that the powers of the Act cannot be exercised in relation to land which is held by the Scottish Ministers or Scottish Executive agencies without the consent of the Scottish Ministers. This provision is required because some of the land affected by the Bill has been identified as belonging to Scottish Ministers or Scottish Executive agencies, whose property enjoys Crown immunity from compulsory purchase. Similar provisions are normally included in private legislation wherever Crown land is proposed to be affected.

\(^{53}\) Disputes under these Acts are referred to the Lands Tribunal for Scotland (see above).
Section 49 – Short title

228. Section 49 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.
ESTIMATE OF EXPENSE AND FUNDING STATEMENT

INTRODUCTION

229. This document relates to the Airdrie-Bathgate Railway and Linked Improvements Bill introduced in the Scottish Parliament on 30 May 2006. It has been prepared by Network Rail Infrastructure Limited, to satisfy Rule 9A.2.3(c)(i) of the Parliament’s Standing Orders and to assist in understanding the background to the Bill. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.

230. The document is divided into three parts, in accordance with the determinations of the Presiding Officer at Annexes E and L of the Parliament’s Guidance on Private Bills. The first part sets out estimates of the cost of each element of the project. The second part sets out when these estimated costs are expected to be incurred and what margin of uncertainty that might exist. The third part sets out estimates of the sources of funding for the project.

ESTIMATED TOTAL COST OF THE PROJECT

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

<table>
<thead>
<tr>
<th>Estimate of Expense of Capital Costs</th>
<th>Amount (£) Q1 2006</th>
<th>Amount (£) Indexed to date of forecasted expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Railway Works</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Engineering (including site clearance, earthworks, public utility diversions, lineside fencing, mineworking stabilisation, drainage, roadworks and cyclepath diversion)</td>
<td>53,998,036</td>
<td>61,919,178</td>
</tr>
<tr>
<td>Structures</td>
<td>15,156,150</td>
<td>17,379,453</td>
</tr>
<tr>
<td>Stations</td>
<td>16,220,490</td>
<td>18,149,059</td>
</tr>
<tr>
<td>Overhead Line Electrification</td>
<td>28,060,841</td>
<td>31,745,204</td>
</tr>
<tr>
<td>Signalling and Telecommunications</td>
<td>15,678,808</td>
<td>18,097,950</td>
</tr>
<tr>
<td>Permanent Way</td>
<td>36,131,506</td>
<td>41,431,750</td>
</tr>
<tr>
<td>Depots</td>
<td>10,843,035</td>
<td>12,293,535</td>
</tr>
<tr>
<td><strong>RAILWAY WORKS SUB TOTAL</strong></td>
<td><strong>176,088,866</strong></td>
<td><strong>201,016,129</strong></td>
</tr>
<tr>
<td><strong>General</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implementation Costs (including fees for professional and other advisors, design, project management costs, land, compensation and mitigation costs)</td>
<td>55,233,577</td>
<td>62,242,923</td>
</tr>
<tr>
<td>Works Preliminaries</td>
<td>22,311,187</td>
<td>25,584,086</td>
</tr>
<tr>
<td><strong>GENERAL ITEMS SUB TOTAL</strong></td>
<td><strong>77,544,765</strong></td>
<td><strong>87,827,009</strong></td>
</tr>
<tr>
<td>Identified Risk Contingency</td>
<td>28,900,000</td>
<td>33,139,436</td>
</tr>
<tr>
<td>Optimism Bias</td>
<td>33,456,884</td>
<td>38,364,785</td>
</tr>
<tr>
<td>Identified opportunities</td>
<td>(-16,260,556)</td>
<td>(-18,645,871)</td>
</tr>
<tr>
<td><strong>CONTINGENCY SUB TOTAL</strong></td>
<td><strong>46,096,328</strong></td>
<td><strong>52,858,350</strong></td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>299,729,958</strong></td>
<td><strong>341,701,488</strong></td>
</tr>
</tbody>
</table>
232. All estimated capital costs were produced in 2006 (1st quarter) prices. The costs include the full extent of the Airdrie to Bathgate railway and linked improvements, as set out in the Bill. When estimated capital costs are adjusted for anticipated inflation and current predicted market forces, using the appropriate indices (as agreed with Transport Scotland) for the various elements of the works, the adjusted estimated grand total becomes £341,701,488. This figure is the Promoter’s estimate of the final cost of the project in 2010 (4th quarter) prices taking into account that the majority of expenditure will occur during the period 2007 to 2010. However indices change over time and the actual cost figure will be dependent upon prices at the time the expense is incurred. The adjusted estimated grand total is, therefore, of necessity indicative.

233. The levels of risk and contingency have been estimated through application of the Network Rail risk management system and reflect the current stage of the project’s development.

234. During the development of the Bill’s submission, a number of potential opportunities were identified which, if realised, will allow the Promoter to deliver the project at an even more efficient cost. These opportunities include reducing the extent of earthworks along the line of route, and applying cost effective procurement of the contract packages. More work is required to quantify exactly the extent of savings that can be made, however the same systems used to quantify the risk and contingency provision were used on the identified opportunities to quantify the anticipated cost savings allowed for in this estimate. The work on defining the actual value of each opportunity will take place during the project’s design development phase which is forecast to complete in 3rd quarter 2007. However procurement efficiencies will not be fully confirmed until main construction works commence in November 2008.

235. Optimism Bias associated with the Airdrie to Bathgate railway and linked improvements costs has been calculated based upon The Supplementary Green Book Guidance on Optimism Bias (HM Treasury 2003) to be 19% of works costs. This value reflects the level of risk awareness on the project.

236. It is estimated that the anticipated annual running costs (that incorporate operation of train services and infrastructure maintenance and renewal) are:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount Q1 2006 (£)</th>
<th>Amount Q4 2010 (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Running Costs</td>
<td>6,225,000</td>
<td>7,123,221</td>
</tr>
<tr>
<td>Optimism Bias</td>
<td>2,775,000</td>
<td>3,178,179</td>
</tr>
<tr>
<td>GRAND TOTAL</td>
<td>9,000,000</td>
<td>10,301,400</td>
</tr>
</tbody>
</table>

237. The anticipated annual running costs for the Airdrie to Bathgate railway are expressed in 2006 (1st quarter) prices and are constant in real terms throughout the life of the project. In order to provide an indication of the estimated costs at the time rail services are forecast to commence, the running costs have also been presented at estimated 2010 (4th Quarter) prices.

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54 The guidance was prepared from advice by Mott MacDonald (2002), Review of Large Public Procurement in the UK, available at www.hm-treasury.gov.uk/greenbook
ANTICIPATED SOURCES OF FUNDING

238. It is proposed that the estimated project funding, as detailed in the Estimate of Expense, is being sought from the following sources:

<table>
<thead>
<tr>
<th>Source of funding</th>
<th>Amount (£) Q1 2006</th>
<th>Amount (£) Indexed to date of forecast expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>the Scottish Executive</td>
<td>299,729,958</td>
<td>341,701,488</td>
</tr>
<tr>
<td>Total</td>
<td>299,729,958</td>
<td>341,701,488</td>
</tr>
</tbody>
</table>

239. The funding for the estimated capital costs is stated in 2006 (1st quarter) prices. The funding is for the full extent of the Airdrie to Bathgate railway and linked improvements, as set out in the Bill. When the estimated capital costs are adjusted for anticipated inflation and current predicted market forces using the appropriate indices (as agreed with Transport Scotland) for the various elements of the works, the resulting estimated funding requirement is £341,701,488. This figure is the Promoter’s estimate of the final cost of the project in 2010 (4th quarter) prices taking into account that the majority of expenditure will occur during the period 2007 to 2010. However indices change over time and the actual cost figure will be dependent upon prices at the time the expense is incurred. The adjusted estimated grand total is, therefore, of necessity indicative.

240. The estimated capital costs will be funded by the Scottish Executive, but this is conditional upon the Bill receiving Royal Assent and the project financial business case being approved.

<table>
<thead>
<tr>
<th>Source of funding</th>
<th>Amount per annum (£)</th>
<th>Amount per annum (£) 2010 prices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fare box</td>
<td>4,875,000</td>
<td>5,580,359</td>
</tr>
<tr>
<td>Public subsidy</td>
<td>4,125,000</td>
<td>4,721,041</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>9,000,000</strong></td>
<td><strong>10,301,400</strong></td>
</tr>
</tbody>
</table>

241. The anticipated sources of funding for the estimated running costs is presented as an annual average calculated over a 60 year period. In order to provide an indication of the estimated funding required at the time rail services are forecast to commence, the running costs have also been presented at estimated 2010 (4th Quarter) prices.

242. The funding of the estimated running costs will be a combination of revenue sources directly from the fare box (ticket sales and other ancillary sources such as advertising) and if required, funding via the ScotRail franchise agreement between First ScotRail Limited and Scottish Ministers dated 20th August 2004 (Franchise Agreement). The detailed breakdown of all sources of funding will be subject to a formal change to the Franchise Agreement at a later date; hence no commitment can be made by the Promoter at the time of Introduction of the Bill as to the detailed breakdown of such sources.
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

ESTIMATE OF TIMESCALES FOR COSTS AND FUNDING

243. The most reasonable estimate of the timescales over which the costs and funding are expected to arise is 2006-2011 with the majority of the costs being incurred during the construction stage. This is currently programmed for 2007 to 2010 and is dependent upon the Bill procedure being concluded by March 2007. The estimate of the timing of the parliamentary process has a margin of uncertainty of plus 6 months. The period of construction has a margin of uncertainty of plus 6 months and minus 3 months. As a result, the timescales over which the costs and funding would be expected to arise have the same margins of uncertainty.”

Signed by Ron McAulay, Director Scotland, Network Rail Infrastructure Limited.

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PROMOTER’S STATEMENT

NOTIFICATION TO PERSONS WITH INTEREST IN HERITABLE PROPERTY

244. 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.

245. The persons having an interest in heritable property that will be subject to compulsory purchase or use are named in the book of reference. Notice of the proposal to introduce a Bill containing compulsory purchase powers was given by means of a letter dated Wednesday 24th May 2006 to each of the persons named in the book of reference. Five standard forms of letter were used to cater for different circumstances (outright acquisition of land within the limits of deviation, outright acquisition of land within the limits of land to be acquired or used, acquisition of permanent rights, acquisition of temporary rights and temporary possession), so that every recipient received a letter in a form all of which was relevant to him or her. The texts of these five forms of letter are set out in Appendices 1 to 5 at the end of this Statement.

246. The persons having an interest in heritable property that may be otherwise affected by the Bill but which is not within the categories covered by Appendices 1 to 5 have been separately identified. They mainly consist of 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 dated Wednesday 24th May 2006 to each of these persons. The standard notification is appended to this Statement as Appendix 6.

247. A person having several interests within any of the categories covered by Appendices 1 to 5 received all the letters applicable to the land in question. Where such a person also owned land within the category covered by Appendix 6, a separate notification was not sent. That is because the Appendix 6 letter only alerts the recipient to the fact that the Bill is being promoted, and those in receipt of letters in the form of Appendices 1 to 5 would already know this.

248. Where a person had a right of common property, that person’s notice included a note in the following terms:
“Common property is property which is owned by more than one person. In a housing development the developer or local authority who builds the houses sometimes provides in the title to each house that the owner of the house will own a share of landscaped areas, play areas, open spaces, roads, paths, and other land in the development. That shared land is common property which is usually maintained by the Local Authority or an appointed factor.

According to our records you live in a house where there are landscaped areas, open spaces or other land which is common property.

Some of that common property land is affected by the proposed Airdrie-Bathgate Railway and linked improvements project.”.

249. A detailed statement of the referencing methodology employed and the legal opinion given to the promoter as to the categories of affected heritable property are appended to this Statement as Appendix 7.

250. All notices were posted by first class pre-paid Recorded Delivery post.

NOTIFICATION TO AND CONSENT FROM PROMOTER’S BOARD

251. 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.

252. The Promoter’s Group Secretary has confirmed in the following terms that the promotion of the Bill was approved in accordance with the Promoter’s internal rules:

“To whom it may concern

30 May 2006

Dear Sir/Madam

The power to run Network Rail Infrastructure Limited rests with the Executive Committee in accordance with powers given by the main Board. I confirm that, in accordance with this company’s governance arrangements, I gave the members of the Executive Committee of Network Rail Infrastructure Limited two days’ notice, by email, that on 28 April 2006 they had to make a formal decision whether to confirm the promotion of the Airdrie-Bathgate Railway and Linked Improvements Bill in the Scottish Parliament. The terms of that email are appended to this letter. I received confirmation of approval from all members of the Committee (bar one) by email by 28th. This is sufficient majority to gain approval in accordance with the company’s rules.

Yours faithfully
Hazel Walker

Group Company Secretary
Network Rail Infrastructure Limited Registered Office: 40 Melton Street London NW1 2EE. Registered in England and Wales No. 2904587 www.networkrail.co.uk”.

The email to the members of the Executive Committee was in the following terms:
“Please find attached a paper for the Exec Co in relation to the Airdrie to Bathgate Bill submission. Given that the project already has authority from Investment Board, Ron McAulay has kept the paper short and limited the authorisation to the need for the document to be signed.

As we are due to submit the Bill on Tuesday 2/5/06, Ron McAulay has asked if this paper could be approved by the Exec Co in correspondence.

Please can you confirm your approval by responding to this email by Fri this week.”

NOTIFICATION TO AND CONSENT FROM BODY AFFECTED

253. 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

254. Notice of the intention to introduce a Private Bill was published in the Airdrie & Coatbridge Advertiser on Wednesday 3rd and 10th May, the West Lothian Courier on Thursday 4th and 11th May and the Scotsman on Monday 8th and 15th May and has been displayed from Thursday 4th May 2006 in the following Scottish Parliament Partner Libraries and other libraries and offices, except at The Mitchell Library, where the notice has been displayed from Friday 5th May:
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Library/Office</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edinburgh Central</td>
<td>Edinburgh Central Library</td>
<td>George IV Bridge, Edinburgh EH1 1EG</td>
</tr>
<tr>
<td>Edinburgh West</td>
<td>Blackhall Library</td>
<td>56 Hillhouse Road, Edinburgh EH4 5EG</td>
</tr>
<tr>
<td>Edinburgh Pentlands</td>
<td>Wester Hailes Library</td>
<td>1 West Side Plaza, Edinburgh EH14 2FT</td>
</tr>
<tr>
<td>Linlithgow</td>
<td>Linlithgow Library</td>
<td>The Vennel, Linlithgow EH49 7EX</td>
</tr>
<tr>
<td>Livingston</td>
<td>Carmondean Library</td>
<td>Carmondean Centre, Livingston EH54 8PT</td>
</tr>
<tr>
<td>Airdrie &amp; Shotts</td>
<td>Airdrie Library</td>
<td>6 Wellwynd, Airdrie ML6 OAG</td>
</tr>
<tr>
<td></td>
<td>Ratho Library</td>
<td>6 School Wynde, Ratho, Newbridge EH28 8TT</td>
</tr>
<tr>
<td>Corstorphine</td>
<td>Kirk Loan</td>
<td>Kirk Loan, Edinburgh EH12 7HD</td>
</tr>
<tr>
<td>City of Edinburgh Council, Planning Department</td>
<td>1 Cockburn Street, Edinburgh EH1 1BJ</td>
<td></td>
</tr>
<tr>
<td>West Lothian</td>
<td>County Buildings</td>
<td>County Buildings, Linlithgow EH49 7EZ</td>
</tr>
<tr>
<td>North Lanarkshire Council, Planning Department</td>
<td>Fleming House, Tryst Road, Cumbernauld G67 1JW</td>
<td></td>
</tr>
<tr>
<td>The Mitchell Library</td>
<td>North Street, Glasgow, G3 7DN</td>
<td></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:

1. The Bill is required in connection with proposals for an electrified double tracked railway between Airdrie and Edinburgh. The purpose of the Bill is to give statutory authority for the construction of railway and other works in the local government areas of North Lanarkshire, West Lothian and the City of Edinburgh. These works comprise:

   - the construction of railway works to provide for the reinstatement of the railway between Drumgelloch and Bathgate;
   - the relocation of the stations at Drumgelloch and Bathgate, new stations at Caldercruix and Armadale and the provision of improved station facilities at Airdrie, Livingston North and Uphall;
   - the construction of sidings to provide a new light maintenance depot at Bathgate;
   - the provision of cyclepaths to replace the existing cyclepaths to be closed as a result of the reinstatement of the railway;
   - the construction of roads necessitated by the reinstatement; and
   - works to bridges along the existing operational railway between Airdrie and Drumgelloch, and between Bathgate and Edinburgh.

2. Some other major features of the Bill’s proposals are as follows:
• The Bill will authorise the permanent closure, necessitated by the railway works, of specified lengths of named roads, including specified parts of the following:

  Cyclepath between the buffer stops at Drumgelloch station and road (unnamed) off Calderigg Place, Drumgelloch
  Cyclepath between road (unnamed) off Calderigg Place and former Airdrie Bathgate Railway solum, Drumgelloch
  Cyclepaths on former Airdrie Bathgate Railway solum, Drumgelloch
  Track between Caldervale Forge and Springfield, Clarkston
  Cyclepath at Towers Road, Clarkston
  Cyclepath between Towers Road and Katherine Park access road/Wester Moffat Farm access track, Clarkston
  North Calder Heritage Trail, Plains
  Cyclepath across former Airdrie Bathgate Railway solum, between Clarkston and Plains
  Cyclepath between access track to St.Philips School and Station Road, Plains
  Access between Main Street and Express Dairies Depot, Plains
  Station Road, Plains
  Footpath between Station Road and Plains Country Park, Plains
  Footpath between former Airdrie Bathgate Railway solum and Plains Country Park, Plains
  Cyclepath between former Airdrie Bathgate railway solum and Plains Country Park access track, Plains
  Cyclepath on former Airdrie Bathgate Railway solum, Plains
  Ford Forge access, Plains
  Cyclepath crossing former Airdrie Bathgate Railway solum, Plains
  Ford Farm access
  Cyclepath crossing former Airdrie Bathgate Railway solum between Plains and Caldercruix
  Cyclepath between Caldercruix Sewage Works and Easterton Farm access road and former Airdrie Bathgate Railway solum, Caldercruix
  Cyclepath between Main Street, Caldercruix, and Hillend Sailing Club access track
  Cyclepath between Hillend Boat Club access track and Airdrie Road (A89) lay-by
  Cyclepath between Airdrie Road (A89) lay-by and Hillend Reservoir path
  Cyclepath between Hillend Reservoir path and existing Cyclepath route 75
  Footpaths at Hillend Reservoir
  Cyclepath between path at Hillend Reservoir and Stones Path
  Cyclepath between Stones Path and Hillend Reservoir path, Bracco Wood
  Cyclepath at Bracco Wood, south shore of Hillend Reservoir
  Cyclepath between Bracco Wood and Gatehouse access track
  Access to Hillend Fishing Lodge
  Cyclepath between Gatehouse access track and cyclepath route 75, Hillend
Cyclepath between cyclepath route 75 and Woodside Road, Forrestfield
Cyclepath at Woodside Road, Forrestfield
Cyclepath between Woodside Road, Forrestfield, and Airdrie Road (A89), Bedlormie Toll
Raizehill Farm access track
Cyclepath at Bedlormie Toll, south of Airdrie Road (A89)
Cyclepath between Bedlormie Toll and cyclepath route 75 at Redburn Quarry
Mossie Farm access
Access track, Redburn Quarry
Access track to Main Street, Blackridge
Cyclepath, Redburn Quarry
Footpath, Redburn Quarry
Cyclepath access to Redburn Road
Cyclepaths, Blackridge
Standhill Farm access, Blackridge
Cyclepath between cyclepath route 75 and Station Road, Blackridge
Cyclepath between cyclepath route 75 and former Airdrie Bathgate Railway solum, Blackridge
Cyclepath along former Airdrie Bathgate Railway solum, Blackridge
Cyclepath between track and access road to Craiginn Terrace (A89), Blackridge
Cyclepath south of Airdrie Road (A89), Westrigg
Cyclepath between track and cyclepath route 75, Westrigg
Cyclepath between cyclepath route 75 and Stonerigg Road
Cyclepath between cyclepath route 75 and track
Netherhouses and Westfield Farm access
Footpath access to Tarrareoch Farm field, Netherhouses
Track west of Station Road (B8086), Armadale
Cyclepath between track and former Airdrie Bathgate Railway solum, Armadale
Track between track and Station Road (B 8084), Armadale
Station Road (B 8084), Armadale
Cyclepath between Station Road (B 8084) and track, Armadale
Tarrareoch Farm field access, Armadale
Cyclepath route 75, Armadale
Cyclepath between cyclepath route 75 and West Mains access, Armadale
Access track from the A801, Whiteside
Track between West Mains access and Whiteside Lane Cottage access
Cyclepath route 75, Whiteside
Cyclepath between cyclepath route 75 and Teepit Hill
Cyclepath between Teepit Hill and Playground at Birniehill Crescent
Cyclepath between cyclepath route 75 and path adjacent to Birniehill Avenue and Birniehill Crescent, Bathgate
Access to cyclepath from Birniehill Avenue and Birniehill Crescent, Bathgate
Footpath between cyclepath and access track off Factory Road, Bathgate
Track between factory Road and Birniehill Avenue
Footpath south of Whiteside, Bathgate
Cyclepath between path and Whitburn Road (B 7002), Bathgate
Cyclepath route 75, Bathgate
Cyclepath between cyclepath route 75 and Whitburn Road (B 7002), Bathgate
Foundry access, Bathgate
Bathgate Golf Course access road, Bathgate
Track south-east of the A7066, Bog Hall
Footbridge carrying footpath over existing railway solum, Livingston
Footpath to Waverley Crescent and Raeburn Rigg, Livingston
Track to Deer Park Golf Course
Track north west of Hilwood House and Linden House, Edinburgh

During the construction period of some two years, the Airdrie to Bathgate section of the Cyclepath Route 75 will be closed as a through route. Sections of the route may remain open, but for that period there will not be a complete route available. No alternative through route is proposed and during the construction period cyclists will require to make use of alternative existing paths and the local road network. Most of the other lengths of road cannot be closed (in the Bill called “stopped up”) until new roads have been constructed as substitutes or alternatives. Where there is no direct alternative or substitute it is because a satisfactory alternative is or will be provided by other routes.

- The Bill includes provision to authorise the temporary stopping up and diversion of roads for the purposes of the works.
- The Bill will make provision for the continuation of or the stopping up and discontinuance of private crossings, either under or over or on the level, which will be crossed by the reinstated railway.
- The Bill will authorise the permanent acquisition and temporary use of land required for the purposes of the intended works, including land to be used for the purposes of construction, access, accommodation works and landscaping and other purposes. This includes the acquisition of rights only, either permanently or temporarily. The Bill will also allow the temporary possession of specified land.
- The Bill provides for the extinction or suspension of rights of way over land that is acquired or of which temporary possession is taken, except where some other agreement is reached with the person entitled to the right of way or where the authorised undertaker constructing the work determines that extinction or suspension are unnecessary.
- The Bill includes special provision as to entry on land to carry out surveys and tests and to commence construction.
- The Bill provides for the payment of compensation to landowners and others who are affected by the compulsory purchase and other powers. It does this by applying to the Bill the body of compensation law that applies to the compulsory purchase of land throughout Scotland.
The Bill includes provision for the disposal or transfer of the railway or any of the powers in the Bill and provides for other ancillary matters including the discharge of water and works affecting listed structures.”.

255. The following further notice is to be published in The Scotsman and the Airdrie & Coatbridge Advertiser on Wednesday 31st May and in the West Lothian Courier, the West Lothian Herald & Post and the North Lanarkshire Extra on Thursday 1st June, giving details of additional locations where the documents listed in paragraphs 1 and 2 above may be inspected:

“Network Rail Infrastructure Limited (“the Promoter”) has introduced the above Bill in the Scottish Parliament.

In addition to the Bill the following Accompanying Documents have been lodged:

- A Statement by the Presiding Officer on the Bill’s legislative competence;
- Explanatory Notes relating to the Bill;
- The Promoter’s Memorandum explaining the policy objectives of the Bill and other matters;
- The Promoter’s Statement giving details of the arrangements made by the Promoter with regard to notification, discussion or consultation on the proposals and the advertising and distribution of the Bill and Accompanying Documents;
- An Estimate of Expense and Funding Statement;
- Maps, plans and sections of the proposed works;
- A Book of Reference;
- An Environmental Statement (including a Non-Technical Summary of that Statement); and
- Agreements with the Scottish Parliamentary Corporate Body relating to the assignment of copyright and licensing.

Copies of the Bill and the accompanying documents are available for inspection at the following Scottish Parliament Partner libraries and other libraries and offices:

- Edinburgh Central Library, George IV Bridge, Edinburgh EH1 1EG
- Blackhall Library, 56 Hillhouse Road, Edinburgh EH4 5EG
- Wester Hailes Library, 1 West Side Plaza, Edinburgh EH14 2FT
- Linlithgow Library, The Vennel, Linlithgow EH49 7EX
- Carmondean Library, Carmondean Centre, Livingston EH54 8PT
- Airdrie Library, 6 Wellwynd, Airdrie ML6 OAG
- Ratho Library, 6 School Wynde, Ratho, Newbridge EH28 8TT
- Corstorphine Library, Kirk Loan, Edinburgh EH12 7HD
- City of Edinburgh Council, Planning Department, 1 Cockburn Street, Edinburgh EH1 1BJ
- West Lothian Council, Planning Department, County Buildings, Linlithgow EH49 7EZ
- North Lanarkshire Council, Planning Department, Fleming House, Tryst Road, Cumbernauld G67 1JW
- The Mitchell Library, North Street, Glasgow, G3 7DN
In addition to the above offices the Bill and the accompanying documents are also available for inspection at the following libraries and office:

- Blackridge Library, Craig Inn Centre, Blackridge EH48 3SP
- Armadale Library, West Main Street, Armadale EH48 3JB
- Bathgate Library, Hopetoun Street, Bathgate EH48 4PD
- Uphall Pumpherton Library, Pumpherton Primary School, Main Street, Pumpherton, West Lothian
- North Lanarkshire Council Planning Department, Planning & Environment, Central Area Office, Kildonan Street, Coatbridge ML5 3LN

Copies of the maps, plans and sections, Environmental Statement, Non-Technical Summary and Book of Reference referred to above are available for purchase. Please contact in the first instance The Communications Office, Airdrie Bathgate Rail Link Project, 3rd Floor, Cornerstone House, 2 Melville Street, Edinburgh EH3 7NS, tel: 0131 556 1515, email: info@airdriebathgateraillink.co.uk. The maps, plans and sections, Environmental Statement and Non-Technical Summary will also be available on the project’s website at www.airdriebathgateraillink.co.uk.

The other documents, and the Bill, have been published by the Parliament and can be purchased from any Blackwell’s bookshop. They are also available on the Scottish Parliament website at www.scottish.parliament.uk.”.

The additional locations are also referred to in paragraph 257 below.

256. An additional notice was on Wednesday 31st May displayed in the following terms at various locations along the route of the proposed railway:

“Network Rail Infrastructure Limited (“the Promoter”) has introduced the above Bill in the Scottish Parliament. The purpose of the Bill is to give statutory authority for the construction of railway and other works including the construction of railway works to provide for the reinstatement of the railway between Drumgelloch and Bathgate and the provision of cyclepaths to replace existing cyclepaths to be closed as a result of the reinstatement of the railway.

In addition to the Bill, maps, plans and sections of the proposed works have also been lodged.

Copies of the Bill, maps, plans and sections and other documents are available for inspection at the following Scottish Parliament Partner libraries and other libraries and offices:

- Edinburgh Central Library, George IV Bridge, Edinburgh EH1 1EG
- Blackhall Library, 56 Hillhouse Road, Edinburgh EH4 5EG
- Wester Hailes Library, 1 West Side Plaza, Edinburgh EH14 2FT
- Linlithgow Library, The Vennel, Linlithgow EH49 7EX
- Carmondean Library, Carmondean Centre, Livingston EH54 8PT
- Airdrie Library, 6 Wellwynd, Airdrie ML6 0AG
- Ratho Library, 6 School Wynde, Ratho, Newbridge EH28 8TT
- Corstorphine Library, Kirk Loan, Edinburgh EH12 7HD
- Blackridge Library, Craig Inn Centre, Blackridge EH48 3SP
- Armadale Library, West Main Street, Armadale EH48 3JB
- Bathgate Library, Hopetoun Street, Bathgate EH48 4PD
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

Uphall Pumpherston Library, Pumpherston Primary School, Main Street, Pumpherston, West Lothian
The Mitchell Library, North Street, Glasgow, G3 7DN
City of Edinburgh Council, Planning Department, 1 Cockburn Street, Edinburgh EH1 1BJ
West Lothian Council, Planning Department, County Buildings, Linlithgow EH49 7EZ
North Lanarkshire Council, Planning Department, Fleming House, Tryst Road, Cumbernauld G67 1JW
North Lanarkshire Council Planning Department, Planning & Environment, Central Area Office, Kildonan Street, Coatbridge ML5 3LN

Copies of the maps, plans and sections, as well as an Environmental Statement and Non-Technical Summary are available for purchase. Please contact in the first instance The Communications Office, contact details below. The maps, plans and sections, Environmental Statement and Non-Technical Summary will also be available on the project’s website at www.airdriebathgateraillink.co.uk.

Other documents, and the Bill, have been published by the Parliament and can be purchased from any Blackwell’s bookshop. They are also available on the Scottish Parliament website at www.scottish.parliament.uk.

Objections to the Bill may be lodged with the Parliament on or before the sixtieth day after the day the Bill is introduced. Any objections must be accompanied by the lodging fee of £20. All objections should be sent to the Private Bills Unit, The Scottish Parliament, Edinburgh, EH99 1SP (tel: 0131 348 6789, email: private.bills@scottish.parliament.uk). Any questions relating to the parliamentary procedures involved in the processing of this Bill should be directed to the clerks there. The clerks can also provide additional information about the procedures, including details of the admissibility criteria for objections, as well as an information leaflet for objectors.

Any questions relating to the content of the Bill should be directed to Alison Gorlov, John Kennedy & Co., 35 Great Peter Street, Westminster, London SW1P 3LR, tel: 020 7593 5005, fax: 020 7593 5199, email: amhgorlov@winckworths.co.uk

Contact details: The Communications Office, Airdrie Bathgate Rail Link Project, 3rd Floor, Cornerstone House, 2 Melville Street, Edinburgh EH3 7NS, tel: 0131 556 1515, email: info@airdriebathgateraillink.co.uk”.

OTHER ACCOMPANYING DOCUMENTS

257. The documents listed in paragraph 2 above may be inspected at the Scottish Parliament Partner Libraries and other libraries and offices listed above. In addition those documents may also be inspected at each of the following libraries and office:

Blackridge Library, Craig Inn Centre, Blackridge EH48 3SP,
Armadale Library, West Main Street, Armadale EH48 3JB,
Bathgate Library, Hopetoun Street, Bathgate EH48 4PD,
Uphall Pumpherston Library, Pumpherston Primary School, Main Street, Pumpherston, West Lothian, and
North Lanarkshire Council Planning Department, Planning & Environment, Central Area Office, Kildonan Street, Coatbridge ML5 3LN.

50
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

Copies of these documents are available for purchase from The Communications Office, Airdrie Bathgate Rail Link Project, 3rd Floor, Cornerstone House, 2 Melville Street, Edinburgh EH3 7NS, tel: 0131 556 1515, email: info@airdriebathgateraillink.co.uk.

258. On Thursday 25th May 2006, the promoter made the following statement:

“We, Network Rail Infrastructure Limited, hereby undertake to send copies of the maps, plans, sections, book of reference, and Environmental Statement accompanying the Airdrie-Bathgate 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 and to the mandatory consultees delivered for the purpose of Rule 9A.1.4B.”.

PROMOTER’S UNDERTAKING TO PAY COSTS

259. On Thursday 25th May 2006, the promoter made the following statement:

“We, Network Rail Infrastructure Limited, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the Airdrie-Bathgate 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:

Appendix 1: Form of letter sent in cases of outright acquisition of land within the limits of deviation

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

Airdrie-Bathgate Railway and Linked Improvements Bill

NOTICE OF PROPOSAL TO ACQUIRE LAND COMPULSORILY

Letter No.

To [Name]  [Address]

24 May 2006

[A] The purpose of this letter is to inform you that Network Rail Infrastructure Limited (“the promoter”) intends to introduce a Private Bill, the Airdrie-Bathgate Railway and Linked Improvements Bill, into the Scottish Parliament on or around 25 May 2006. This letter also explains the procedures involved should you wish to seek further information regarding the Bill, the parliamentary process to which it will be subject, or how to lodge an objection.

[B] The Bill is required in connection with proposals for an electrified double tracked railway between Airdrie and Edinburgh. The purpose of the Bill is to authorise-
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

- the construction of railway works to provide for the reinstatement of the railway between Drumgelloch and Bathgate;
- the relocation of the stations at Drumgelloch and Bathgate, new stations at Caldercruix and Armadale and the provision of improved station facilities at Airdrie, Livingston North and Uphall;
- the construction of sidings to provide a new light maintenance depot at Bathgate;
- the provision of cyclepaths to replace the existing cyclepaths to be closed as a result of the reinstatement of the railway;
- the construction of roads necessitated by the reinstatement; and
- works to bridges along the existing operational railway between Airdrie and Drumgelloch, and between Bathgate and Edinburgh.

[C] We understand that you have an interest in the property/properties described in the schedule to this letter and shown on the attached extract or extracts from the Parliamentary plans. If the Bill is passed by the Parliament, you may be obliged to sell the whole or part of your property. This means that your interest in the whole or part of the property/properties described in the schedule to this letter could be taken from you. You may be entitled to compensation from the promoter if you are obliged to sell any part of the property.

[D] This letter, therefore, relates to the plot numbers described in the schedule to this letter.

[E]

Should you require further information or have any questions about the area of land referred to (e.g. identifying precise location, intended use) please contact The Communications Office, Airdrie Bathgate Rail Link Project, 3rd Floor, Cornerstone House, 2 Melville Street, Edinburgh EH3 7NS, tel: 0131 556 1515, email: info@airdriebathgateraillink.co.uk. It is believed you have an interest in this land.

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; and
- Statement by the Presiding Officer of the Parliament on the legislative competence of the Bill.

The day after introduction, the Bill and the above documents will be available, free of charge, on the Parliament’s website (www.scottish.parliament.uk go to ‘Parliamentary Business’ and then ‘Bills’). Copies of maps, plans and sections of the works and the environmental statement will be available on the project’s website (www.airdriebathgateraillink.co.uk). In addition, copies of the Bill and all of its accompanying documents, including, in addition to those listed above, maps and plans and sections, the book of reference and the environmental statement that have been published by the promoter in connection with the Bill will be available for inspection at the following Parliament partner libraries and other libraries and offices –

- Edinburgh Central Library, George IV Bridge, Edinburgh EH1 1EG
- Blackhall Library, 56 Hillhouse Road, Edinburgh EH4 5EG
- Wester Hailes Library, 1 West Side Plaza, Edinburgh EH14 2FT
- Linlithgow Library, The Vennel, Linlithgow EH49 7EX
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

Carmondean Library, Carmondean Centre, Livingston EH54 8PT
Airdrie Library, 6 Wellwynd, Airdrie ML6 OAG
Ratho Library, 6 School Wynde, Ratho, Newbridge EH28 8TT
Corstorphine Library, Kirk Loan, Edinburgh EH12 7HD
City of Edinburgh Council, Planning Department, 1 Cockburn Street, Edinburgh EH1 1BJ
West Lothian Council, Planning Department, County Buildings, Linlithgow EH49 7EZ
North Lanarkshire Council, Planning Department, Fleming House, Tryst Road, Cumbernauld G67 1JW
The Mitchell Library, North Street, Glasgow G3 7DN

If possible a copy of the environmental statement will be made available via the Parliament’s website, www.scottish.parliament.uk/bills but will also be available to view on the project website www.airdriebathgateraillink.co.uk.

Copies of the Bill, and those accompanying documents published by the Parliament will be available for sale from any Blackwells bookshop. Copies of the other accompanying documents will be available to purchase. Please make contact in the first instance with The Communications Office, Airdrie Bathgate Rail Link Project, 3rd Floor, Cornerstone House, 2 Melville Street, Edinburgh EH3 7NS, tel: 0131 556 1515, email: info@airdriebathgateraillink.co.uk.

The prices of the documents are:

Environmental statement
   Vol 1 – Main Text £258.00
   Vol 2 – Annexes £55.00
Non-technical summary of the environmental statement £5.00
Maps, plans and sections
   a) A1 size £165.00
   b) A3 size £20.00
Single sheet of plans or sections (A3) 90p
Book of reference £45.00

The environmental statement and non-technical summary and the maps, plans and sections will also be available on CD. The CD will be free of charge.

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

(a) restricts the power of acquiring compulsorily a part only of a house or building to cases where the part can be taken without material detriment to the house or building; and

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

Once the Bill has been introduced into the Parliament, it will be subject to a three Stage process. A specially established Private Bill Committee will consider it in detail and it will also be considered by the full Parliament.
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

Should you wish to object to the Bill, you will have 60 days to do so. The objection period commences at the beginning of the day after the date of introduction of the Bill and ends at 5pm on the sixtieth day after the date of introduction. Objections must be lodged with the Private Bills Unit, The Scottish Parliament, Edinburgh EH99 1SP (tel: 0131 348 6789, email: private.bills@scottish.parliament.uk).

The enclosed leaflet gives information on the Private Bill process and, in particular, the objection process.

Compensation will be dealt with by a procedure applied by the Bill but separate from it. It is not therefore a matter for the Parliament. You should not lodge an objection against the only purpose of which is to protect your right to be paid compensation. That right does not need to be protected. It will follow automatically from the Bill.

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

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

- be in English;
- be printed, typed or clearly hand-written;
- set out clearly the name, address and, where available, other contact details of the objector (telephone, email and fax) (see below for additional information in relation to this);
- be signed (where applicable, by a person duly authorised and showing that person’s position or designation) and dated;
- set out clearly the nature of the objection;
- explain whether the objection is to the whole Bill and/or specified provisions (in which case these should be clearly identified);
- specify how the objector’s interests would be adversely affected by the Bill; and
- be accompanied by the lodging fee (currently £20.00).

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

At the conclusion of the objection period, the clerks in the Private Bills Unit will check all objections for admissibility. Once this has been done, a letter will be issued to each objector and a copy of each admissible objection will be made available for inspection on the Parliament’s website. Note that given the obligations imposed on the Parliament under the Data Protection Act 1998 the following information (if provided) will be removed from the objection letter copied onto the website: your address, email address; telephone number, signature, any sensitive personal data such as your medical history and statements regarding a third party which constitute sensitive personal data about that person or which may identify that person. Your email address, telephone number and signature will also be removed from the objection letter copied to the promoter. The objection will however be copied in full to the members of the Parliamentary Committee and (if relevant) any assessor appointed to consider objections.
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

For further details on the Private Bill process and, in particular, the objection process, please contact the Private Bills Unit. For further details on the subject matter of the Bill please contact Mrs A M H Gorlov, John Kennedy & Co (tel: 020 7593 5005, fax: 020 7593 5199, email: amhgorlov@winckworths.co.uk).

Signed: John Kennedy & Co

On behalf of: Network Rail Infrastructure Limited

Date: 24 May 2006

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

Appendix 2: Form of letter sent in cases of outright acquisition of land within the limits of land to be acquired or used

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

- at point [E] there is included:

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

Appendix 3: Form of letter sent in cases of acquisition of permanent rights

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

- the heading is:

NOTICE OF PROPOSAL TO ACQUIRE PERMANENT RIGHTS IN LAND COMPULSORILY

- the paragraph at point [C] reads:

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

- at point [E] there is included:

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

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

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

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

- the paragraph at point [C] reads:

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

- at point [E] there is included:

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

Appendix 5: Form of letter sent in cases of temporary possession of land

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

- the heading is:

NOTICE OF PROPOSAL TO TAKE TEMPORARY POSSESSION OF LAND

- the paragraph at point [C] reads:

We understand that you have an interest in the property/properties described in the schedule to this letter and shown on the attached extract or extracts from the Parliamentary plans. If the Bill is passed by the Parliament, you may be obliged to give up possession of that property/those properties on a temporary basis. This means that your interest in the property/properties described in the schedule to this letter could be temporarily interfered with. You may be entitled to compensation from the promoter if this occurs.

- at point [E] there is included:

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

- the paragraph at point [F] is omitted.

Appendix 6: Form of notification sent in respect of interest in affected land (not within Appendices 1, 2, 3, 4 and 5)

NOTIFICATION OF A PRIVATE BILL

Notification No.

To [Name]

[Address]

24 May 2006
**Airdrie-Bathgate Railway and Linked Improvements Bill**

The purpose of this letter is to inform you that Network Rail Infrastructure Limited ("the promoter") intends to introduce a Private Bill, the Airdrie-Bathgate Railway and Linked Improvements Bill, into the Scottish Parliament on or around 25 May 2006. This letter also explains the procedures involved should you wish to seek further information regarding the Bill, the parliamentary process to which it will be subject, or how to lodge an objection.

The Bill is required in connection with proposals for an electrified double tracked railway between Airdrie and Edinburgh. The purpose of the Bill is to authorise:

- the construction of railway works to provide for the reinstatement of the railway between Drumgelloch and Bathgate;
- the relocation of the stations at Drumgelloch and Bathgate, new stations at Caldercruix and Armadale and the provision of improved station facilities at Airdrie, Livingston North and Uphall;
- the construction of sidings to provide a new light maintenance depot at Bathgate;
- the provision of cyclepaths to replace the existing cyclepaths to be closed as a result of the reinstatement of the railway;
- the construction of roads necessitated by the reinstatement; and
- works to bridges along the existing operational railway between Airdrie and Drumgelloch, and between Bathgate and Edinburgh.

The Bill would **not** authorise the compulsory acquisition of your property or of rights in your property.

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.

The day after introduction, the Bill and the above documents will be available, free of charge, on the Parliament’s website (www.scottish.parliament.uk go to ‘Parliamentary Business’ and then ‘Bills’). Copies of maps, plans and sections of the works and the environmental statement will be available on the project’s website (www. airdriebathgateraillink.co.uk). In addition, copies of the Bill and all of its accompanying documents, including, in addition to those listed above, maps and plans and sections, the book of reference and the environmental statement that have been published by the promoter in connection with the Bill will be available for inspection at the following Parliament partner libraries and other libraries and offices –

- Edinburgh Central Library, George IV Bridge, Edinburgh EH1 1EG
- Blackhall Library, 56 Hillhouse Road, Edinburgh EH4 5EG
- Wester Hailes Library, 1 West Side Plaza, Edinburgh EH14 2FT
- Linlithgow Library, The Vennel, Linlithgow EH49 7EX
- Carmondean Library, Carmondean Centre, Livingston EH54 8PT
- Airdrie Library, 6 Wellwynd, Airdrie ML6 OAG
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

Ratho Library, 6 School Wynde, Ratho, Newbridge EH28 8TT
Corstorphine Library, Kirk Loan, Edinburgh EH12 7HD
City of Edinburgh Council, Planning Department, 1 Cockburn Street, Edinburgh EH1 1BJ
West Lothian Council, Planning Department, County Buildings, Linlithgow EH49 7EZ
North Lanarkshire Council, Planning Department, Fleming House, Tryst Road, Cumbernauld G67 1JW
The Mitchell Library, North Street, Glasgow G3 7DN

If possible a copy of the environmental statement will be made available via the Parliament’s website, www.scottish.parliament.uk/bills but will also be available to view on the project website www.airdriebathgateraillink.co.uk.

Copies of the Bill, and those accompanying documents published by the Parliament will be available for sale from any Blackwells bookshop. Copies of the other accompanying documents will be available to purchase. Please make contact in the first instance with The Communications Office, Airdrie Bathgate Rail Link Project, 3rd Floor, Cornerstone House, 2 Melville Street, Edinburgh EH3 7NS, tel: 0131 556 1515, email: info@airdriebathgateraillink.co.uk.

The prices of the documents are:

- Environmental statement
  - Vol 1 – Main Text £258.00
  - Vol 2 – Annexes £55.00
- Non-technical summary of the environmental statement £5.00
- Maps, plans and sections
  - a) A1 size £165.00
  - b) A3 size £20.00
- Single sheet of plans or sections (A3) 90p
- Book of reference £45.00

The environmental statement and non-technical summary and the maps, plans and sections will also be available on CD. The CD will be free of charge.

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

Should you wish to object to the Bill, you will have 60 days to do so. The objection period commences at the beginning of the day after the date of introduction of the Bill and ends at 5pm on the sixtieth day after the date of introduction. Objections must be lodged with the Private Bills Unit, The Scottish Parliament, Edinburgh EH99 1SP (tel: 0131 348 6789, email: private.bills@scottish.parliament.uk).

The enclosed leaflet gives information on the Private Bill process and, in particular, the objection process.

A copy of the Parliament’s Guidance on Private Bills, which explains in greater detail the Private Bill process, is available for inspection from the partner libraries and other libraries and offices listed above. The guidance is also available on the Parliament’s website (www.scottish.parliament.uk, go to ‘Parliamentary Business’ and then ‘Parliamentary Procedure’).
If you are wishing to lodge an objection, you will require to conform to the admissibility criteria set out in the Parliament’s Standing Orders (its rules of procedure). Objections are required to-

- be in English;
- be printed, typed or clearly hand-written;
- set out clearly the name, address and, where available, other contact details of the objector (telephone, email and fax) (see below for additional information in relation to this);
- be signed (where applicable, by a person duly authorised and showing that person’s position or designation) and dated;
- set out clearly the nature of the objection;
- explain whether the objection is to the whole Bill and/or specified provisions (in which case these should be clearly identified);
- specify how the objector’s interests would be adversely affected by the Bill; and
- be accompanied by the lodging fee (currently £20.00).

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

At the conclusion of the objection period, the clerks in the Private Bills Unit will check all objections for admissibility. Once this has been done, a letter will be issued to each objector and a copy of each admissible objection will be made available for inspection on the Parliament’s website. Note that given the obligations imposed on the Parliament under the Data Protection Act 1998 the following information (if provided) will be removed from the objection letter copied onto the website: your address, email address; telephone number, signature, any sensitive personal data such as your medical history and statements regarding a third party which constitute sensitive personal data about that person or which may identify that person. Your email address, telephone number and signature will also be removed from the objection letter copied to the promoter. The objection will however be copied in full to the members of the Parliamentary Committee and (if relevant) any assessor appointed to consider objections.

For further details on the Private Bill process and, in particular, the objection process, please contact the Private Bills Unit. For further details on the subject matter of the Bill please contact Mrs A M H Gorlov, John Kennedy & Co (tel: 020 7593 5005, fax: 020 7593 5199, email: amhgorlov@winckworths.co.uk).

John Kennedy & Co

35 Great Peter Street, Westminster, London SW1P 3LR
Parliamentary Agents for the promoter, Network Rail Infrastructure Limited

24 May 2006
Appendix 7: Referencing Methodology and Legal Opinion

PART 1 – Referencing Methodology

PROPOSED AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL

NOTE

by

BRODIES LLP

on

Land Referencing Methodology and Service of Notification

1 Introduction

1.1 The purpose of this document is to set out the method that has been used by Brodies LLP, land referencers, in identifying persons entitled to receive notice in respect of heritable property affected by the Bill.

1.2 The referencers’ role is limited to identifying the persons with interests in the property identified as affected heritable property. The decision as to what is to be treated as affected heritable property, and (to the extent that there is any doubt) the interpretation of the Presiding Officer’s Determination on this subject, has been taken by Network Rail which has instructed the referencers accordingly. In turn, that decision has been informed by advice from John Kennedy & Co, a copy of which is in Annex 1 to this document. This methodology does not, accordingly, repeat details of the different categories of affected heritable property as determined for the purpose of the Bill.

1.3 Throughout the preparation of the reference there has been close consultation amongst Network Rail (the Promoter), John Kennedy & Co (Parliamentary Agents), Jacobs Babtie (project engineers), Brodies LLP (Referencing Consultants), Ironside Farrar (environmental consultants) and Harrison Cowley (public relations consultants).

2 Scope of Reference and Types of Notification

2.1 The purpose of the reference was to:-

2.1.1 identify all those with interests as owner, lessee or occupier in each of the categories of affected heritable property detailed in Annex 1; and

2.1.2 record the type or types of notification to which each identified person was entitled.

2.2 The type of notification to be given in each case depends upon the Bill’s proposals in relation to that property. The following categories of heritable property have been identified as being affected or potentially affected by the Bill.

2.2.1 Heritable property situated within the limits of deviation (LOD) or limits of land to be acquired or used (LLAU) will be subject to some level of compulsory acquisition or use i.e. one or more of the following:
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

- permanent outright acquisition
- acquisition of rights over the property (permanent or temporary)
- temporary possession i.e. exclusive occupation but on a temporary basis.

Each notification relating to this land specified the land to which it related and the applicable level of acquisition or use.

2.2.2 **Heritable property abutting LOD or LLAU is not directly affected** by the authorised works but has been identified as potentially affected more than property in general outside the Bill limits. The notification relating to this land accordingly simply alerted recipients to the intention to promote the Bill. Like the other notifications, it also gave details of where the Bill and accompanying documents could be inspected, copied or obtained and outline information regarding objections.

2.2.3 Heritable property abutting property within section 2.2.2 and on which there is a structure that is physically joined to or is part of a structure on the abutting property is not directly affected by the authorised works but, because of the structural link to that property, may also be potentially more affected than property in general. Such structurally joined property has accordingly been treated as described in section 2.2.2.

2.2.4 **Affected heritable property specifically identified in the Environmental Statement as being a receptor likely to experience substantial, severe, high or significant impacts** is in the same position as property within section 2.2.2.

2.3 The template texts of all notices are in the Promoter’s Statement.

3 **Land referencing methodology**

The methodology employed was as follows:

3.1 **Initial Walkover**

The following procedures were followed:

- Plans of the railway line and of the adjacent land on a scale of 1:1250 were consulted and annotated along the route, as necessary, for future site visits. 1:500 plans or greater were used if particular issues needed to be amplified, such as in areas of complex land boundaries.

- Digital photographs of the route showing existing boundaries, accesses and any other features which would assist in clarifying the identification of owners and occupiers were taken and consulted.

3.2 **Door-to-door enquiries and completion of questionnaires**

3.2.1 Door-to-door enquiries of every property along the route were made (unless locked gates made this impossible) at every house and business along the route between Airdrie and Bathgate. Between Bathgate and Edinburgh, door to door enquiries were made at all houses adjacent to those parts of the route where works are to be carried out. In Livingston and other places where searching of the Register of Sasines and/or
Land Register disclosed the fact that parties at some distance from the route had a right of common property in land to be acquired or used, all such properties were visited.

3.2.2 Land information was collected by the referencing team using questionnaires. Owners/occupiers/land agents and third parties were questioned.

3.2.3 Where there was no response to door-to-door enquiries, questionnaires were left for completion with prepaid envelopes for their return. Where parties refused to answer the questioner, a questionnaire was posted to the address and a record kept of the posting thereof.

3.2.4 For the stretch of the route between Airdrie and Bathgate 2541 questionnaires were issued and either completed “on the doorstep” or left for completion. (Some people received more than one questionnaire, for example, if they had an interest in more than one plot.) Of that number 2339 were either completed “on the doorstep” or returned completed by post.

3.2.5 For the stretch of the route between Bathgate and Edinburgh 1343 questionnaires were issued and either completed “on the doorstep” or left for completion. (Again, some people received more than one questionnaire, for example, if they had an interest in more than one plot). Of that number 509 were either completed “on the doorstep” or returned completed by post.

3.2.6 “Follow up” questionnaires were not sent to:

- properties between Bathgate and Edinburgh who were to receive confirmation schedules (see paragraph 3.8 below). These parties did not receive follow up questionnaires because of the short period of time between the initial visit and the issue of confirmation schedules.

- properties which were only affected by the scheme because the proprietors of those properties own a right of common property in affected land. These parties did not receive follow up questionnaires because of the large number of such parties; the referencers’ confidence that the initial questionnaire had been delivered and that the occupiers of those properties had been given an opportunity to respond and the fact that these parties’ interest in the proposed scheme was less “immediate” than that of frontagers.

3.2.7 Where parties phoned the dedicated helpline set up by Harrison Cowley and asked for a questioner to visit or send a questionnaire, the team visited that party or posted questionnaires as requested.

3.2.8 Repeat visits were made to properties where there was no response to a visit or to a questionnaire left or posted.

3.3 Written Enquiries

Written Enquiries were made of parties such as local authorities and housing associations with a view to identifying their property interests.

3.4 Title Searches
3.4.1 Millar & Bryce Limited provided a plan to Registers of Scotland in respect of the proposed route and Registers of Scotland provided details of properties registered in the Land Register along that route.

3.4.2 Millar & Bryce Limited, professional search consultants retained by Brodies, carried out title searches in the Public Registers.

3.4.3 Searches in the Land Register and Register of Sasines were carried out as follows:

3.4.3.1 Searches for properties between Airdrie Station and Bathgate Station were commenced in April 2005.

3.4.3.2 Searches for properties between Bathgate Station and Edinburgh were commenced in October 2005

These Searches were continued until a picture of land ownership along the route had been built up.

3.4.4 Searches have been carried out in respect of the land to be acquired and adjacent land in the following registers:

- The Register of Sasines
- The Land Register
- Books of Council and Session (where appropriate)
- Local authority roads status
- Coal Holdings Register
- Electronic copies of the relative valuation roll’s and published electoral registers as provided by North Lanarkshire Council and West Lothian Council

3.4.5 Millar & Bryce Limited examined Historical Ordnance survey Data (when required)

3.4.6 The searches included searching in the Land Register “Application Record” and in the Register of Sasines “Computerised Presentment Book” in order to try to ascertain the identity of parties where the owner as disclosed in the Register of Sasines or Land Register may have moved away. Where appropriate the Companies Register and Personal Register have also been examined.

3.4.7 When the deeds identified contained plans or where the narrative of the deed provided a sufficient description, Millar & Bryce Limited plotted those titles on to their Geographical Information System to build up a picture of land ownership.

3.4.8 Searches were made in the Millar & Bryce Limited exclusive in-house Companies Office database and through Companies House by use of the on-line facility to check the names and Registered Offices of Companies or where the companies appeared to have changed their names.
3.4.9 A statement by Millar & Bryce Limited of their detailed search methodology is appended in Annex 2.

3.5 Examination of Titles

Brodies LLP examined the titles identified by Millar & Bryce Limited to check that the title related to the land identified. Where appropriate Brodies LLP requested additional titles referred to in the titles provided by Millar & Bryce Limited or copies of Deeds of Servitudes, Deeds of Conditions or other deeds with a view to ensuring that parties with “lesser” interests in land such as those with registered rights of access or servitudes for utilities as well as common interests were identified.

3.6 Additional checks

3.6.1 Network Rail’s title deeds for the former railway line were examined and Network Rail’s title plan was compared with the Parliamentary plans.

3.6.2 Searches in the Network Rail’s Hazards Directory were made to assist in identifying utility wayleaves and Network Rail’s MARLIN system (land ownership database) was used to tie up ownership of former railway lines.

3.6.3 Network Rail’s MARLIN system was used to clarify ownership of existing railway land. Some inconsistencies between the MARLIN plans and the title information obtained from the Land Register and the Register of Sasines were noted:

- Some of these could be explained by the fact that boundary features had been moved or that boundaries were difficult to identify from old title descriptions and plans.
- In other cases searches in the Register of Sasines and Land Register disclosed that parties had recorded or registered an a non domino titles to land which had formerly belonged to Network Rail or one of its predecessors. (An a non domino title is one where the title to the land has not been granted by the owner of the land but by a third party who may have no real interest in the land concerned or right to grant such a title).

3.6.4 Requests were made to utility companies to provide information about the infrastructure which they have in the area.

3.6.5 A full assessment of the contents of the Initial Technical Feasibility Study Appendix L – Land Boundaries was carried out. This includes a Land Issues Report along with a comprehensive set of land plans identifying land belonging to Network Rail and Railway Paths Ltd (in respect of the cycleway) boundaries, as well as issues of registration, encroachment, and tenancy or licence issues. Other plans indicate former at-grade crossings, Council ownership boundaries, proposed alternative road accesses, and land-take requirements, utility wayleaves and servitudes etc.

3.7 Update of the Registers

3.7.1 Approximately 6 weeks prior to the Bill being formally submitted to the Private Bills Unit, 21 days in advance of the intended introduction date (Bill Submission), Millar & Bryce Limited carried out an update of the Searches relating to the part of the route between Airdrie Station and Bathgate Station by searching all the relevant Registers to identify any changes since the initial Searches were carried out.
3.7.2 The titles and information obtained were passed to Brodies LLP who followed the procedure detailed at 3.5 above and updated the database referred to in paragraph 4 below as appropriate.

3.8 Confirmation Schedules

3.8.1 Confirmation Schedules were sent to all owners, lessees, occupiers and affected parties who had been identified on 6 April 2006.

3.8.2 The Confirmation Schedules included a location plan, plans showing the land plots and a table showing the interest of the party according to the land referencers’ database.

3.8.3 The Schedules contained a “return sheet” for each party to complete confirming that the name and address of that party was correct and that the ownership/occupation/leasehold interests were as shown in the table. There was also a space for providing corrections or additional information.

3.9 Confirmation Schedule Response

3.9.1 A dedicated helpline set up by Harrison Cowley logged all responses to Confirmation Schedules (other than those who contacted the Promoter, Jacobs Babtie or John Kennedy & Co., direct). Any telephone calls received by the Promoter, Jacobs Babtie, or Brodies LLP direct were intimated to Harrison Cowley and were added by Brodies LLP to the list referred to in 3.9.2 below.

3.9.2 Harrison Cowley sent a list of each query or comment with contact details or corrected information to Brodies LLP who dealt with queries as appropriate either by sending an amended Schedule, correcting ownership or other details in the database, contacting Solicitors or Agents as requested to confirm the contents of title or obtaining additional titles where appropriate from the Registers to compare with information already provided.

3.9.3 Where appropriate, parties with queries were referred to Jacobs Babtie or to Network Rail to deal with practical or engineering questions or requests for modification changes or information with regard to the proposed works.

3.10 Further Visits

Further visits to sites on the disused and operational parts of the route were carried out just before notification began so that any changes or developments on the land (such as new development sites) were noted. This last check ensured that information first ascertained some time previously was updated so that the Book of Reference complies with the requirements in the determination published as Annex M to the Parliament’s ‘Guidance on Private Bills’ that the information contained in the Book of Reference is extracted from the most recent information available.

3.11 Final Update Searches

3.11.1 Millar & Bryce Limited carried out a final check in all the relevant Registers against building companies identified from previous searches to ensure that any houses sold...
since the last update were identified so far as possible and that recent purchasers were included in the notification process.

3.11.2 Updated searches were carried out in all the relevant registers where any significant change “on the ground” was noted following the final visits.

3.11.3 These searches involved searching the Registers to 4th May 2006.

4 Completion of database and comparison with Parliamentary plans

4.1 The information with regard to owners and registered lessees obtained from the searchers together with the information ascertained from door to door enquiries, questionnaires, other parties and confirmation schedules was added to a database of names of owners, lessees and occupiers indexed by reference to numbered areas of land.

4.2 The numbered areas of land were compared with the titles and with the plans showing the intended works prepared by Jacobs Babtie so that individual plots could be identified and where appropriate, plot boundaries were amended to reflect different ownerships of proposed uses.

4.3 The information contained in the database recorded the type of interest of each identified party as owner, occupier or lessee.

4.4 The database also recorded any restricted interest such as a common interest, right of access or drainage right which was identified.

4.5 The database recorded the plot purpose so that the proposed use of each plot and each party with an interest or affected by that plot could be identified.

5 Final Review

5.1 At the final review of the Parliamentary plans, attended by representatives of the Promoter, Parliamentary Agents, Project Engineers, Referencing Consultants, Environmental Consultants and Public Relations Consultants, a plot by plot cross check was made of the numbered plots as shown on the Parliamentary plans, shoulder notes to the plans, Bill schedules and Book of Reference to establish that:

- none of the plots had been missed
- the categories of land take/use were correctly identified.

6 Policy and Approach

6.1.1 During the land referencing period and continuing into the objection period, a reactive and flexible approach to notification has been and will be taken involving re-servicing notices and serving fresh notices in response to information received.

6.1.2 Throughout the process the Promoters, Project Engineers, Public Relations Consultants and Environmental Consultants shared with the referencers any information concerning land ownership or occupation of which they became aware during their consultation work.
6.1.3 In dealing with responses to the Confirmation Schedules and when queries have been received from members of the public at any time during the referencing procedure, all reasonable steps have been taken to ensure that queries or requests for information were dealt with as quickly and effectively as possible.

6.1.4 The referencing team are aware that the Waverley Railway (Scotland) Bill Committee recommended that the referencers’ methodology for searching public registers be reviewed by Registers of Scotland. The referencing team for this project included Millar & Bryce Limited who are professional searchers of public registers.

7 Compilation of the Book of Reference and Affected Persons Schedule

7.1 The Standing Orders require the compilation of a Book of Reference relating to land within the Bill limits (LOD, LLAU). The appropriate information was extracted from the database and produced in Book of Reference format as required by the Presiding Officer’s Determination (Annex E to the Guidance on Private Bills).

7.2 A separate Affected Person’s Schedule was compiled from the database of the owners, lessees and occupiers of affected heritable property outside Bill limits.

8 Service of Notification

8.1 Using the formats set out in the Promoter’s Statement, individual notifications will be generated using the database. As part of that exercise, relevant extracts from the Parliamentary plans will be annexed to the notifications relating to land within LOD and LLAU.

8.2 The notification envelopes will be posted by prepaid first class recorded delivery service. Proof of posting will be obtained by way of postal lists receipted by Royal Mail.

8.3 Use will be made of Royal Mail’s “track and trace” service whereby the status of any letter can be traced. Receipts are taken at the point of delivery and copies are available on payment. Royal Mail will be paid to provide copies of all receipts so obtained.

8.4 Any letters returned as undelivered will be checked and if correct names and/or addresses can be ascertained, the notices will be re-served by Recorded Delivery.

8.5 Where letters are returned by the Royal Mail marked as “not called for”, or where letters appear to have gone astray or where Royal Mail cannot provide a receipt, the letters will be re-served by hand delivery by teams of two representatives from the Land Referencers and Project Engineers and the delivery will be witnessed. A record will be kept of each such delivery with signatures of the two representatives of the Land Referencers and Project Engineers being retained as evidence of hand delivery. Where personal delivery cannot be effected (for example where there is no letter box), the letter will be retained by the Land Referencers and a record kept of the reason for its retention.

ANNEX 1

Annex 1 is the Legal Opinion in Part 2 of this Appendix
ANNEX 2

Airdrie – to – Bathgate

Millar & Bryce Limited Search Methodology

The Millar & Bryce methods for a search of this complexity are detailed below.

- On receipt of the Airdrie to Bathgate railway route we sent to Registers of Scotland a file identifying the route and the buffer zone adjacent thereto. The ROS were requested to identify all registered titles in the Land Register affecting same.
- We examined their findings and plotted these titles on to our Geographical Information System (GIS).
- After consideration of this information we identified that the residue of the route remained in the Register of Sasines or in the Land Register Application record. We therefore commenced our searches through Registers Direct by examining the Registers of Scotland official Places indicies in the Sasine Register and identified the relevant search sheet numbers that were applicable to each plot requested.
- We then examined these numerous Search sheets and noted current proprietors/tenants (where a lease has been recorded) for each plot requested.
- We also identified any break off writs relevant to each plot identified.
- We viewed the fully recorded writ held in the record volume in the Register House (National Archive Scotland) in an effort to establish a sufficient property description. (Whether by written reference or by viewing of a plan).
- We obtained copies of the writs with the best possible description.
- An examination of the “Application Record” in the Land Register was carried out to (a) identify titles to subjects which had been presented for registration and (b) update the searches over fully registered titles.
- An examination of the “Computerised Presentment Book” was carried out to (a) identify titles to subjects which had been presented for recording in the Sasine Register and (b) update the searches over identified Sasine recorded titles.
- Where no individual title could be identified in either the Sasine or Land registers we supplied reference to the Estate from which adjoining plots derived. As a result of these searches, again, record volumes were viewed in the Register House.
- We plotted our findings from the Sasine and Land Registers on to our GIS.
- To support and enhance the results of the aforementioned searches we carried out examinations, where appropriate, of the Books of Council and Session and Coal Holdings Registers. We also obtained Local Authority roads status information and reviewed historical Ordnance Survey data.
- Searches were made in the Millar & Bryce Limited exclusive in-house Companies Office database and through Companies House by use of the on-line facility to check the names and Registered Offices of Companies or where the Companies appeared to have changed their names.
- Again our findings were recorded on our GIS

Millar & Bryce Limited – 19th May 2006
PART 2 – Legal Opinion

CONFIDENTIAL ADVICE TO NETWORK RAIL INFRASTRUCTURE LIMITED

Proposed

AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL

NOTE

-by-

John Kennedy & Co

-on-

criteria for identifying heritable property affected by the Bill

(Rule 9A.2.3(d)(i))

Executive Summary

1. The Standing Orders of the Scottish Parliament require notification to be given in respect of heritable property affected by a private Bill, but do not give any guidance as to what is meant by “affected”. As a result, promoters have to decide what is appropriate in relation to their own Bills.

2. There can be no definitive ‘right’ or ‘wrong’ method for deciding which heritable property is affected and what is the significance in this context of the limits of deviation (“LOD”) and the limits of land to be acquired or used (“LLAU”). Whatever the method is, the essential thing is that should satisfy a judicial review. The approach must, therefore, be consistent, reasonable and not arbitrary. Hard and fast rules are needed with no element of subjectivity. The intention is to identify property that might be affected more than the general run of property in the vicinity.

3. On this basis, the advice is to treat the following as affected heritable property:

- Heritable property within LOD/LLAU.
- Heritable property abutting LOD/LLAU.
- Heritable property that adjoins by a structure property that abuts LOD/LLAU.
- Heritable property specifically identified in the Environmental Statement (“ES”) as being a receptor likely to experience substantial, severe, high or significant impacts.
- Heritable property benefiting from existing private legislation that is to be repealed or amended.
6. The list of registers in the Presiding Officer’s Determination should be treated as an information source, not as a definitive list.

1. INTRODUCTION

1.1 This Note advises on a reasonable method for identifying heritable property affected by the Bill, as required for compliance with Rule 9A.2.3(d)(i) of the Standing Orders of the Scottish Parliament. It is the method that has been employed, following advice in the terms of this Note.

1.2 The Standing Orders of the Scottish Parliament and the Presiding Officer’s Determinations include requirements concerning the notification to be given to persons having an interest in heritable property affected by a Private Bill. These notice requirements derive, initially, from the requirements concerning the Promoter’s Statement, which is one of the accompanying documents that must be lodged with the Bill when it is introduced. The relevant provision is Rule 9A.2.3(d)(i) which provides that one of the matters to be included in a Promoter’s Statement is:

“(i) in the case of a Private Bill which contains provision which will affect heritable property, details of the notification of the proposed Private Bill given by the promoter to such persons or classes of person having an interest in heritable property affected by the Bill as the Presiding Officer may determine;”

The starting point, therefore, is to identify what heritable property ought to be treated as being affected by the Bill. Only then does one move on to identifying the persons to be notified as being interested in that property.

1.3 The Presiding Officer’s determination-making function in relation to Rule 9A.2.3(d)(i) relates purely to this latter question, how to identify those interested in the relevant heritable property. This Note touches on that subject and, accordingly, the relevant determination (in Annex G to the Scottish Parliament’s ‘Guidance on Private Bills’ (‘the Guidance’) is set out in the Schedule to this Note. The main issue, however, is the identification of affected heritable property, for which there is no relevant definition in the Standing Orders.

2. WHICH CATEGORIES OF PROPERTIES ARE “AFFECTED”? 

2.1 Unlike notice requirements under other similar procedures, in particular the General Orders that governed the procedure for Provisional Orders under Private Legislation Procedure (Scotland) Act 1936, the Standing Orders neither define nor give any guidance as to the meaning of “affected” for the purposes of Rule 9A.2.3(d)(i). The onus is placed on the promoter to identify which categories of heritable property are to be treated as “affected” by the Bill.

2.2 Because of this lack of definition, we have approached the issue on the basis that there are no absolute ‘right’ or ‘wrong’ methods of deciding which heritable property is affected. The proper approach must be for a promoter to operate to a methodology that represents a consistent and reasonable approach and is not arbitrary. These are the tests that would be necessary to satisfy a court on judicial review, which is the worst case scenario so far as the promotion is concerned. More immediately, a promoter must be ready to demonstrate to the Committee that the approach adopted complies with the Parliament’s requirements.
2.3 In order to avoid uncertainty and ambiguity so far as possible, one needs to remove any element of discretion or subjective judgement. There needs to be a set of fixed parameters to which promoters can work. At the same time, the Parliament is known to be against the requirements of the Rule being applied to a list of specific types of heritable property in all cases (as with the General Orders). It is necessary in each case to see what the basis ought to be. But in applying what are considered to be the appropriate parameters, the categories of heritable property have to be identifiable on some objective basis. Anything else will not ensure consistent treatment throughout the route.

2.4 The range of heritable property which might potentially be “affected” by a Bill’s provisions is incapable of definition. All sorts of property might be affected in one way or another to a greater or lesser degree. However, it seems reasonable to assume that the public advertisement of the Bill (also required by Rule 9A) is intended for the public at large. It would follow that the intention of Rule 9A.2.3(d)(i) must be to ensure that individual notices are given to owners of heritable property that is affected in a way that is special to that property i.e. affected in a way that other property in general is not. On that reasoning, it is necessary to identify heritable property that would, using the terminology of the old General Orders, be “specially affected” by the provisions of the Bill.

2.5 Proceeding in this way, what follows is a set of rules to which a promoter can work without the process being subjected to the vagaries of subjective judgement.

3. PROPERTIES IN RESPECT OF WHICH NOTICE WAS REQUIRED UNDER THE GENERAL ORDERS

3.1 Before responsibility for transport infrastructure schemes was devolved, such projects were usually authorised under the Private Legislation Procedure (Scotland) Act 1936. The General Orders made under the 1936 Act laid down notice requirements. These were directed to property whose owners could claim to be “specially affected” by the proposals in the Bill. Accordingly, and if only for the sake of completeness, one should consider whether any account ought to be taken of the narrow categories of property identified in the General Orders.

3.2 These categories were prescriptive. The types of property whose owners were entitled to notice were precisely described. Many of the categories of the General Orders are archaic, but the common thread running through them all is that these are properties that will or may be affected differently from heritable property in general. The reason is either environmental (for example mill owners whose water supply might be affected) or legal (such as the repeal of existing statutory protective provisions for the benefit of the land concerned).

3.3 It would not be sensible for the precise categories found in General Orders to be carried forward to the Scottish Parliament’s Private Bill procedures. The method for identifying affected heritable property must be such that it catches heritable property that may in reality be specially affected in ways that the general run of heritable property is not. Taking the General Orders requirement for notice to mill owners as an example, if works proposed in the Bill might affect a water supply to a mill, that should be identified in the Environmental Statement lodged with the Bill. As advised later in this Note, being identified in this way would result in the property being treated as “affected”.

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4. AFFECTED HERITABLE PROPERTY

Heritable property within LOD/LLAU

4.1 In past promotions a distinction has been drawn between heritable property within LOD or LLAU on the one hand and other affected heritable property on the other. It will be apparent from the quotation above that Rule 9A.2.3(d)(i) does not in fact draw this distinction. Clearly, however, heritable property within LOD or LLAU must by virtue of being subject to compulsory powers be specially affected. It will therefore be “affected” for the purposes of the Rule.

Heritable property abutting LOD/LLAU

4.2 Heritable property immediately adjoining land on which works are to be authorised is not necessarily specially affected by the proposed works. However, it is clear that such property is more likely to be affected than property further away. In earlier Bills before the Parliament the view has accordingly been taken that “affected” heritable property includes any property the boundary of which immediately adjoins LOD/LLAU as shown on the Parliamentary plans. This means that, for example, those whose back gardens abut on the railway will receive notice as persons whose heritable property is affected.

Heritable property that adjoins by a structure property that abuts LOD/LLAU

4.3 There may be cases of property that adjoins abutting property and which is physically joined to, or part of, a structure on the abutting property. The clearest example is that of terraced houses of which only the house at the end of the terrace actually abuts LOD or LLAU. In this situation, if the abutting property is specially affected by the authorised works, there is a greater likelihood that the same will be true of a structure that is physically part of or joined to a structure on the abutting property. Such adjoining properties should therefore be treated as “affected” for the purpose of Rule 9A.2.3(d)(i).

Heritable property specifically identified in the Environmental Statement as being a receptor likely to experience substantial, severe, high or significant impacts

4.4 The Environmental Statement will identify properties that are likely to suffer particular impacts that are not felt elsewhere. It will name the properties, the relevant impact (e.g. noise, visual) and the degree to which it is likely to be felt. This assessment will be arrived at by applying recognised tests. The results reported in the ES will not therefore represent a subjective judgement. It follows that heritable property that is identified in this way will or may be specially affected, has been identified by reference to established criteria and so should be treated as “affected” for the purpose of Rule 9A23.3.(d)(i).

Other

4.5 The categories of heritable property mentioned above are those that will (or in the case of safeguarding and repeals may) arise in every case. The categories cannot however be regarded as completely closed. In any given case there may be specific proposals resulting in some heritable property being affected in ways different from the rest, and that is the essential test to apply. It is to be expected that, like the elephant, such cases will be recognised when seen. [A theoretical (albeit unlikely) example is the heritable property whose access off a public road is to be replaced by a private road which is to be vested in the owner of that property. The landowner will therefore be obliged to take on responsibility for his access road, when he had none previously, amounting to a special effect on the land to be served by the private road.]
5. PERSONS ENTITLED TO BE NOTIFIED

5.1 The Presiding Officer’s Determination set out in the Schedule addresses who are the persons or classes of persons who should be given notice in respect of affected heritable property. These are persons who (see Rule 9A.2.3(d)(i)) have an interest in the property.

5.2 There has been a certain amount of debate as to whether the requirement is to include anyone who appears in one of the documents listed in paragraphs (a), (b) and (c) of the determination, even if the person concerned is no longer interested in the property e.g. because the property has been sold and the register is out of date. The revised Guidance makes clear that these are mentioned as sources of information which a promoter will wish to use in order to identify who has interests in the relevant property. An entry in a register or valuation roll that is known to be wrong need not be reflected in the Book of Reference. By the same token, it is not sufficient to rely on the written material alone, none of which is likely to throw reliable light on the identity of occupiers. Nothing in the determination detracts from the need to carry out door to door referencing enquiries, as has been done in this case.

5.3 Due largely to the layout of the text, there has also been some uncertainty as to whether the determination catches categories of interest wider than that of owners, lessees and occupiers. In fact, as persons with e.g. servitudes or similar rights over land will be occupiers in respect of those rights, the question really amounts to whether notification should be given to heritable creditors (mortgagees) other than any who are in possession (and so will be occupiers). Heritable creditors not in possession are not owners, lessees or occupiers. Paragraph (d) of the determination and the closing words make clear that those are the interests with which the determination is concerned. Not only is this as one would expect and consistent with what has been accepted in the case of all the other works Bills so far promoted in the Scottish Parliament, but it is also consistent with all other comparable procedures in the United Kingdom and with the nature of the interests justifying notice at the promotion stage.

5.4 In relation to other Bills before the Parliament, question has also arisen as to the level of enquiry that is required, and in particular whether searches of the Registers of Scotland are required to go beyond the main title details to source documents in the registers that may reveal additional information regarding, for example, persons with interests in minerals. The Bill may not affect such interests and they are not generally searched for as a referencing exercise. That may however, be required at the stage, after Royal Assent, when land for the project is being acquired. For that reason, in this case title searches were undertaken at the referencing stage, as described in the paper by Brodies LLP entitled ‘Land Referencing Methodology and Service of Notification’. The question of whether any lesser searches might be sufficient does not arise.

JOHN KENNEDY & CO
Parliamentary Agents

35 Great Peter Street
London SW1P 3LR

26th May 2006
SCHEDULE

EXTRACT FROM THE SCOTTISH PARLIAMENT’S ‘GUIDANCE ON PRIVATE BILLS’

ANNEX G

(1) DETERMINATION BY THE PRESIDING OFFICER ON THE NOTIFICATION ARRANGEMENTS FOR PRIVATE BILLS AFFECTING PERSONS OR CLASSES WITH AN INTEREST IN HERITABLE PROPERTY

The Presiding Officer has determined under Rule 9A.2.3(d)(i) of Standing Orders the persons or classes of persons with an interest in heritable property who require to be notified by the promoter of a Private Bill as follows:

Persons whose interests are:

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

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

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

“In my view, the provisions of the Airdrie-Bathgate Railway and Linked Improvements Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Airdrie-Bathgate Railway and Linked Improvements Bill (SP Bill 64) as introduced in the Scottish Parliament on 30 May 2006

AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL

EXPLANATORY NOTES

(ALSO ACCOMPANYING DOCUMENTS)

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