These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

WAVERLEY RAILWAY (SCOTLAND) 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 Waverley Railway (Scotland) Bill introduced in the Scottish Parliament on 11 September 2003:
   - Explanatory Notes;
   - an Estimate of Expense and Funding Statement;
   - a Promoter’s Statement; and
   - the Presiding Officer’s Statement on legislative competence.

A Promoter’s Memorandum is printed separately as SP Bill 8–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).
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

EXPLANATORY NOTES

INTRODUCTION

3. These Explanatory Notes have been prepared by John Kennedy & Co., Parliamentary Agents, on behalf of the promoter Scottish Borders Council (“the Council”) in order to assist the reader of the Waverley Railway (Scotland) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

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

THE BILL

5. The Bill will grant powers to the Council and its successors (for an explanation of successors to the Council see the notes on section 30 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 from a point in Midlothian immediately south of Newcraighall (which is in the City of Edinburgh) to Tweedbank in Scottish Borders. All the other powers in the Bill, including the other works described below, are required in connection with the construction of the new railway. In particular, the Bill grants compulsory purchase powers. This will ensure that the authorised undertaker will be able to acquire the land or rights in land that are required for the works to be constructed and operated. Paragraphs 6 to 9 below outline the purpose of the Bill in greater detail.

6. The principal purpose of the Bill is to give statutory authority to the Council and its successors (in the Bill called “the authorised undertaker”) for the construction of a railway from a point immediately south of Newcraighall to Tweedbank, largely following the formation of the former Waverley railway (in the Bill called “the railway works”).

7. In connection with these principal works the Bill also provides for the stopping up\(^1\) of lengths of some roads and other rights of way where they cross or are on the route. Diversions and substituted routes will be provided, including (as part of the railway works) 13 new footbridges. 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 railway works. In the Bill the works that will enable these miscellaneous things to be done are called “the ancillary works”.

8. The new railway will be able to operate as an integral part of the national rail network, to which it will connect at the northern end. This will require adjustments, in particular to signalling equipment, but all these can be done within the existing network and it is envisaged that the necessary works will be carried out by Network Rail using existing statutory powers.

\(^1\) “Stopping up” a road is the technical expression for closing the road to traffic and terminating public rights of way over it.
9. Provision is also included for the compulsory acquisition of land for the scheme, including land for new stations at Shawfair, Eskbank, Newtongrange, Gorebridge, Galashiels and Tweedbank which will be constructed as part of the scheme.

RECIPIENTS OF THE POWERS

10. The powers of the Bill will be conferred initially on the Council. Provision is made for the Council to transfer the railway undertaking and related powers in whole or in part, and to share or delegate any of the powers of the Bill. The intention is that the railway powers will eventually be transferred to another undertaker, expected to be Network Rail.

RELATIONSHIP WITH PLANNING AND RAILWAYS REGULATION

11. As explained in paragraph 7 of the Promoter’s Memorandum, the development authorised by the Bill will be permitted development, so that the Act will effectively grant planning permission. The Bill restricts this planning permission so that it applies only to works authorised by the Act where construction has been started within 10 years of the Act receiving Royal Assent. The position is described further in the explanation of section 35 (see paragraphs 195 and 196 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. Statutory authority to operate the railway will also result from the incorporation of the Railways Clauses Consolidation (Scotland) Act of 1845 (c.33). (The incorporation of this and other Acts is explained in paragraphs 18 to 21 and 73 and 230 below.)

THE BILL AND RELATED DOCUMENTS

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

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2 “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.).
14. European legislation on environmental assessment (EC Directive 85/337/EEC as amended by EC Directive 97/11/EC) applies to the Bill. The requirements are transposed into domestic law for development projects authorised under planning legislation through the Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1) as amended by the Environmental Impact Assessment (Scotland) Regulations 2002 (SSI 2002/324). The requirements of those Regulations are applied to the procedures for Scottish Private Bills authorising works by virtue of Rule 9A.2.3(c)(iii) of the Standing Orders of the Scottish Parliament and the Presiding Officer’s determinations as set out in Annexes K and N to the Parliament’s Guidance on Private Bills. The findings of the environmental assessment that has been carried out in relation to the Bill’s proposals are set out in the Environmental Statement that has been lodged as one of the accompanying documents.

STRUCTURE OF THE BILL

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

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

- those works that are specifically described (the railway works described in schedule 1); and
- 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 scheme 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. Departure from what is generally applicable also has human rights implications. This means that in the Bill compulsory purchase must be subject to all the same procedural rules, safeguards and requirements regarding compensation as apply generally. All these provisions are in a large and complex body of law contained in several public Acts of Parliament and case law. So that those affected by the Bill are on the same footing as those affected by compulsory purchase orders, this body of legislation must be applied to the Bill.

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 42 of the Bill proposes the latter. In this it adopts the format for legislation authorising railways and

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3 The relevant law has been described as having “become an unwieldy and lumbering creature” – see ‘Fundamental Review of the Laws and Procedures Relating to Compulsory Purchase and Compensation: Final Report’, Office of the Deputy Prime Minister, January 2003, para. 20.
similar infrastructure works which has been in place throughout Great Britain since the mid 19th century and which continues to be utilised.4

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 68 to 148 and 230 explaining Part 2 of the Bill and section 42. The Acts applied by section 42 contain a total of some 400 sections. Not all sections are relevant, but in much of this legislation it is not possible to say with absolute certainty that a particular provision is not going to be relevant. In addition, this legislation is written in 19th century legal English that would be unacceptable today. As a result, it could not be written into the Bill at length without being completely rewritten. The result of this would inevitably be that the meaning would be affected. Such an exercise in statute law revision, however desirable, is far outside the scope of any private Bill promoter.5

21. The Bill accordingly incorporates provisions of the Acts referred to in section 42. 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 Acts6;
- 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 Scotland7 and...

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4 Recent Scottish examples of provisions similar to section 42 are the British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.3 (authorising an upgrading of the part of the present route between Cambus and Alloa) and the British Railways (No. 3) Order Confirmation Act 1994 (c.iii), s.3 (authorising an upgrading of the railway between Hamilton and Larkhall). More recent examples are in Orders made under the Transport and Works Act 1992, which are the means of authorising most infrastructure works in England and Wales and which apply the equivalent English Law. See for example article 4 of the Leeds Supertram (Extension) Order 2001 (SI 2001/1347), articles 4 and 5 of the Leeds Supertram (Land Acquisition and Road Works) Order 2001 (SI 2001/1348) and articles 3 and 10 of the Heathrow Express Railway Extension Order 2002 (SI 2002/1064).

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

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

7 “… it is unfortunate in view of … the criticism which has been levelled at the [Lands Clauses Consolidation (Scotland) Act 1845] that Parliament has not found time to produce more up-to-date legislation as was done in
also to allow for the greater flexibility provided for in the Bill. Details of the adjustments are explained in the notes below on sections 14, 17, 21 and 25 of the Bill.

COMMENTARY ON SECTIONS

Part 1 – Works

22. The meaning of “the railway works” and “the ancillary works” is explained in paragraphs 23 to 25 below. They are collectively described as “the authorised works” (defined in section 43).

Section 1 – Authority to construct works

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

24. Subsection (2) makes clear the extent of the works for which authority is given. Section 2 refers to the railway works as being within the limits of deviation shown on the Parliamentary plans. However, the precise position of the works may move (“deviate”) within those limits, in accordance with section 4. Subsection (2) accordingly provides that the extent of the authorised works is the works as constructed within the permitted deviation.

Section 2 – The railway works

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

26. The main railway work is the railway comprising Works Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 shown on sheet nos. 1 to 78 of the Parliamentary plans. The railway commences immediately south of Newcraighall in Midlothian and terminates at Tweedbank in the Scottish Borders. It largely follows the route of the former Waverley railway. The northern end of the railway will join the national rail network (the Niddrie North to Bilston Glen railway operated by Network Rail as part of the Edinburgh CrossRail) at a point south of Newcraighall Station. The railway will then continue for approximately 49.2 km through Shawfair, Eskbank, Newtonongrange, Gorebridge and Galashiels to Tweedbank, where the railway will terminate. Stations are to be provided at all those places. The construction of the railway will necessitate numerous works to bridges including in particular—

- a bridge to carry the intended railway (Work No. 1) under the City of Edinburgh Bypass (A720) (sheet nos. 1 to 6 of the Parliamentary plans);

England with the passing of the Compulsory Purchase Act 1965 (c.56).” Stair Memorial Encyclopaedia, Title ‘Compulsory Acquisition and Compensation’ para. 13.

The need for such authority is explained in paragraph 5 of the Promoter’s Memorandum.
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- the strengthening of Glenesk Viaduct carrying the intended railway (Work No. 2) over the river North Esk (sheet no. 7 of the Parliamentary plans); and the strengthening of Newbattle Viaduct carrying Work No. 2 over the river South Esk (sheet nos. 11 and 12);

- a viaduct carrying the intended railway (Work No. 3) over the A7 road at Gore Glen Country Park (sheet no. 17 of the Parliamentary plans);

- the replacement of Little Gala, Crookston Mill, Hollowshank and Bower bridges carrying the intended railway (Work No. 6) over Gala Water (sheet nos. 39, 42 and 43 of the Parliamentary plans);

- the reconstruction of Plenploth North, Torquhan South and Watherston bridges to carry the intended railway (Work No. 7) over Gala Water (sheets nos. 47, 48 and 51 of the Parliamentary plans); and the replacement of the decking of the bridge to carry the intended railway (Work No. 7) over Gala Water at Galabank (sheet no. 52);

- the replacement of the decking of Ferniehirst Water and Bowshank South bridges carrying the intended railway (Work No. 8) over Gala Water (sheet nos. 59 and 60 of the Parliamentary plans) and the bridge (Bowlan Bridge) carrying the intended railway over the Caddonfoot to Bowlan road (B710) (sheet no. 62); and the improvement of Bowshank Tunnel (sheet no. 60);

- the replacement of the decking of Whin Underbridge carrying the intended railway (Work No. 9) over Gala Water at Robin’s Knowe (sheet no. 65 of the Parliamentary plans); and a bridge (Torwoodlee Water Underbridge) to carry the intended railway (Work No. 9) over Gala Water at Torwoodlee (sheet no. 70);

- bridges to carry the intended railway (Work No. 10) over Gala Water at Torwoodlee and over Wheatlands Road (DG108) (sheet nos. 70 and 71 of the Parliamentary plans).

27. As a result of the construction of the railway works road and bridge works will be required including the following—

Resulting from Work No. 1

- Work No. 1A – a bridge over the intended railway to provide access for the proposed Shawfair development;

- Work No. 1B – an access road to provide continued access to the CPL Distribution Depot on the unnamed road forming the western continuation of Newton Church Road at Harelaw;

- Work No. 1E – a footbridge over the intended railway to provide access for the proposed station at Shawfair;

- Work No. 1K – a road including a bridge over the intended railway to provide continued access to Sheriffhall Mains.

Resulting from Work No. 2

- Work No. 2A – a footbridge over the intended railway to provide access to the proposed station at Eskbank;
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- Work No. 2B – an access road into the proposed station car park at Eskbank;
- Works Nos. 2C and 2D – roads providing continued access to the goods entrance to Tesco and to K&I Coachworks at Hardengreen;
- Work No. 2E – a footbridge over the intended railway at Newtongrange between Redwood Walk and Station Road;
- Work No. 2F – a footbridge over the intended railway at Deanpark between New Star Bank and Station Road.

Resulting from Work No. 3

- Works Nos. 3A and 3B – footbridges over the intended railway at Gore Glen Country Park;
- Work No. 3C – a short length of railway forming a turnback siding at Gorebridge, which will be laid adjacent to the intended railway before it connects into it at a point west of the Main Street/Station Road bridge;
- Work No. 3D – a footbridge at Gorebridge to carry the path between Robertson’s Bank and Vogrie Road over the intended railway.

Resulting from Work No. 5

- Work No. 5A – a realignment of the A7 road, including a bridge over the intended railway, at Falahill;
- Work No. 5B – a road to provide continued access to Falahill Farm.

Resulting from Work No. 7

- Work No. 7B – an access road to provide continued access to Allanshaugh.

Resulting from Work No. 10

- Work No. 10A – a footbridge over the intended railway to replace a length of Plumtreehall Brae (DG84), Galashiels, which is to be stopped up;
- Work No. 10B – a reconstruction of the bridge carrying Plumtreehall Brae (DG84) over Gala Water north-east of the junction with King Street (A72), Galashiels;
- Works Nos. 10F and 10G – access roads to the car parks adjoining Our Lady and St Andrew Church and adjoining Anderson’s Chambers, Galashiels;
- Work No. 10H – an access road into the Landhaugh Industrial Estate, Galashiels;
- Work No. 10K – an access road to the proposed station car park at Tweedbank.

Section 3 – The ancillary works

28. Section 3 gives effect to schedule 2, which describes the types of works which may be provided in connection with the railway works. Works of this nature will only be authorised by
the Bill if they are necessary or expedient\textsuperscript{9} in connection with the construction of the railway works, or are required as a consequence of those works being constructed.

29. Schedule 2 catalogues types of works and operations that are normally necessary for the operation of a railway. The “railway” itself is only the railway track as laid along the route.\textsuperscript{10} The ancillary items accordingly range from the provision of stations and platforms to operations such as discharging water during construction\textsuperscript{11} and moving utility apparatus.\textsuperscript{12} The ancillary works will accordingly form an essential part of the authorised works.

30. Unlike the specifically authorised railway works, which are a known quantity and the position of which is certain within a margin, section 3 does not need to prescribe any limits within which the ancillary works may be constructed. Also, as the nature of the ancillary works is known but at this stage not the precise ancillary works or their positions, the Bill does not identify any land to be compulsorily purchased for the purposes of ancillary works. Accordingly, the places where ancillary works can be carried out will be limited by the need for the works to be ancillary to the railway works. As there are no compulsory purchase powers for land to accommodate ancillary works, the location of these works will be further limited by the fact that they can only be constructed on land which the authorised undertaker has been able to acquire, or in which it has acquired appropriate rights.

31. Examples of ancillary works that will be required are stations, platforms, landscaping and the repairs and other works affecting the listed structures specified in schedule 9.

32. The authorised works will necessitate some apparatus belonging to utility undertakers\textsuperscript{13} being moved away from the works, or in the case of any sewers protected from the works.\textsuperscript{14} Such accommodation works are usually conduits or other similar apparatus. Section 3(2) accordingly authorises the authorised undertaker to construct these works for the benefit of others e.g. utility undertakers whose apparatus is moved.

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 railway works are situated within the limits of deviation. The Bill will not accordingly permit the construction of those works outside these lateral limits.

\textsuperscript{9} i.e. advantageous; suitable, appropriate (Concise Oxford English Dictionary).
\textsuperscript{10} See, by virtue of section 81(3) of the Railways Act 1993 (c.43), the definition of “railway” in section 67(1) of the Transport and Works Act 1992 (c.42).
\textsuperscript{11} e.g. when pumping away water from a site so as to be able to lay track on dry ground.
\textsuperscript{12} e.g. water mains and power supply cables.
\textsuperscript{13} Utilities are gas, electricity, water and telecommunications. Sewers are also treated as utilities. Utility undertakers are suppliers of these utilities, or in the case of sewers, the providers of sewerage services. Utility undertakers normally own their apparatus.
\textsuperscript{14} Sewers are protected rather than moved because moving them would involve a change in their levels. Sewers usually rely on gravity and so their levels cannot readily be altered. The works to provide alternative apparatus for utility apparatus that is being moved, or to protect sewers, are called “accommodation works”.
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.

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 mine workings or other geological conditions. If it came to light that at any point along the route the ability to deviate downwards created an impact that should be catered for, that could be dealt with by way of amendment to the Bill, if appropriate, or agreement with any person affected.

Section 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 and maintenance of new or altered roads

38. The roads associated with the railway works other than private accesses are all to become public roads. In accordance with standard arrangements when a new road is built, section 6 provides for the relevant works to be completed to the reasonable satisfaction of the roads authority, and to become maintainable by the roads authority after an initial 12 month maintenance period during which the authorised undertaker remains liable for any maintenance. This is normal practice to allow any defects that emerge once the roads are first commissioned after construction to be remedied at the expense of the authorised undertaker.

Section 7 – Vesting of private roads

39. Works Nos. 1B and 7B are private access roads which will be constructed for the benefit of individual landowners to replace existing private accesses. These works will not therefore become public roads and section 7 accordingly makes provision similar to section 6, but with the roads vesting in named landowners.
Section 8 – Private crossings

40. 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. As the railway authorised by the Bill will be a new railway along a route where no railway exists at present, it is appropriate to provide for any special requirements for crossings on the basis of present needs rather than past entitlements. However, where there were previously entitlements to cross the former railway, there are circumstances in which there may still be vestigial present rights of way, and these must also be taken into account.

41. There are 47 points along the route where there were formerly private crossings and where rights of way appear to subsist. 42 of these are to be reinstated so that they can be used, with the new railway in place. This is provided for in subsection (1) of section 8 and Part 1 of schedule 4, which details the private crossings in question (in the Bill called “the continuing private crossings”).

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

43. Subsection (3) requires the authorised undertaker to provide equipment at each continuing private crossing which complies with the requirements of the Secretary of State under subsection (4) or subsection (5) (i.e. the requirements enforced by HM Railway Inspectorate).

44. Subsection (4) requires the equipment provided at continuing private crossings to comply with the Secretary of State’s requirements for that sort of railway equipment. Subsection (5) makes clear that any equipment provided under this section must also comply with any specific HMRI requirements relating to a particular crossing.

45. Subsection (6) 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 former private crossings of the former railway will have been constructed by way of discharging the section 60 obligation when the original railway was built.

46. 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.

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15 Railway Safety Principles and Guidance, Part 2 Section E (HM Railway Inspectorate).
16 Section 60 is included in the provisions incorporate by section 42.
The purpose of subsection (6) is accordingly to ensure that the section 60 obligation is discharged in relation to the railway by the provision of 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.

Five private crossings of the route are to be closed with private rights across them being extinguished. This is provided for in subsection (7) and Part 2 of schedule 3, which details the crossings in question.

Subsection (8) 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 (7). 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 78 and 79 below.

Section 9 – Permanent stopping up of roads

Subsection (1) authorises the permanent stopping up of 65 lengths of track, path 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 4.

49 of these stopped up roads will be replaced by the substitutes specified in column (4) of Part 1 of schedule 4. Where there is a substitute 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.

In the 16 cases where there is no substitute, subsection (3) prevents the stopping up of a length of road under the section unless the conditions in paragraphs (a) to (d) are satisfied as regards that length of road. These conditions ensure that owners and occupiers who use the road are not left without reasonably convenient means of access.

Where a road is closed, subsection (4) 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 (5) provides for the payment of compensation to any person who suffers loss by the extinguishment or suspension of such rights. This subsection operates in the same way as section 8(8) (see above).

Section 10 – Temporary stopping up, alteration or diversion of roads

It will be necessary for the authorised undertaker during construction temporarily to stop up, alter, or divert roads. Precise details of the roads, timing and duration of closures will be developed as the scheme is designed. Subsection (1) will enable such temporary stoppings up by the authorised undertaker provided consent is obtained from the road works authority under

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17 For explanation see paragraph 7 above and footnote.
18 i.e. in the case of a public road, the roads authority for the road, and in the case of any other road the road managers (New Roads and Street Works Act 1991 (c.22), s.108(i)). The road works authorities for public roads potentially affected by this section will therefore be Midlothian Council and Scottish Borders Council in their respective areas and the Scottish Executive as regards trunk roads.
subsection (4). By subsection (5) consent could not be unreasonably withheld but could be given subject to conditions. Under subsection (6) disputes as to the reasonableness of any condition would be determined by arbitration. (Section 32 provides for the way in which any arbiter is appointed.)

55. In addition to any condition imposed by the road works authority, the authorised undertaker will be obliged by subsection (2) to provide continued pedestrian access to premises19 abutting on the temporarily stopped up road.

56. 21 necessary temporary stoppings up have been identified at this stage as being required at the locations and for the purposes specified in Part 2 of schedule 4. For this reason subsection (3) authorises these temporary closures and, unlike the unspecified closures, subsection (4)(a) requires consultation with the road works authority but not consent.

Section 11 – Discharge of water

57. Section 11 ensures that the authorised undertaker can effectively drain its works, both during construction and thereafter. Subsection (1) enables the authorised undertaker to use any available stream or watercourse or any public sewer or drain for drainage purposes. It provides that within the limits of deviation or the limits of land to be acquired or used20 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.

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

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

60. 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 ponds21 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

19 “Premises” is used in its ordinary meaning i.e. places, landholdings (including buildings). Except where it is especially defined, as in some legislation, it is not a technical term. “‘Premises’ is an ordinary word of the 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.

20 For explanation of this expression see paragraph 71 below and footnote and paragraph 81 below.

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

61. Subsection (5) provides that any disagreement between the authorised undertaker and an authority owning a public drain or sewer shall be resolved by arbitration. (Section 30 provides for the way in which any arbiter is appointed.)

62. Subsection (6) ensures that the normal pollution control regime will apply to discharges of water authorised by section 11. It does this by applying section 30F of the Control of Pollution Act 1974 (c.40) (“the 1974 Act”) to those discharges. Section 30F makes it an offence to pollute rivers and other waters but by virtue of section 30I(1)(f) of the 1974 Act no offence is committed where (as would be the case here) the discharge is authorised by a local Act\(^\text{22}\). It is the promoter’s intention that (as is the normal practice in legislation authorising the construction of works) the works should be subject to the same pollution control regime as the rest of the rail and road networks. Subsection (6) is required to achieve that aim.

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

64. In the absence of section 11 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.

Section 12 – Safeguarding works to buildings

65. The ground conditions along the route may give rise to a need to prevent or remedy damage to buildings caused by the construction, operation or maintenance of the authorised works. This will call for underpinning, strengthening or other works for the same purposes (all in the Bill called “safeguarding works”). The area where there is a possibility of such works being required is the land within 20 metres of the authorised works (or any part of them).

66. Subsection (1) accordingly enables the authorised undertaker at its own expense to carry out such safeguarding works to any building within the 20 metre distance as the authorised undertaker considers to be necessary or expedient. Safeguarding works may be carried out during construction or at any time during the five years after any part of the authorised works is first opened for public use.

\(^\text{22}\) i.e. an Act that has effect in a particular locality, rather than generally throughout the country. Every private Act authorising specified works has effect only in the area affected by the works and so is a local Act.
67. The detailed procedure that must be adopted is set out in schedule 5. This allows for the carrying out of preliminary surveys and (except in an emergency) the service of 14 days’ notice prior to entry and carrying out the safeguarding works. A landowner may question the necessity for safeguarding works and require the issue to be referred to arbitration. Where damage is caused by safeguarding works, or where safeguarding works prove to be inadequate within five years after the opening of the relevant authorised works, the authorised undertaker must pay compensation.

Part 2 – Land

Introduction

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

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

- land and rights to access land to construct and then maintain the railway;
- land for signalling and level crossing equipment;
- land for the new Shawfair Station and car park;
- land for pedestrian and vehicular access to premises;
- land for relocation of apparatus;
- land for road improvements and landscaping;
- land for riverbank protection works;
- rights to undertake ground stabilisation work;
- rights to install and maintain drainage.

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”.)

70. In many cases (roads and housing are examples) powers are given by compulsory purchase order made by the authority that is to have the powers, or by the relevant Minister. In the present case compulsory purchase is authorised by the Bill itself: there will not be a separate compulsory purchase order. The compulsory purchase powers are in Part 2 of the Bill, either set out in full or applying the compulsory purchase and compensation law that applies to compulsory purchase orders. This suite of provisions gives the authorised undertaker powers for the compulsory purchase of land and rights over land, access and temporary possession all of which are needed in connection with the authorised works. It also deals with issues concerning compulsory purchase procedures, entry on land, the assessment of compensation and procedures relating to compensation, as well as the particular issues dealt with in specific sections of the Bill. The effect of the provisions is explained in greater detail below.
71. The land affected by the compulsory purchase powers in the Bill is the land described – that is, given a description and not merely referred to as an unused plot number – in the book of reference. On the Parliamentary plans it is all the land within the limits of deviation\(^\text{23}\) and within the limits of land to be acquired or used.\(^\text{24}\)

72. 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**

73. 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.\(^\text{25}\) An outline of this applied legislation is given below.

**Compulsory purchase procedures**

74. After the Bill has been enacted, the first stage of the procedures will be the service on each landowner whose land is required of a notice (called a notice to treat) under section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19) (in the Bill called “the 1845 Lands Act”). This notice will inform those with an interest in land of the intention of the authorised undertaker to acquire the land or the rights described in the notice. A notice to treat will create a contract between the authorised undertaker and the landowner.

75. 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.

76. Where a landowner is unwilling or unable to sell the authorised undertaker may acquire the land by executing notarial instrument.\(^\text{26}\) 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.

\(^\text{23}\) For an explanation of “limits of deviation” see notes on section 4.

\(^\text{24}\) i.e. land situated outside the limits of deviation which is required to be acquired or used for specific purposes - see sections 13(b), 14, 15 and 17 and schedules 6 and 7.

\(^\text{25}\) For an explanation of the reason for applying other Acts see paragraphs 17 to 19 above.

\(^\text{26}\) “Notarial instrument”: the term used in sections 74 to 76 of the 1845 Lands Act when referring to the formal document that in these circumstances will vest land in the authorised undertaker. The expression is only a description. There is no special style laid down for this type of deed.
77. 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

78. The money paid for lands and rights purchased compulsorily is known as compensation. The body of law governing rights to compensation where there are compulsory purchase powers and the rules for calculating the basis and amount of compensation are in part in the common law, part in the Lands Clauses Acts and partly in Part I of the Land Compensation (Scotland) Act 1963 (c.51). This detailed body of law will apply to compulsory purchase under the Bill. Disputes about compensation will be referred to the Lands Tribunal for Scotland.27

79. The Bill applies the Railways Clauses Consolidation (Scotland) Act 1845 (c.33), in the Bill called “the 1845 Act”. This Act includes a detailed code relating to minerals under the railway. These provisions (as amended by the Mines (Working Facilities and Support) Act 1923 (c.20)) restrict mineral extraction where this risks damaging the railway. If these restrictions apply the authorised undertaker may be required to pay compensation to the person with the right to work the mine.

Section 13 – Authority to acquire land

80. Section 13(a) is the power for the authorised undertaker to acquire land within the limits of deviation. The land that may be acquired must be within those limits, it must be described28 in the book of reference and it must be land that may be required for the purposes of the authorised works.

81. Section 13(b) relates to the permanent outright acquisition of land within the limits of land to be acquired or used. The authorised undertaker is authorised to acquire the land within those limits if (a) it is specified in columns (1), (2) and (3) of Part 1 of schedule 6 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 6 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. An example is acquisition for the new station and car park at Shawfair. This is only some of the land within the

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

28 See paragraph 71 above.
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

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.  

82. The powers of section 13 are subject to the time limit in section 26 of the Bill. They are also subject to the restrictions on compulsory acquisition that are imposed by sections 27 and 28(4).  

Section 14 – Acquisition of subsoil or rights

83. Section 14 applies to any land that is authorised to be compulsorily acquired under section 13. Section 13 authorises outright purchase of the land i.e. including the airspace above the surface and the subsoil and bedrock beneath it. The purpose of section 14 is to ensure that when exercising those powers the authorised undertaker is able to acquire less than that total interest in cases where all that is required is the subsoil under the land or some right over the land.

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

85. By subsection (2) rights acquired under subsection (1) may be heritable or moveable in nature. Subsection (2) also covers the case where the rights required by the authorised undertaker do not already exist. The subsection expressly allows for the creation of new rights, which will then be compulsorily acquired by the authorised undertaker.

86. Subsection (3) provides that by exercising the powers of section 14 the authorised undertaker will not be required to acquire the land itself or any interest in the land greater than the rights acquired under the section. In the absence of this provision the authorised undertaker will be required to buy land outright, even though all that is required for the authorised works is the subsoil (e.g. because the authorised undertaker will only need to dig a culvert under the land), or some right of access to the railway.

87. 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 (4) accordingly provides that section 90 of the 1845 Lands Act (which states that landowners cannot be required to sell part of any house or building or manufactory) does not apply to the

29 See sections 14, 15 and17.
30 See notes explaining those sections.
31 “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.
32 Heritable rights are rights connected with land e.g. leases, or which will yield periodical profits e.g. annuities. All other rights are moveable.
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.33

88. Subsection (5) applies the other provisions of the Lands Clauses Acts to the compulsory acquisition of new rights under section 14. In subsection (7), the modifications in the 1845 Lands Act reflect similar provision in the Land Compensation (Scotland) Act 1973 (c.56).

Section 15 – Purchase of specific new rights under land

89. In addition to section 14, in relation to the land within the limits of land to be acquired or used which is specified in columns (1), (2) and (3) of Part 2 of schedule 6, section 15 enables the authorised undertaker to acquire new rights over that land for the specific purposes mentioned in column (4). This is mainly to allow access for construction and then maintenance of the railway. Rights that have been specifically identified also include ground stabilisation and installation of closed circuit television and lighting. The powers in section 15 are subject to the time limit in section 26 of the Bill.

Section 16 – Rights in roads or public places

90. Section 16 applies to any road or public place that is included in the land that may be compulsorily acquired under section 13. In relation to such land, the section allows subsoil or airspace to be used for the works without the need for compulsory purchase.

91. 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.

92. 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.

93. Subsection (3) is a technical provision to safeguard the authorised undertaker’s exercise of the powers in this section. The subsection provides that the powers in subsection (1) are taken to create a real right, even though it is not a right that is registered. An unregistered real right is an overriding interest.34 An overriding interest takes effect as against the registered owner of land even though it is not registered.35 Thus the effect of subsection (3) is to ensure that the powers in subsection (1) will be binding on anyone who owns land to which this section applies.

94. 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 for the

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

95. Subsection (5) provides that subsection (2) shall not apply where subsoil to which the section applies is occupied by an underground subway or building or by an underground part of an adjoining building. This recognises that in these cases the authorised undertaker will be occupying an integral part of a larger structure. Where what is occupied is a part of a structure the authorised undertaker ought not to be able to avoid the obligation to acquire the relevant land or obtain appropriate rights. Accordingly, subsection (5) obliges the authorised undertaker to acquire the relevant land, or an appropriate servitude or right, before using it for the authorised works.

Section 17 – Temporary use of land for construction of works

96. Where the authorised undertaker only needs to occupy land for a temporary period, purchase of the land cannot be justified (see paragraph 69 above). Section 17 allows for the authorised undertaker to take temporary possession of specified land for the period required for specific authorised works. Provision of this sort is standard in legislation authorising works.

97. By subsection (1) the authorised undertaker may take temporary possession of the land specified in columns (1), (2) and (3) of schedule 7 for the various purposes mentioned in column (4) of that schedule. (These are purposes such as the provision of construction compounds, working spaces and access.) On exercising these powers the authorised undertaker may remove buildings and vegetation and construct temporary works (including means of access) and temporary buildings on the land.

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

99. 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 7. The authorised undertaker is allowed to remain in possession for this further year so that he can do all the work required during the 12 month maintenance period immediately after construction has been completed. It is normal in construction contracts for contractors to be liable to maintain works for a given period (usually 12 months) after the works have been completed. This makes the contractor responsible to rectify any defects that come to light while the works are ‘bedding in’.

100. 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.36

36 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
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

101. 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.

102. By subsection (6) the amount of any compensation is to be determined in case of dispute under the Land Compensation (Scotland) Act 1963 (c.51). The compensation payable under section 17 is in respect of loss or damage arising from the temporary possession. The same landowner might be entitled to compensation in respect of the same land arising from the construction of the authorised works. Accordingly, subsection (7) provides that any compensation payable under this section is additional to any other compensation that may be payable in respect of the land.

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

Section 18 – Disregard of certain interests and improvements

104. Under the rules applicable to the assessment of compensation land is valued at its market value. The purpose of section 18 is to ensure that landowners do not act to enhance the value of their land solely for the purpose of obtaining compensation or increased compensation. Subsection (1) accordingly provides that when assessing compensation payable on the acquisition of the land the Lands Tribunal for Scotland shall not take into account the creation of any interest in land, the erection of buildings or the carrying out of works, improvements or alterations which will increase market value.

Section 19 – Set-off of betterment against compensation

105. Development may enhance the value of adjoining or nearby land. Section 19 accordingly provides for compensation to be reduced by an amount equivalent to any enhanced value of other contiguous37 or adjacent38 land of the person seeking the compensation.

Section 20 – No double recovery

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

Section 21 – Acquisition of part of certain properties

107. Section 21 lays down special procedures in place of section 90 of the 1845 Lands Act, which would otherwise be applicable where an acquiring authority wishes to acquire part only of certain types of property required for the works. Section 90 provides that the owner of a house, building or manufactory cannot be compelled to sell only part of his or her property if he or she

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37 “contiguous”: touching or immediately next to, sharing a common boundary with [other land].
38 “adjacent” includes land that is not contiguous, but which is close to or near other land.
is willing to sell the whole. This would enable a landowner to insist on the acquisition of the whole of his or her property, however large, even where the purchase of the part proposed for compulsory acquisition is insignificant in relation to the whole. The replacement procedures allow the authorised undertaker to acquire only part of a property where this can be done without material detriment\(^{39}\) to the rest of the property and, in the case of a house with a park or garden, without also seriously affecting the amenity or convenience of the house.\(^{40}\) These replacement provisions reflect the modernised state of the law in England and Wales (under section 8 of the Compulsory Purchase Act 1965 (c.56)). Their application in legislation of this sort is standard.\(^{41}\)

108. Subsection (1) applies this section to any case where a notice to treat\(^{42}\) relates to land forming part of a house, building or factory or to land consisting of a house with a park or garden. For the section to apply a copy of the section must also be served with the notice to treat.

109. 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.

110. 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.

111. Under subsection (4), if the authorised undertaker does not agree to acquire the whole of the land the issue is referred to the Lands Tribunal 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.

112. Under subsection (5) 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.

113. Under subsection (6) 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.

114. Subsection (7) 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

\(^{39}\) “Material detriment” to the remainder of the property: the test is whether the remainder, after the part is compulsorily acquired, is less useful or less valuable in some significant degree compared with the property as existing before the acquisition took place (McMillan v Strathclyde Regional Council 1984 S.L.T. Lands Tr. (Scot)) 25.

\(^{40}\) “Seriously affecting the amenity and convenience of the house”: the test is whether after the part has been compulsorily acquired the house has less amenity and less convenience in some significant degree compared with the property as existing before the acquisition took place (see McMillan v Strathclyde Regional Council).

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

\(^{42}\) For an explanation of this expression see paragraph 74 above.
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.

115. Under subsection (8), where the authorised undertaker agrees to acquire the land subject to a counter-notice, or 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.

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

117. Subsection (9) 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. Either of these circumstances could have serious implications for the design or operation of the authorised works. The authorised undertaker is allowed 6 weeks within which to withdraw the notice to treat rather than proceed with the acquisition of the land determined by the Lands Tribunal. If the authorised undertaker withdraws the notice to treat it is obliged to pay the owner compensation for any expense caused by the giving and withdrawal of the notice to treat. This enables the authorised undertaker to take any available alternative options. This might for example involve re-designing works or methods of construction so that none of the land is required. Where the Lands Tribunal determination can exclude land that is essential to the scheme, the authorised undertaker might re-start the process so as to acquire the whole of the property in question.

118. By subsection (10), where this section results in an owner being required to sell only part of—
   - a house, building or factory; or
   - land with a house and a park or garden,
the authorised undertaker is not required to buy the whole property. However, the authorised undertaker must in addition to paying compensation for the value of the interest acquired, pay compensation for any loss resulting from severance of the land.44

Section 22 – Extinction or suspension of private rights of way

119. The Bill provides for necessary public and private means of access.45 The authorised works cannot accommodate further rights of way over the land that may be compulsorily acquired under the Bill. Section 22 accordingly extinguishes 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.

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43 Where material detriment extends to only part of the land subject to the counter-notice subsection (7) applies.
44 i.e. diminution in value of the remaining land due to the loss of the compulsorily acquired land.
45 See Works Nos. 1B, 1D, 1E, 1F, 1G, 1H, 1K, 2A, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 5B, 5C, 5D, 5E, 5F, 7B, 10A, 10C, 10F, 10G, 10H, 10J and 10K and the private railway crossings authorised by section 8 and schedule 3.
46 i.e. terminates the rights, so that they cease to exist.
120. Subsection (1) provides for the extinguishment of private rights of way over land which may be compulsorily acquired under the Act. It applies where the land is actually acquired by the authorised undertaker, both where the purchase has been by using the compulsory purchase procedures and where the authorised undertaker and the landowner have instead agreed terms without recourse to the formal procedures. The private rights of way will be extinguished as from the date when the land is acquired. Where the authorised undertaker enters the land and takes possession before completion under section 24, the extinguishment or suspension takes place instead as from the date on which possession is taken.

121. Subsection (2) provides for the suspension of private rights of way over land of which the authorised undertaker takes temporary possession. The suspension continues while the authorised undertaker is in temporary possession of the land. This suspension is subject to the provisions of subsection (7) (see below).

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

123. Subsection (4) provides that the section does not apply to rights of way of statutory undertakers to which section 224 or 225 of the Town and Country Planning (Scotland) Act 1997 (c.8) apply. (The position of statutory and utility undertakers is separately dealt with in section 31 and schedule 8.)

124. Subsection (5) allows for the extinction or suspension of private rights of way under the section to be subject to agreement between the authorised undertaker and the person entitled to the right of way. For example, the authorised undertaker might be able to agree to a right of way continuing between the date of acquisition and the commencement of construction works, or to a diversion of the route used.

125. By subsection (6) the authorised undertaker may determine that particular rights of way can be exercised compatibly with the use of the land under the Act. In such cases the right will continue. A determination under this subsection must be made before the land is acquired or (if sooner) before entry on the land.

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

127. Subsection (8) provides for notice of a determination under section 22 to be posted on the land to which the determination relates.
128. The object of subsections (5) to (7) is to ensure that the interference with private rights which results from their extinction or suspension under this section is kept to the minimum necessary to accommodate the construction and maintenance of the authorised works.

129. The purpose of section 22 is to ensure there are no incompatible rights of way over land on which the authorised undertaker is to construct works. This protection is unnecessary on land where the authorised undertaker is only acquiring rights. Accordingly, under subsection (9) the automatic extinguishment effected by subsection (1) or (2) will not apply on land where the authorised undertaker is only acquiring rights.

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

130. The Lands Clauses Acts do not allow adequately for the carrying out of survey and similar work before acquiring land. Surveys and the other activities described in subsection (1) are a necessary part of the detailed design and preparatory work that is required in advance of starting construction. It is impracticable for survey work to await completion of formal purchase procedures, which can include Lands Tribunal hearings. This is recognised in section 83 of the 1845 Lands Act which allows entry before purchase for survey and a limited number of other purposes (drilling and soil samples). Section 23 of the Bill extends these purposes to include what is necessary for a modern construction project. It is a standard provision in modern legislation of this sort.

131. Subsection (1) enables the authorised undertaker to enter any land within the limits of deviation or the limits of land to be acquired or used for the purposes of carrying out surveys and investigations (including archaeological investigations) and to protect or remove flora or fauna.

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

133. 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.

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

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

Section 24 – Further powers of entry

136. Section 24 is also a standard provision. The 1845 Lands Act permits entry on land under compulsory purchase powers only after full payment has been made (1845 Lands Act, 1845, s. 83).

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47 See section 15 and Part 2 of schedule 6.
48 See e.g. British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.21, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), ss. 12 and 13.
49 See e.g. British Railways (No. 2) Order Confirmation Act 1994 (c.ii), s.22, City of Edinburgh (Guided Busways) Order Confirmation Act 1998 (c.iii), s. 14.
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.\(^{50}\) The purpose of section 24 of the Bill is to allow this modern procedure to apply.

137. 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.

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

139. 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.

140. Where the authorised undertaker enters land under section 24, subsection (4) provides that the authorised undertaker must pay compensation as though sections 83 to 89 had been complied with. Section 24 does not therefore alter a landowner’s right to compensation.

141. The object of section is to ensure that the works are not delayed by negotiations with landowners about the compensation to which they are entitled. As landowners are to be obliged to give up their land in any event, the amount of compensation is a completely separate issue from possession of the land.

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

142. Section 25 applies to persons such as trustees who are only able to convey the land because they are empowered to do so by the 1845 Lands Act. People who are legally disabled from doing something (in this case selling land) are described as being under a disability. Section 7 of the 1845 Lands Act enables such people to convey existing rights, but not to create new rights. Provision is accordingly required to ensure that it will always be possible for the authorised undertaker to acquire new rights under section 15 of the Bill.

143. Subsection (1) accordingly allows persons under a disability to grant to the authorised undertaker servitudes, rights or privileges\(^{51}\) over their land. If they remained unable to do this such people in this position could only sell the whole of the land. The authorised undertaker could be left with land it did not need and an increased compensation liability.

\(^{50}\) See Compulsory Purchase Act 1965 (c.56), s.11.

\(^{51}\) “Privileges”: rights that are of benefit to the person entitled to exercise them, for example fishing rights.
144. By subsection (2), rights cannot be granted in relation to water in which others have an interest.\(^{52}\)

145. Subsection (3) ensures that all the associated provisions of the Lands Clauses Acts relating to the conveyancing treatment of land and feu duties or ground annuals\(^{53}\) relating to land are also applied to the grant of new rights under this section.

**Section 26 – Period for compulsory acquisition of land**

146. Subsection (1) provides that the compulsory purchase powers of the Act will expire seven years from the date on which the Act comes into force (i.e. seven 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 if notice to treat has been served before that date.

147. A time limit on exercising the compulsory purchase powers is needed so that landowners are not prejudiced. Without a time limit landowners would be likely to find that for so long as land was at risk of compulsory purchase it would be difficult if not impossible to sell, or its value would be reduced. Section 39 provides for the situation where a landowner needs to sell land that is affected in this way.

148. It is normal for legislation authorising the construction of works to impose time limits on the exercise of compulsory purchase powers.\(^{54}\)

**Section 27 – Acquisition of land for Work No. 1B**

149. In consequence of the permanent stopping up of parts of Newton Church Road, Longthorn and the unnamed road forming the western continuation of Newton Church Road (see Part 1 of schedule 4 and sheet no. 3 of the Parliamentary plans), access will be lost from those roads to the land lying to the north of them, the former Monkton Hall colliery. At present this land is largely unused and the only premises that make use of this access route are believed to be the CPL distribution depot which is shown on sheet no. 3 of the Parliamentary plans.

150. All this land, including the site of the depot, is proposed for redevelopment. When the redevelopment takes places the developer will provide its own accesses for the new development. For the moment, however, the Bill must provide for what currently exists on the ground. Accordingly, Work No. 1B is a replacement private access road to serve the depot.

151. The prospective developer has expressed concern that Work No. 1B could interfere with the redevelopment proposals. The Council and the developer are in agreement that there will be no purpose in constructing Work No. 1B or acquiring the land for it if a new access road serving

\(^{52}\) Where several landowners have interests in the same water, the law treats them as sharing a common interest: one of them cannot therefore do something that affects the others. Subsection (2) is needed to prevent section 25 being used to override these general property rights.

\(^{53}\) The references to land and feu duties and ground annuals are simply to describe which are the relevant sections of the 1845 Lands Act. They are feudal duties on land which have been superseded by the Land Tenure Reform (Scotland) Act 1974 (c.38).

\(^{54}\) See e.g. British Railways (No.2) Order Confirmation Act 1994 (c.ii), s.15; City of Edinburgh (Guided Busways) Order 1998 (c.iii), s.20.
the depot has already been constructed. Section 27 therefore ensures that the powers cannot be exercised if the new access road is in place by the time the railway development is under way.

**Section 28 – Acquisition of land for Work Nos. 1C and 1E**

152. Work No. 1C is a realignment of the two roads mentioned in paragraph 149 above. It includes a bridge over the railway (Work No. 1). Work No. 1E is a footbridge over the railway to provide access to the new station at Shawfair. Both works will be integrated into the proposed redeveloped Shawfair town centre and when that development is complete they will be surrounded by buildings. To construct the bridges after the buildings would be prohibitively expensive and disruptive. It is therefore essential that the bridge infrastructure should be in place before the construction of the adjoining parts of the Shawfair development.

153. The bridge works affect four plots of land that are particularly important for the Shawfair development. Plots Nos. 46 and 46a (defined in subsection (5) as “the development land”) are at the foot of the town centre end of the footbridge (Work No. 1E) and will be integrated into that development. These plots are to be permanently acquired for the footbridge. Plots Nos. 43 and 43a are required temporarily as working space for works including Works Nos. 1C and 1E. The Shawfair developer has expressed concern that the development land need not be altogether lost to the Shawfair development, and that the construction of the bridge works ought not to delay the Shawfair developer’s use of the working space. Section 28 addresses both issues.

154. Subsection (1) requires that, as soon as may be after Works Nos. 1C and 1E have been opened for public use, the authorised undertaker must transfer to the owner of the land abutting the northern boundary of the development land i.e. the Shawfair developer, so much of the development land as is not permanently required for the purpose of Works Nos. 1C and 1E. The extent of the land that the authorised undertaker needs permanently will be reduced by the ability in subsection (2) to transfer the land subject to servitudes or other rights for the authorised undertaker for the purpose of the maintenance or operation of any of the authorised works. The effect of subsections (1) and (2) is accordingly to minimise the permanent acquisition of the development land and allow for its shared use with the Shawfair development.

155. Subsections (3) and (4) address the possibility that the Shawfair development may move ahead of the railway. If the Shawfair developer is ready to proceed it may itself construct the two bridges so that it can construct its own development without having to wait for the railway works to be constructed first. In that event the authorised undertaker will not need to take temporary possession of plots nos. 43 and 43a as working space for Works Nos. 1C and 1E (although it may still need those plots in connection with Works Nos. 1 and 1D).

156. Subsection (3) therefore provides that if before implementing the compulsory purchase powers (serving notice to treat or making a vesting declaration) it finds that there are existing bridges that meet its requirements for the bridge comprised in Work No. 1C and for Work No. 1E, subsection (4) will operate to prevent the compulsory acquisition or use of plots nos. 43 and 43a for the purposes of those two works.
Part 3 – Miscellaneous and general

Section 29 – Power to fell, etc. trees or shrubs

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

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

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

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

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

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

Section 30 – Powers of disposal, agreements for operation, etc.

161. Section 30 is required because, although the Council is the promoter of the Bill, there has never been any intention for the Council to operate the railway. The expectation is that the powers conferred by the Bill or the completed railway will be transferred to Network Rail as the national rail infrastructure operator. Section 30 therefore gives effect to the intention that the Council will be no more than the procurer of the powers. In the absence of section 30 the powers in the Bill would not be transferable.

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

163. Subsection (2) allows the authorised undertaker to make transfer agreements for the transfer of all or any of the authorised undertaker’s functions under the Act. The powers cease to have effect once the final transfer is made to Network Rail (see subsection (12) below). This subsection would, for example, allow for the transfer to Network Rail of the powers in the Bill to construct the railway and the compulsory purchase powers relating to the railway; or for all the powers to be transferred to a special purpose vehicle which would be responsible for acquiring the land, procuring the construction of the authorised works and, finally, transferring them once they are completed.
164. Subsection (3) will operate after construction. It authorises transfer agreements relating to the authorised works once they have come into existence. Agreements authorised by subsection (3) can relate not simply to the physical works and the land held with the works but also to “the undertaking”. This expression means the statutory ‘package’ consisting of the physical works and land and all the statutory powers that go with them by virtue of the Bill. Possible examples are agreements making future revenues security for loan capital or (as is contemplated) an agreement transferring the completed railway and the statutory powers (“the undertaking”) to Network Rail.

165. Subsection (4) enables the authorised undertaker to make agreements for the construction, maintenance and operation of the authorised works, and anything ancillary to those things. An agreement under subsection (4) would not necessarily involve a transfer of statutory functions. The most obvious example of the use of this subsection is to authorise the letting of the construction contract on terms that might involve a transfer of statutory powers, for example relating to land acquisition or use.

166. Subsection (5) provides that any transferee exercising a power in the Act will be subject to the same restrictions, liabilities and obligations as would apply if the function were being exercised by the authorised undertaker making the transfer. This has the effect that the exercise of any of the powers of the Act, whether by a new authorised undertaker to whom the powers have been transferred or by someone with a lesser interest, will be subject to the same obligations as bind the authorised undertaker.

167. Subsection (6) deals with the position where an authorised undertaker is subject to an obligation or liability arising from an undertaking or agreement it has given (as distinct from a statutory obligation under the Bill). In the absence of section 30 the law of contract would leave the liability with the authorised undertaker making the transfer. Subsection (6) ensures that the transferee takes on the same liability. Subsection (6) ensures that the authorised undertaker making the transfer is not liable for so long as, and to the extent that, the obligation is assumed by the transferee.

168. Subsection (7) provides for the Act to be read as referring to any transferee under a transfer agreement. Section 30 allows for the transfers to be of some functions only, so that there might be more than one authorised undertaker. This subsection ensures that the Act can be read as referring to any person who is an authorised undertaker at the time.

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

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

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

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

172. The principal object of section 30 is to assist in the procurement of the authorised works. Ultimately, it is the expectation that the railway works will vest in, and be operated by, Network Rail as an integral part of the national rail network. At the point at which the railway works are transferred to Network Rail, that object will have been achieved and section 30 will have served its purpose. Subsection (12) accordingly provides that when that transfer occurs, the section is to cease to have effect.

173. Subsection (13) contains definitions. “Functions” includes powers, duties and obligations: in short, in relation to the statutory functions under the Bill, anything arising under the Bill. A “transferee” is any person to whom the authorised undertaker has transferred property or functions under a transfer agreement. And a “transfer agreement” is any agreement made under subsection (2), (3) or (4). As the section is designed to allow for maximum flexibility, this includes the transfer of the statutory powers and duties contained in the Bill, the transfer of the railway when built or the disposal or grant of any lesser interest, as well as leasing and other delegations.

Section 31 – Statutory undertakers, etc.

174. Section 31 introduces schedule 8 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.

175. It is known that there is undertakers’ apparatus in some of the land required for the authorised works. The Bill when enacted will therefore give rise to the situation for which sections 224 to 227 are designed. Schedule 8 accordingly applies the code in sections 224 to 227 to the authorised works.

176. Paragraph 1 of schedule 8 provides for those sections to apply. Paragraph 2 applies all other provisions of the 1997 Act that are needed for the operation of sections 224 to 227, including the provisions regarding compensation.

177. Paragraph 4 of schedule 8 allows affected undertakers to recover compensation from the authorised undertaker in respect of expenditure incurred in moving apparatus.
178. Sewers are not susceptible to being moved in the same way as other undertakers’ apparatus. As a result, paragraph 5 of schedule 8 provides that where a public sewer is moved, compensation is payable to the persons who will have to make different drainage arrangements, namely the owner or occupier of premises drained by the sewer, or the owner of a private sewer that connected with the public sewer that has been moved.

179. Part IV of the New Roads and Street Works Act 1991 (c.22) (in the Bill called “the 1991 Act”) is a separate code governing works in public roads. It covers works involving the removal or laying of undertakers’ apparatus in roads, and it applies automatically. Accordingly, paragraph 6 of schedule 8 provides that this schedule will not apply to cases that are governed by Part IV.

180. Schedule 8 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 8 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 32 – Arbitration

181. Section 32 lays down the procedures applicable in cases where the Act provides for disputes (other than those to which the Lands Clauses Acts apply) to be settled by arbitration. The arbiter is to be agreed by the parties to the dispute or, failing agreement, by the President of the Institution of Civil Engineers. By subsection (2) the arbiter is entitled to obtain a ruling on points of law from the Court of Session. This is standard practice for resolving such disputes.

Section 33 – Service of notices, etc.

182. Section 33 lays down detailed procedures for the services of notices under the Act. The section allows notices to be served in person, by hand to someone’s address or by post. It also specifies how notices and letters may be properly addressed.

Section 34 – Listed buildings and conservation areas

183. Section 34 introduces schedule 9. The schedule makes special provisions as to the listed buildings which will be affected by the railway works.

184. 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 34 and schedule

56 This is because sewers operate by gravity so that, unlike gas pipes, water pipes or electricity cables, their levels are essential to their functioning properly. Moving a sewer calls for more than finding a new horizontal route. It also involves finding a route that allows sufficient fall for the flow in the sewer to be maintained.

57 Disputes under these Acts are referred to the Lands Tribunal for Scotland (see above).
9, the authorised undertaker would have to obtain listed building consent and conservation area consent separately from the Bill. This section and schedule 9 accordingly disapply this separate statutory requirement so that the Bill will, effectively, also grant these consents.

185. Paragraph 1(1) of the schedule specifies the provisions in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9) ("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.

186. 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 9 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.

187. The purpose of schedule 9 is to give listed building consent in all cases where it is needed. The buildings mentioned in the table are the only buildings that were listed as at 21 March 2003. Paragraph 1(3) ensures that if any further buildings are listed the schedule will apply to them, as well.

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

189. Paragraph 1(5) of schedule 9 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.58

190. The listed buildings and the works to which the schedule will apply are described in the table at the end of paragraph 1. They are all bridges along the route which require works ranging from minor repairs to total or partial demolition and replacement. Only one listed structure (the

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58 The Listed Buildings Act provides that these things are deemed to be part of a listed building, but only for the purposes of that Act (Listed Buildings Act, s.1(4)).
footbridge to the former Eskbank and Dalkeith Station) is to be demolished without replacement. These works are needed in order to make the bridges fit for purpose (including compliant with current safety standards as part of the new railway).

191. Paragraph 2 of schedule 9 disappplies 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 34 of and schedule 9 to the Bill is effectively to grant listed building consent for the specified works, section 53 ought not to apply to the works.

192. Paragraph 3 of the schedule applies the definitions of “building”\(^{59}\) and “listed building”\(^{60}\) in the Listed Buildings Act.

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

194. In the absence of this section it would be necessary to obtain separate listed building consent and conservation area consent in respect of works affecting the specific listed buildings or certain works in the conservation areas in which they are situated. This section enables listed building issues to be dealt with at the same time as the rest of the scheme.

### Section 35 – Saving for Town and Country Planning

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

196. As explained in paragraph 11 above, development authorised by the Bill is permitted development. Subsection (2) lays down a 10-year limit in respect of these permitted development rights. By section (3) the time limit does not apply to the alteration, maintenance or repair of the authorised works, or the substitution for those works of new works. The Bill therefore operates to grant planning permission for the works subject to a condition that development must be begun within 10 years.

\(^{59}\) “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).

\(^{60}\) “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 Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

Section 36 – Interpretation of sections 37 and 38

197. Section 36 is the first of three sections dealing with the discrete topic of planning agreements, that is agreements between developers and local planning authorities entered into under section 75 of the Town and Country Planning (Scotland) Act 1997 (c.8) (in the Bill called “the 1997 Act”).

198. Subsection (1) contains specific definitions. A planning agreement relates to particular developments of specified land. For the purposes of sections 37 and 38 subsection (1) has a definition of a “relevant planning agreement”. This is a planning agreement entered into in connection with land that is specifically benefited by the works authorised by the Bill. The test is that development on the land can be expected to benefit from or be enhanced by the authorised works. An example would be a proposed housing development where, if the railway were built, the houses would command a higher price because of the good transport links.

199. Sections 37 and 38 deal, among other things, with financial contributions towards the cost of providing the authorised works under a “financial support contract”. Subsection (1) of section 36 has a detailed definition of this expression, which contemplates three different categories of binding contract, namely—

- a funding commitment or approval, whereby one of the parties is committed to procuring funding for the provisions of the authorised works or approves a relevant local planning authority incurring expenditure or entering into a financial obligation for that purpose (intended to cover Scottish Executive approval of expenditure, which might be given together with a commitment for the Executive to procure funds for the works);
- a contract that obliges one party to provide money to pay for the provision of the authorised works and obliges the authorised undertaker to pay interest or give other monetary consideration (intended to catch the widest possible range of money provision agreements from interest bearing loans to capitalised payments); and
- a contract that obliges one party to provide or procure the provision of all or part of the authorised works for a consideration all or part of which consists of the transfer or grant of assets or benefits, in either case other than money (intended to cover the full range of possible procurement contracts such as design and build; design, build, operate and maintain; franchised operations).

200. Sections 37 and 38 apply to relevant planning authorities. Subsection (2) of section 36 provides that the relevant planning authorities are Scottish Borders Council, Midlothian Council and City of Edinburgh Council.

Section 37 – Planning agreements

201. The legislation governing planning agreements is in section 75 of the 1997 Act. Section 75 provides that “a planning authority may enter into an agreement with any person interested in land in their area (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of that land”. Section 75(2) permits

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61 For an explanation of this expression see section 36(2) and paragraph 200 below.
agreements made under section 75 to include incidental and consequential provisions, including financial provisions. A planning agreement may be recorded in the Register of Sasines or registered in the Land Register of Scotland, with the result that the agreement will bind persons whose title derives from the landowner who entered into the agreement.

202. Planning authorities may require planning agreements to be entered into as a condition of granting planning permission. Policy guidance on the reasonable exercise of this power is in Scottish Office Development Department Circular 12/1996 which requires that a planning agreement meets certain criteria. In particular—

- planning authorities should only require planning agreements to be entered into if, in land use planning terms, it would be wrong to grant planning permission without them;\(^{62}\)
- an applicant’s need for planning permission should not be treated as an opportunity to obtain a benefit, financial or environmental, which is unrelated in nature, scale or kind to the development proposed;
- a planning agreement should serve a planning purpose,\(^{63}\) relate to the development being proposed by overcoming some difficulty – such as a need for particular facilities – that the proposed development would create,\(^{64}\) should be related in scale and kind to the proposed development\(^{65}\) and should meet the test of reasonableness;\(^{66}\)
- the provision of contributions towards public transport or community facilities may be acceptable provided the requirements are directly related to the development proposed and the need for them arises from its implementation.\(^{67}\)

203. The guidance in the Circular, and particularly the first and fourth bullet point items, restricts the ability of planning authorities to insist upon planning agreements to cases where the agreement is a direct necessity if planning permission is to be granted. The guidance concerning contributions to transport or community facilities also means that contributions can only be required in relation to facilities that follow the proposed development. In practice developers may sometimes be prepared voluntarily to go beyond the scope of the guidance, but the guidance does not allow planning authorities to require planning agreements by way of support for planned infrastructure that will benefit a development but which is not necessitated by the development alone. As a result of this guidance, planning agreements are of limited application as a means of supporting the provision of infrastructure that is of benefit to a wide development area.

204. In addition to the powers under the 1997 Act, section 69 of the Local Government (Scotland) Act 1973 (c.65) and Part 3 of the Local Government in Scotland Act 2003 (asp 1) give local authorities wide powers to do things, including entering into agreements, for the purpose of promoting or improving the well-being of its area. Unlike planning agreements, however, an agreement to advance well-being cannot be required to bind land to which it relates.

\(^{62}\) Circular 12/1996, paragraph 5.
\(^{63}\) The same, paragraph 9.
\(^{64}\) The same, paragraph 10.
\(^{65}\) The same, paragraph 11.
\(^{66}\) The same, paragraph 12.
\(^{67}\) The same, paragraph 13.
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

205. Section 37 extends the scope of what may be dealt with by a relevant planning agreement\(^\text{68}\) so as to allow for developers to be required to contribute towards or support the provision of the authorised works which will benefit their proposed developments.

206. Section 37 is additional to the general law, not in substitution for it. Subsection (1) accordingly provides that the legislation explained in paragraphs 202 to 204 above is to have effect, but in accordance with the provisions of section 37. It automatically follows that Circular 12/1996 will also have effect subject to section 37.

207. Subsection (2) enables a relevant planning agreement to include provision relating to, or to development that supports or is otherwise connected with, the authorised works. This would cover provision directly connected with ("relating to") the authorised works, such as the construction of works that are subsequently to be integrated into surrounding developments, as may happen with Work No. 1E and the bridge comprised within Work No. 1C (bridges at Shawfair) (see explanation of section 28). Supporting or connected development would extend to, for example, a developer providing a link road from a proposed development to facilitate access to the railway infrastructure.

208. As explained above, a planning agreement must relate to the proposed development. The special nature of a linear work such as a railway is that its effect in one locality is referable to the whole length of the work. Subsection (3) therefore puts it beyond doubt that a planning agreement can validly relate to the authorised works notwithstanding that they are wholly or partly outwith the local government area of the relevant planning authority concerned. The subsection does not remove the need for the particular development to relate to the authorised works. It merely recognises the possibility of there being such a relationship notwithstanding geographical remoteness.

209. Subsection (4) provides that in a relevant planning agreement financial provisions relating to the authorised works may require the payment of developer contributions, that is contributions by the developer towards the cost of providing the authorised works or any development relating to, supporting or otherwise connected with the authorised works. For this purpose section 36 defines "provision" as meaning design, construction or financing of any part of the railway works as defined in section 2. The definition includes maintenance and operation so far as provided in conjunction with design, construction or financing. This would mean that the relevant cost of providing the works could include the cost of a DBOM (design, build, operate, maintain) contract.

210. The reference to supporting or connected development reflects subsection (2).

211. The object of developer contributions pursuant to this section will be to assist in the provision of the authorised works only. Subsection (5) accordingly caps the aggregate developer contributions that can be secured. Aggregate contributions cannot exceed the total of the sums necessary for the purpose of providing the authorised works.

\(^{68}\) For an explanation of this expression see paragraph 198 above.
212. It is also important that there should be an end date for financial contributions. Subsection (6) provides that a developer contribution cannot be required more that 30 years after the opening of the railway for public use. The period reflects the likely length of financial support contracts.

213. The true cost of providing the authorised works is, in addition to the nominal capital cost, the cost of securing that capital, whether by interest payments, loan charges or any other sums payable under a financial support contract. Subsection (7) provides that all these sums are included in the cost of providing the authorised works for which contributions may be required.

214. It follows that developer contributions may be used while there is any outstanding loan agreement or financial support contract. Subsection (8) accordingly enables a relevant planning authority to require developer contributions at any time during the currency of such an agreement or contract.

215. Section 22(7) of the Local Government in Scotland Act 2003 (asp 1) prohibits a local authority from using the powers to advance well-being to impose a levy or imposition. Subsection (9) makes clear that developer contributions required under section 37 do not infringe this rule.

216. The effect of these provisions is to extend the developments that could be requested to contribute towards the authorised works to any development that will benefit from the existence of the railway, whether the railway is built before or after the contributing development. The provisions also recognise that the generally beneficial effect of transport infrastructure on development values extend beyond the provision of infrastructure that is purely for or necessitated by any one development. Sections 37 and 38 also reflect the fact that it can be reasonable for developers to contribute towards the cost of infrastructure that benefits particular developments even though the developments are acceptable for planning purposes without such infrastructure being provided.

217. These are extensions of existing policy as set out in Circular 12/1996. They reflect the increasingly wide effects of transport infrastructure schemes. The provisions therefore build on existing policy, without replacing it. As a result, all the current criteria, as extended in the Bill, will continue to apply.

Section 38 – Application of developer contributions

218. Subsection (1) makes the relevant local planning authority responsible for securing that any developer contributions it obtains towards the cost of providing the authorised works is applied for the purpose for which it was obtained. The planning authority may pay the authorised undertaker direct, but it is likelier that the relevant contracts will be procured through some dedicated entity. These would provide a ‘pot’ into which all contributions could be put.

219. As a safeguard to paying developers, subsection (2) allows a period of 12 months for a developer contribution to be applied as provided in subsection (1). If a developer contribution is not applied within that period, the relevant planning authority must repay it.
Section 39 – Blighted land

220. Section 39 applies the planning blight provisions of sections 100 to 122 of the Town and Country Planning (Scotland) Act 1997 (c.8) (which applies in cases mentioned in Schedule 14 to the Act). These provisions ordinarily apply where compulsory purchase is authorised by a variety of legislative instruments, including a private Act of the UK Parliament, but on devolution this was not extended to apply automatically where the authorisation is by a private Act of the Scottish Parliament. This section is therefore needed to ensure that these provisions apply to the works authorised by the Bill.

221. The effect of section 39 is that—

- a resident owner-occupier of a residential dwelling;
- an owner-occupier of land with an annual (i.e. in most cases rateable) value of (currently) £21,500; 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 40 – Method of vesting land

222. The compulsory purchase procedures under the Lands Clauses Acts as outlined in paragraphs 74 to 77 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 40 applies a further procedure that is available generally to vest land that has been compulsorily acquired.

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

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

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

226. 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

69 Designed to catch small businesses.
declaration provisions will apply on publication of a notice that the Act has received Royal
Assent, giving details about the general vesting declaration procedure and stating that
compensation may be payable. Subsection (2) provides that such a notice may be given at any
time after the Act comes into force. The requirements for publication and service referred to in
subsection (2)(c) are for newspaper publication and service on landowners who previously
received notice of the proposals.

Section 41 – Application of original enactments

227. This section deals with the Acts (in the Bill called “the original enactments”) that either
authorised the former railways which the new railway will replace or are other local enactments
relating to any former railway.

228. The original enactments listed in schedule 10 relate to former local authority
undertakings. They contain protective provisions for the benefit of structures comprised in the
former railways. As these structures are to be used for the railway authorised by the Bill, these
protective provisions are still relevant. Subsection (1) provides for them to apply to the
authorised works.

229. Many of the enactments that authorised the former railways have not been repealed.
However, the effect of the railways themselves having ceased to exist is that the enactments are
spent.70 The only possible exceptions are obligations relating to any private crossings that
remain. As explained in relation to section 8, the provisions in the Bill will replace any
remaining rights under the original enactments. Subsection (2) accordingly makes clear that
these other original enactments will not apply to the authorised works.

Part 4 – Supplementary

Section 42 – Incorporation of enactments

230. 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 42
accordingly incorporates the relevant legislation.

Section 44 – Short title

231. Section 44 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.

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70 i.e. their factual basis having ceased to be, the enactments no longer have any legal effect.
ESTIMATE OF EXPENSE AND FUNDING STATEMENT

INTRODUCTION

232. This statement is provided under Rule 9A.2.3(c)(i) of the Parliament’s Standing Orders. That Rule applies because the Bill seeks to authorise the construction or alteration of works which fall into the categories determined by the Presiding Officer under that Rule and the compulsory acquisition or use of lands or buildings. This statement has been prepared by Scott Wilson Railways (Scotland) Limited and Turner & Townsend Management Solutions Limited on behalf of Scottish Borders Council (the promoter).

ESTIMATED TOTAL COST OF THE PROJECT

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

<table>
<thead>
<tr>
<th>Work or purpose</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Railway works</strong></td>
<td></td>
</tr>
<tr>
<td>Permanent way (Works Nos. 1, 2, 3, 3C, 4, 5, 6, 7, 8, 9 and 10)</td>
<td>17,503,673.00</td>
</tr>
<tr>
<td>Earthworks</td>
<td>11,524,639.00</td>
</tr>
<tr>
<td>Geotechnical and mine working remediation measures</td>
<td>6,693,654.00</td>
</tr>
<tr>
<td>Stations and buildings</td>
<td>3,323,207.00</td>
</tr>
<tr>
<td>Other structures (includes Works Nos. 1A, 1E, 1F, 2A, 2E, 2F, 3A, 3B, 3D, 5C, 10A, 10B, 10C and 10J)</td>
<td>19,440,250.00</td>
</tr>
<tr>
<td>Signalling and telecommunications</td>
<td>10,900,000.00</td>
</tr>
<tr>
<td>Civils and other works</td>
<td>9,589,804.00</td>
</tr>
<tr>
<td>Roadworks (includes Works Nos. 1B, 1C, 1D, 1G, 1H, 1J, 1K, 2B, 2C, 2D, 5A, 5B, 5D, 5E, 5F, 5G, 7A, 7B, 8A, 10D, 10E, 10F, 10G, 10H, 10K and 10L)</td>
<td>7,480,246.00</td>
</tr>
<tr>
<td><strong>Railway works sub-total</strong></td>
<td>£86,455,473.00</td>
</tr>
<tr>
<td><strong>General</strong></td>
<td></td>
</tr>
<tr>
<td>Fees of professional and other advisers</td>
<td>9,710,000.00</td>
</tr>
<tr>
<td>Acquisition of land and rights over land</td>
<td>8,514,320.00</td>
</tr>
<tr>
<td>Ground investigation works</td>
<td>550,000</td>
</tr>
<tr>
<td>Preliminaries</td>
<td>7,416,243.00</td>
</tr>
<tr>
<td><strong>General sub-total</strong></td>
<td>£26,190,563.00</td>
</tr>
<tr>
<td><strong>Contingency</strong></td>
<td></td>
</tr>
<tr>
<td>Public utility diversions</td>
<td>2,890,000.00</td>
</tr>
<tr>
<td>Environmental mitigation</td>
<td>1,654,917.00</td>
</tr>
<tr>
<td>Risk</td>
<td>12,419,170.00</td>
</tr>
<tr>
<td><strong>Contingency sub-total</strong></td>
<td>£16,964,089.00</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td>£129,610,123.00</td>
</tr>
</tbody>
</table>
233. The best estimate of the timescales over which such costs are expected to arise is 2004 to 2008, with the majority of the costs being incurred during the construction stage. This is currently programmed for 2005 to 2008, and is dependent on the Bill procedure being concluded by winter 2004. Allowances have been made for certain taxes, such as landfill and aggregate, within the estimate.

ANTICIPATED SOURCES OF FUNDING

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

<table>
<thead>
<tr>
<th>Funder</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Executive integrated transport fund</td>
<td>110,610,123.00</td>
</tr>
<tr>
<td>Strategic Rail Authority</td>
<td>4,000,000.00</td>
</tr>
<tr>
<td>Local contribution*</td>
<td>15,000,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£129,610,123.00</strong></td>
</tr>
</tbody>
</table>

*Subject to final business case being approved by all parties.


PROMOTER’S STATEMENT

NOTIFICATION TO PERSONS WITH INTEREST IN HERITABLE PROPERTY

236. 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.

237. The persons having an interest in heritable property that will be subject to compulsory purchase are the persons named in the book of reference. Notice of the proposal to introduce a Bill containing compulsory purchase powers by means of a letter was posted by Special Delivery post on 11 September 2003 to each of the persons named in the book of reference. Three standard forms of notice were used to cater for different circumstances (outright acquisition, acquisition of rights only and temporary possession), so that every recipient received a notice in a form all of which was relevant to him or her. The texts of these three forms of notice are set out in appendices 1 to 3 at the end of this statement.

238. The persons having an interest in heritable property that will be otherwise affected by the Bill but which is not to be subject to compulsory purchase have been separately identified. They mainly consist of all persons with an interest in land abutting the route i.e. sharing a common boundary with the railway. Notice of the intention to introduce a Bill was given by means of a
notification posted by Special Delivery post on 11 September 2003 to each of these persons. The standard notification is appended to this statement as appendix 4.

NOTIFICATION TO AND CONSENT FROM MEMBERS ETC.

239. 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.

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

241. For compliance with section 82 a meeting of the Scottish Borders Council was held on 5 March 2003 when a resolution to approve the promotion of the Bill was proposed. At that meeting 30 of the Council’s 34 members attended and by a vote of 29 for and 1 against the resolution was passed by a majority of all members of the Council. Notice of the meeting was published in the Border Telegraph on 18 February 2003 and the Southern Reporter on 20 February 2003. The resolution as passed was as follows:

“That Scottish Borders Council do promote, supported by the City of Edinburgh and Midlothian Councils, a private Bill in the Scottish Parliament for the purpose of authorising the following:

1. The construction in the local government areas of Midlothian and Scottish Borders of a railway from Newcraighall in Midlothian to Tweedbank in Scottish Borders substantially following the route of the former Waverley railway.

2. The carrying out in connection with the proposed railway of ancillary works, including such stoppings up of and interference with roads as may be required, such provision for crossings of the railway as may be necessary and such provision as may be required (in addition to provision made by the roads authorities) to secure the continued availability along the route of facilities for cyclists and pedestrians.

3. The compulsory acquisition of land required for the purposes of the intended works, including land to be used for the purposes of construction, the provision of stations, access, accommodation works and landscaping and other purposes. These proposed powers include the compulsory acquisition of temporary and permanent rights over land rather than outright purchase, and the compulsory temporary possession of land for the purposes of the construction works. All compulsory powers will be exercisable only on payment of appropriate compensation in accordance with the compensation code that applies nationally to all compulsory purchase of land.
4. The extinction of rights of way over land to be acquired.

5. The outright or partial disposal or transfer of any of the powers in the Bill (including the power to construct the railway) or of the railway once built.

6. Related ancillary matters including the discharge of water; powers to enter on land for the purpose of surveying and investigating land; lopping of trees; and the alteration or removal of specified listed structures.

And in connection with the promotion further resolved as follows:

7. That the appropriate Proper Officers of the Council, be authorised in relation to the Bill to take all steps and do and perform all such acts on behalf of the Council as they may consider necessary or expedient including in relation to—
   
   (a) the agreeing of amendments to be sought in the Bill;
   (b) the carrying on of negotiations and the making of agreements with third parties, including Network Rail Infrastructure Ltd.;
   (c) the giving on behalf of the Council of undertakings in connection with the Bill;
   (d) the affixing of the Council’s Common Seal to any documents; and
   (e) the instructing of Counsel, agents and witnesses.”

NOTIFICATION TO AND CONSENT FROM BODIES AFFECTED

242. This part of the statement is provided under Rule 9A.2.3(d)(iii) of the Parliament’s Standing Orders. That Rule applies because the Bill contains provisions to confer powers upon bodies corporate, namely Midlothian Council and City of Edinburgh Council.

243. For compliance with section 82, meetings of Midlothian Council and City of Edinburgh Council were held on 13 March 2003 and 20 March 2003 respectively, when resolutions to approve the promotion of the Bill were proposed.

244. At the Special Meeting of Midlothian Council on 13 March 2003, 12 of the Council’s 18 members attended and by a unanimous vote of those present, the resolution was passed by a majority of all members of the Council. Notice of the meeting was published in the Midlothian Advertiser on 27 February 2003. The resolution as passed was as follows:

“That the Midlothian Council do support Scottish Borders Council in promoting a private Bill in the Scottish Parliament for the purpose of authorizing the following:

1. The construction in the local government areas of Midlothian and Scottish Borders of a railway from a point in Midlothian, just south of Newcraighall, Edinburgh to Tweedbank in Scottish Borders substantially following the route of the former Waverley railway.
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

2. The carrying out in connection with the proposed railway of ancillary works, including such stoppings up of and interference with roads as may be required, such provision for crossings of the railway as may be necessary and such provision as may be required (in addition to provision made by the roads authorities) to secure the continued availability along the route of facilities for cyclists and pedestrians.

3. The compulsory acquisition of land required for the purposes of the intended works, including land to be used for the purposes of construction, the provision of stations, access, accommodation works and landscaping and other purposes. These proposed powers include the compulsory acquisition of temporary and permanent rights over land rather than outright purchase, and the compulsory temporary possession of land for the purposes of the construction works. All compulsory powers will be exercisable only on payment of appropriate compensation in accordance with the compensation code that applies nationally to all compulsory purchase of land.

4. The extinction of rights of way over land to be acquired.

5. The outright or partial disposal or transfer of any of the powers in the Bill (including the power to construct the railway) or of the railway once built.

6. Related ancillary matters including the discharge of water; powers to enter on land for the purpose of surveying and investigating land; lopping of trees; and the alteration or removal of specified listed structures.

And in connection with the promotion further resolved as follows:

7. That the appropriate Proper Officers of the Council be authorised to liaise with and agree as necessary as partners of Scottish Borders Council in progressing the Bill.”

245. At the Special Meeting of the City of Edinburgh Council held on 20 March 2003 53 of the Council’s 58 members attended and by a unanimous vote of those present the resolution was passed by a majority of all members of the Council. Notice of the meeting was published in the Scotsman and the Edinburgh Evening News on 4 March 2003. The resolution as passed was as follows:

“That The City of Edinburgh Council do support Scottish Borders Council in promoting a private Bill in the Scottish Parliament for the purpose of authorising the following:

1. The construction in the Local Government areas of Midlothian and Scottish Borders of a railway from a point in Midlothian, just south of Newcraighall, Edinburgh to Tweedbank in Scottish Borders substantially following the route of the former Waverley railway.

2. The carrying out in connection with the proposed railway of ancillary works, including such stoppings up of and interference with roads as may be required, such provision for crossings of the railway as may be necessary and such provision as may be required (in
addition to provision made by the roads authorities) to secure the continued availability along the route of facilities for cyclists and pedestrians.

3. The compulsory acquisition of land required for the purposes of the intended works, including land to be used for the purposes of construction, the provision of stations, access, accommodation works and landscaping and other purposes. These proposed powers include the compulsory acquisition of temporary and permanent rights over land rather than outright purchase, and the compulsory temporary possession of land for the purposes of the construction works. All compulsory powers will be exercisable only on payment of appropriate compensation in accordance with the compensation code that applies nationally to all compulsory purchase of land.

4. The extinction of rights of way over land to be acquired.

5. The outright or partial disposal or transfer of any of the powers in the Bill (including the power to construct the railway) or of the railway once built.

6. Related and ancillary matters including the discharge of water; powers to enter on land for the purpose of surveying and investigating land; lopping of trees; and the alteration or removal of specified listed structures.

And in connection with the promotion further resolved as follows:

7. That the Director of City Development and the Council Solicitor, Proper Officers of the Council, be authorised to liaise with and agree as necessary as partners of Scottish Borders Council, in progressing the Bill.”

246. For compliance with section 82, second meetings of the three Councils will be held at least 14 days after the Bill has been introduced when a second resolution to approve the promotion of the Bill will be proposed. If this resolution is not passed by a majority of all members the Bill may be withdrawn. The text of each of the newspaper notices of the meetings is attached to this statement as appendix 5.

ADVERTISEMENT OF INTENTION TO INTRODUCE THE BILL

247. Notice of the intention to introduce a Private Bill was published in the Scotsman on 1 September 2003 and 8 September 2003, the Midlothian Advertiser on 4 September 2003 and 11 September 2003, the Southern Reporter on 4 September 2003 and 11 September 2003 and the Border Telegraph on 2 September 2003 and 9 September 2003 and has been displayed from 28 August 2003 in the following Scottish Parliament Partner and other Libraries:
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Library</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Midlothian</td>
<td>Dalkeith Library</td>
<td>White Hart Street, Dalkeith EH22 1AE,</td>
</tr>
<tr>
<td>Tweeddale, Ettrick &amp; Lauderdale</td>
<td>Galashiels Library</td>
<td>Lawyers Brae, Galashiels TD1 3JQ</td>
</tr>
<tr>
<td>Tweeddale, Ettrick &amp; Lauderdale</td>
<td>Peebles Library</td>
<td>High Street, Peebles EH45 8AG.</td>
</tr>
</tbody>
</table>

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

“The purpose of the Bill is to give statutory authority for the construction of a railway in the local government areas of Midlothian and Scottish Borders substantially along the route of the former Waverley Railway from a point in Midlothian immediately south of Newcraighall in the City of Edinburgh to Tweedbank in Scottish Borders. The Bill will also authorise the construction of new roads to allow local traffic to divert following the closure of certain specified roads, necessitated by the railway works. The Bill will also authorise the permanent stopping up of specified roads and the temporary stopping up of roads for the purposes of the works; the acquisition of land required for the purposes of the intended works, including land to be used for the purposes of construction, the provision of stations, access, accommodation works and landscaping and other purposes; acquisition of rights only; extinction of rights of way over land to be acquired; special provision as to entry on land and compensation and temporary possession of specified land; provision for outright or partial disposal or transfer of the railway or any of the powers in the Bill relating to the railway; and provision for other related ancillary matters including the discharge of water; powers to enter on land for the purpose of surveying and investigating land; lopping of trees; and the alteration or removal of certain specified listed structures. The Bill includes provision concerning requirements for developers to enter into planning agreements containing provision for the making of contributions to the authorised works.”

OTHER ACCOMPANYING DOCUMENTS

249. The documents listed in paragraph 2 above may be inspected at the Scottish Parliament Partner Libraries and other libraries listed above. Copies of these documents are available for purchase from Philippa Gilhooly, Policy & Programme Engineer, Transport & Environmental Standards, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA.

250. On 8 September 2003, the promoter made the following statement:

“We, Scottish Borders Council, hereby undertake to send copies of the maps, plans, sections, book of reference and environmental statement accompanying the Waverley Railway (Scotland) Bill not published by the Parliament, together with any other
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

documents relevant to the Bill submitted to the Parliament on or after introduction, to the premises determined by the Presiding Officer for the purpose of Rule 9A.4.2.”

PROMOTER’S UNDERTAKING TO PAY COSTS

251. On 8 September 2003, the promoter made the following statement:

“We, Scottish Borders Council, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the Waverley Railway (Scotland) Bill in respect of the matters determined by that Body under Rule 9A.2.3(d)(vi) of the Parliament’s Standing Orders.”

APPENDICES: FORM OF NOTICES SENT TO PERSONS AFFECTED AND NEWSPAPER NOTICES ETC.

Appendix 1: Form of notice sent in cases of permanent acquisition of land and/or rights

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

Waverley Railway (Scotland) Bill

NOTICE OF PROPOSAL TO ACQUIRE LAND COMPULSORILY

Notice No.: [ ]

To [Name]
 [Address]

This Notice relates to the following land:

[Book of reference details of property]

We write to inform you that Scottish Borders Council intends to introduce a Private Bill, the Waverley Railway (Scotland) Bill, into the Scottish Parliament around 11 September 2003. The purpose of the Bill is to authorise:

• the reconstruction of a railway from a point in Midlothian immediately south of Newcraighall in the City of Edinburgh to Tweedbank in Scottish Borders; and

• the construction of road and other works necessitated by the railway.

We understand that you have an interest in the property comprising [general details of property] fully described in the schedule to this notice and shown on the attached extract from the Bill plans. If the Bill is passed, you may be obliged to sell your property, or a right to use it. This means that your interest in the property comprising [Book of reference details of property] could be taken from you. You may be entitled to compensation from the promoter if you are obliged to sell the property or the promoters gain a right to use it.
The purpose of this letter is to inform you of this intention and the procedures involved as well as alerting you to where you can seek further information regarding:

- the Bill;
- your rights to object; and
- the Parliamentary process.

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.

From the day after introduction, the Bill and the above documents will also be available, free of charge, on the Parliament’s website (www.scottish.parliament.uk). Copies of the Bill and all of its accompanying documents, including maps and plans and sections, the book of reference, the environmental statement [and agreements with the Scottish Parliamentary Corporate Body relating to the assignment of copyright and licensing] will be available for inspection at the following Scottish Parliament Partner and other Libraries:

- Dalkeith Library, White Hart Street, Dalkeith EH22 1AE
- Galashiels Library, Lawyers Brae, Galashiels TD1 3JQ
- Peebles Library, High Street, Peebles EH45 8AG

Copies of the maps, plans, sections, environmental statement, book of reference and copyright agreement can be purchased from Philippa Gilhooly, Policy & Programme Engineer, Transport & Environmental Standards, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA. The other documents will be published by the Parliament and will be available for sale from The Stationery Office bookshops and free of charge on the website mentioned above.
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

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Note 1: Cheques should be made payable to Scottish Borders Council.

Note 2: Bill and other accompanying documents available from the Stationery Office and on the Scottish Parliament website (www.scottishparliament.uk)

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

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

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

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

Should you wish to object to the Bill, you will have 60 days from the date of the introduction of the Bill to lodge objections. Objections to the Bill must be sent to the Private Bills Unit of the Scottish Parliament, Edinburgh EH99 1SP (0131 348 6789, private.bills @scottish.parliament.uk) accompanied by a lodging fee of £20. A copy of the Scottish Parliament’s Private Bill Guidance, which explains in detail the procedures involved in the Private Bill process, is available for inspection from the Partner Libraries listed above. The Guidance is also available on the Parliament’s website. A copy of the Parliament’s guidance for objectors is enclosed with this letter.
Any questions relating to the parliamentary procedures involved in the processing of this Bill should be directed to the Private Bills Unit clerks. Any other questions relating to the Bill should be directed to Mrs. A M H Gorlov, John Kennedy & Co (020 7593 5005).

Signed: John Kennedy & Co

On behalf of: Scottish Borders Council

Date: 11 September 2003

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

You can obtain further information on Private Bill Procedure from the Private Bills Unit at the Parliament. They can be contacted on 0131 348 6789 or by e-mail to private.bills@scottish.parliament.uk

**SCHEDULE**

Description of land and/or buildings affected by the proposed compulsory purchase powers

In the local government area of [    ]

<table>
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<tr>
<th>No. on attached plan</th>
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**Appendix 2: Form of notice sent in cases of acquisition of rights only**

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

### Waverley Railway (Scotland) Bill

**NOTICE OF PROPOSAL TO ACQUIRE RIGHTS IN LAND COMPULSORILY**

Notice No.: [    ]

To [Name]

[Address]

This Notice relates to the following land:
We write to inform you that Scottish Borders Council intends to introduce a Private Bill, the Waverley Railway (Scotland) Bill, into the Scottish Parliament around 11 September 2003. The purpose of the Bill is to authorise:

- the reconstruction of a railway from a point in Midlothian immediately south of Newcraighall in the City of Edinburgh to Tweedbank in Scottish Borders; and
- the construction of road and other works necessitated by the railway.

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

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

The purpose of this letter is to inform you of this intention and the procedures involved as well as alerting you to where you can seek further information regarding:

- the Bill;
- your rights to object; and
- the Parliamentary process.

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;
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- Dalkeith Library, White Hart Street, Dalkeith EH22 1AE
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Note 1: Cheques should be made payable to Scottish Borders Council.

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

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

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

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

Should you wish to object to the Bill, you will have 60 days from the date of the introduction of the Bill to lodge objections. Objections to the Bill must be sent to the Private Bills Unit of the Scottish Parliament, Edinburgh EH99 1SP (0131 348 6789, private.bills@scottish.parliament.uk) accompanied by a lodging fee of £20. A copy of the Scottish Parliament’s Private Bill Guidance, which explains in detail the procedures involved in the Private Bill process, is available for inspection from the Partner Libraries listed above. The Guidance is also available on the Parliament’s website. A copy of the Parliament’s guidance for objectors is enclosed with this letter.
Any questions relating to the parliamentary procedures involved in the processing of this Bill should be directed to the Private Bills Unit clerks. Any other questions relating to the Bill should be directed to Mrs. A M H Gorlov, John Kennedy & Co (020 7593 5005).

Signed: John Kennedy & Co

On behalf of: Scottish Borders Council

Date: 11 September 2003

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

You can obtain further information on Private Bill Procedure from the Private Bills Unit at the Parliament. They can be contacted on 0131 348 6789 or by e-mail to private.bills@scottish.parliament.uk

**SCHEDULE**

Description of land and/or buildings affected by the proposed compulsory purchase powers and purposes for which rights are required

In the local government area of [ ]

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Appendix 3: Form of notice sent in cases of temporary possession of land

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

**Waverley Railway (Scotland) Bill**

**NOTICE OF PROPOSAL TO TAKE TEMPORARY POSSESSION OF LAND**

Notice No.: [ ]

To [Name]
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

[Address]

This Notice relates to the following land:

[Book of reference details of property]

We write to inform you that Scottish Borders Council intends to introduce a Private Bill, the Waverley Railway (Scotland) Bill, into the Scottish Parliament around 11 September 2003. The purpose of the Bill is to authorise:

- the reconstruction of a railway from a point in Midlothian immediately south of Newcraighall in the City of Edinburgh to Tweedbank in Scottish Borders; and
- the construction of road and other works necessitated by the railway.

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

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

The purpose of this letter is to inform you of this intention and the procedures involved as well as alerting you to where you can seek further information regarding:

- the Bill;
- your rights to object; and
- the Parliamentary process.

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.

From the day after introduction, the Bill and the above documents will also be available, free of charge, on the Parliament’s website (www.scottish.parliament.uk). Copies of the Bill and all of its accompanying documents, including maps and plans and sections, the book of reference, the environmental statement and agreements with the Scottish Parliamentary Corporate Body relating to the assignment of copyright and licensing will be available for inspection at the following Scottish Parliament Partner and other Libraries:
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

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Note 1: Cheques should be made payable to Scottish Borders Council.

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

Should you wish to object to the Bill, you will have 60 days from the date of the introduction of the Bill to lodge objections. Objections to the Bill must be sent to the Private Bills Unit of the Scottish Parliament. Edinburgh EH99 1SP (0131 348 6789, private.bills@scottish.parliament.uk) accompanied by a lodging fee of £20. A copy of the Scottish Parliament’s Private Bill Guidance, which explains in detail the procedures involved in the Private Bill process, is available for inspection from the Partner Libraries listed above. The Guidance is also available on the Parliament’s website. A copy of the Parliament’s guidance for objectors is enclosed with this letter.

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

On behalf of: Scottish Borders Council

Date: 11 September 2003

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

You can obtain further information on Private Bill Procedure from the Private Bills Unit at the Parliament. They can be contacted on 0131 348 6789 or by e-mail to private.bills@scottish.parliament.uk

SCHEDULE

Description of land and/or buildings affected by the proposed compulsory powers and purposes for which rights are required

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Appendix 4: Form of notice to affected parties

NOTICE OF INTENTION TO INTRODUCE A PRIVATE BILL

Notification No.: [    ]

To [Name]
[Address]

11 September 2003

Waverley Railway (Scotland) Bill

We write to inform you that Scottish Borders Council intend to introduce a Private Bill, the Waverley Railway (Scotland) Bill, into the Scottish Parliament on or around 11 September 2003. The purpose of this notification is to inform you of this intention and of the procedures involved should you wish to seek further information regarding the Bill or the Parliamentary process to which it will be subject.
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

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.

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

- Dalkeith Library, White Hart Street, Dalkeith EH22 1AE
- Galashiels Library, Lawyers Brae, Galashiels TD1 3JQ
- Peebles Library, High Street, Peebles EH45 8AG.

Copies of the maps, plans, sections, environmental statement, book of reference and copyright agreement can be purchased from Philippa Gilhooly, Policy & Programme Engineer, Transport & Environmental Standards, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose TD6 0SA. The other documents will be published by the Parliament and will be available for sale from The Stationery Office bookshops and free of charge on the website mentioned above.

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These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

* P&P for more than one document: price on application

Note 1: Cheques should be made payable to Scottish Borders Council.

Note 2: Bill and other accompanying documents available from the Stationery Office and on the Scottish Parliament website (www.scottishparliament.uk)

Once the Bill has been introduced into the Parliament, it will be subject to a three Stage process where it will be considered in detail both by a specially established Private Bill Committee and by the full Parliament. During the Bill’s consideration by the Committee, it can hear evidence directly from objectors to the Bill.

Should you wish to object to the Bill, you will have 60 days from the date of the introduction of the Bill to lodge objections. Objections must be lodged with the Private Bills Unit, The Scottish Parliament, Edinburgh EH99 1SP (0131 348 6789, private.bills@scottish.parliament.uk) accompanied by a lodging fee of £20. A copy of the Scottish Parliament’s Private Bill Guidance, which explains in detail the procedures involved in the Private Bill process, is available for inspection from the Partner Libraries listed above. The Guidance is also available on the Parliament’s website.

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

John Kennedy & Co
35 Great Peter Street, Westminster, London SW1P 3LR
Parliamentary Agents for the promoter

Appendix 5: Form of newspaper advertisements for meetings at which consent to promotion of Private Bill was obtained

“Scottish Borders Council

Statutory meeting under section 82 of the Local Government (Scotland) Act 1973

Notice is hereby given pursuant to the provisions of section 82 of the Local government (Scotland) Act 1973 that a Meeting of Scottish Borders Council will be held at Headquarters, Newtown St. Boswells, on 5 March 2003 at 10 a.m., prior to the Ordinary Meeting of the Council to be held on that day, to consider and if thought fit approve and adopt the following resolution:

Proposed Waverley Railway (Scotland) Bill

Resolution

Resolved
[see text of resolution in paragraph 241of the Promoter’s Statement in this document]
Dated: 18 February 2003
Signed: J. N. Dundas, Head of Corporate Administration”
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

“Midlothian

Statutory meeting under section 82 of the Local Government (Scotland) Act 1973

Notice is hereby given pursuant to the provisions of section 82 of the Local government (Scotland) Act 1973 that a Meeting of The Midlothian Council will be held at Midlothian House, Buccleuch Street, Dalkeith EH22 1DN on 13 March 2003 at 10.30 a.m. to consider and if thought fit approve and adopt the following resolution:

Proposed Waverley Railway (Scotland) Bill

Resolution

Resolved

[see text of resolution in paragraph 244 of the Promoter’s Statement in this document]

Dated: 27 February 2003

Signed: Ian Jackson, Director, Corporate Services, on behalf of Midlothian Council”

“The City of Edinburgh Council

Statutory meeting under section 82 of the Local Government (Scotland) Act 1973 as amended

A Meeting of The City of Edinburgh Council will be held at City Chambers, High Street, Edinburgh EH1 1YJ on 20 March 2003 at 10 a.m., prior to the Ordinary Meeting of the Council to be held on that day, to consider and if thought fit approve and adopt the following resolution:

Proposed Waverley Railway (Scotland) Bill

Resolution

Resolved

[see text of resolution in paragraph 245 of the Promoter’s Statement in this document]

Dated: 4 March 2003

Signed: John Sturt, Council Secretary, on behalf of the City of Edinburgh Council”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

252. On 10 September 2003, the Presiding Officer (George Reid) made the following statement:
“In my view, the provisions of the Waverley Railway (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Waverley Railway (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 11 September 2003

Waverley Railway (Scotland) Bill

Explanatory Notes

(And Other Accompanying Documents)

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