Airdrie-Bathgate Railway and Linked Improvements Bill

Marshalled List of Amendments for Consideration Stage

The Bill will be considered in the following order—

- Sections 1 and 2  Schedule 1
- Section 3  Schedule 2
- Sections 4 to 7  Schedule 10
- Sections 8 to 11  Schedule 4
- Sections 12 to 15  Schedule 3
- Sections 16 to 19  Schedule 5
- Sections 20 and 21  Schedule 6
- Sections 22 to 38  Schedule 7
- Section 39  Schedule 8
- Sections 40 to 42  Schedule 9
- Sections 43 to 49  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 1

Cathy Peattie
1  In schedule 1, page 25, line 27, leave out <2D> and insert <2E>

Section 4

Janis Hughes
2  In section 4, page 2, line 16, leave out <to any extent not exceeding 3 metres upwards> and insert <upwards by a maximum of 3 metres>

Section 6

Jeremy Purvis
3  In section 6, page 2, line 39, leave out <subsection (4)> and insert <subsections (4) and (6C)>

Jeremy Purvis
4  In section 6, page 3, line 15, leave out subsection (6) and insert—

<6> The authorised undertaker shall give the roads authority notice in writing with a certificate that any authorised work to which subsection (3) applies is complete.

(6A) The roads authority may, within 21 days after such service, give the authorised undertaker a counter-notice in writing that the notice is disputed on the ground that the work is not complete.
(6B) Any dispute as to the completion of a work shall be determined by arbitration, and the determination of the arbiter (or other person to whom the dispute is referred) shall be final and binding.

(6C) Any work or associated land which is the subject of a notice under subsection (6) shall vest—
(a) 28 days after the service of the notice;
(b) on the date of a determination under subsection (6B) that the work is complete;
(c) on the date on which the authorised undertaker complies with any conditions for completion that are specified in the determination; or
(d) on the completion of the work as provided by subsection (3), whichever is the latest.

(6D) A certificate issued by or on behalf of the authorised undertaker as to the date on which the authorised undertaker complied with any conditions of the sort referred to in subsection (6C)(c) together, if so requested by the roads authority, with a report from a consultant to be agreed between the authorised undertaker and the roads authority confirming such compliance, shall for the purposes of this section be conclusive evidence of such compliance.

Section 7

Jeremy Purvis

5 In section 7, page 3, line 26, leave out subsection (1) and insert—

(1) Subject to subsections (2) and (7), on completion of each of the private accesses specified in columns (1) and (2) of Part 3 of schedule 10 to this Act, the private access and its associated land shall, if they are vested in the authorised undertaker, by virtue of this section vest in the intended owner.

(1A) Any vesting effected by subsection (1) shall be subject to such rights specified by the authorised undertaker as may be requisite to reflect public or private rights in any access for which the private access is a substitute.

Jeremy Purvis

6 In section 7, page 3, line 33, leave out <road> and insert <private access>

Jeremy Purvis

7 In section 7, page 3, line 39, at end insert—

(4) The authorised undertaker shall give every person in whom it intends to vest any access or associated land under this section not less than 28 days’ notice in writing specifying—
(a) the private access or associated land that is to be vested;
(b) details of any other person in whom that access or land is to be vested; and
(c) details of any rights to which the access or land is to be subject and of every person who has or will have such rights, together with a certificate that the access is complete.
A person on whom a notice is served under subsection (4) may, within 21 days after such service, give the authorised undertaker a counter-notice in writing that the notice is disputed on the grounds that—

(a) the person on whom the notice has been served is not such a person as is described in subsection (9);

(b) the access is not complete; or

(c) any rights specified under subsection (4)(c) are not such as described in that subsection.

Any dispute as to whether a person is such a person as is described in subsection (9), as to the completion of a private access or as to whether rights specified in a notice are such as described in subsection (4)(c) shall be determined by arbitration, and the determination of the arbiter (or other person to whom the dispute is referred) shall be final and binding.

Any private access or associated land which is the subject of a notice under subsection (4) shall vest—

(a) 28 days after the service of notice under subsection (4);

(b) on the date of a determination under subsection (6) that the person on whom the notice has been served is such a person as is described in subsection (9) and that the access is complete;

(c) on the date on which the authorised undertaker complies with any conditions for completion that are specified in the determination; or

(d) on the completion of the access as provided by subsection (1), whichever is the latest.

A certificate issued by or on behalf of the authorised undertaker as to the date on which the authorised undertaker complied with any conditions of the sort referred to in subsection (7)(c) shall for the purposes of this section be conclusive evidence of such compliance.

In this section “intended owner” means a person or persons identified by the authorised undertaker to become the owner of a private access constructed under this Act as being—

(a) the owner of the private access for which the private access being vested is a substitute; or

(b) the owner of land that is served by the private access.

Schedule 10

Jeremy Purvis

8 In schedule 10, page 78, line 27, column (3), at beginning insert "The bridge over the railway at Bedlormie Mains Farm"

Jeremy Purvis

9 In schedule 10, page 78, leave out line 32
Jeremy Purvis
10 In schedule 10, page 81, line 3, column (2), leave out <road> and insert <access>

Jeremy Purvis
11 In schedule 10, page 81, line 3, column (3), leave out <road> and insert <access>

Jeremy Purvis
12 In schedule 10, page 81, line 21, column (3), at beginning insert <The bridge over the railway>

Jeremy Purvis
13 In schedule 10, page 81, line 22, column (3), at beginning insert <The bridge over the railway>

Section 8

Jeremy Purvis
14 In section 8, page 4, line 5, leave out from <English> to end of line 6 and insert <EWS Railway.>

Jeremy Purvis
15 In section 8, page 4, line 6, at end insert—

<(2) The authorised undertaker shall give EWS Railway not less than 28 days’ notice in writing with a certificate that any work or facility referred to in subsection (1) is complete.

(3) The provisions of subsections (6A) to (6D) of section 6 shall apply to a notice given under subsection (2) of this section as if any reference in those subsections to a work or associated land were a reference to any work or facility referred to in subsection (1) of this section, and as if references to the roads authority were references to EWS Railway.

(4) In this section “EWS Railway” means English Welsh and Scottish Railway Limited (company no. 02938988).>

Section 9

Jeremy Purvis
16 Leave out section 9 and insert—

<Registration of vested land

(1) The Keeper of the Registers of Scotland may, without prejudice to section 4 of the Land Registration (Scotland) Act 1979 (c.33), register any land vested under section 6, 7 or 8 on receiving the material specified in subsection (2).

(2) The material referred to in subsection (1) is—

(a) particulars of the land vested under section 6, 7 or 8 sufficient to enable the Keeper to identify it by reference to the Ordnance Map;

(b) particulars of the person or persons in whom the land is vested;>
(c) an application for registration made by or on behalf of the authorised undertaker or the person in whom the land is vested;
(d) details of any rights to which the vesting is subject;
(e) such proof as the Keeper may require that the events giving rise to the vesting have happened; and
(f) such other documents and evidence as the Keeper may require in order to satisfy himself that the vesting should be registered.>

Section 11

Cathy Peattie
17 In section 11, page 5, line 12, leave out <by the Secretary of State>

Section 16

Alasdair Morgan
18 In section 16, page 7, line 34, at end insert <or the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348).>

Section 17

Janis Hughes
19 In section 17, page 8, line 20, leave out subsection (2)

Section 19

Cathy Peattie
20 In section 19, page 9, line 18, leave out subsection (4)

Schedule 5

Janis Hughes
21 In schedule 5, page 53, leave out lines 32 and 33

Section 21

Janis Hughes
22 In section 21, page 10, leave out lines 38 and 39
Leave out section 31 and insert—

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

(1) Where—

(a) the authorised undertaker has entered into a binding obligation (“the obligation”) not to acquire any land within the limits of deviation or the limits of land to be acquired or used; and

(b) either the authorised undertaker or the owner desires to reflect that commitment by way of either amendment of, or addendum to, either or both the Parliamentary plans and the book of reference,

the authorised undertaker or the owner of the land may (after giving the notice required by subsection (3)) apply summarily to the sheriff under this section.

(2) If the Parliamentary plans or the book of reference are inaccurate in—

(a) their description of any land; or

(b) their statement or description of the ownership or occupation of any land,

the authorised undertaker may (after giving the notice required by subsection (3)) apply summarily to the sheriff for the correction of such inaccuracy.

(3) The notice required by subsections (1) and (2) is 10 days’ prior notice—

(a) in the case of a notice by the authorised undertaker, to the owner, lessee and occupier of the land in question; and

(b) in the case of a notice by an owner, to the authorised undertaker and to any lessee or occupier of the land in question.

(4) Any person to whom a notice has been given under subsection (1) or (2) may, within the period of 10 days from the giving of the notice, give to the sheriff and the person who gave the notice a counter-notice in writing that the person disputes—

(a) in the case of an application under subsection (1), that the proposed amendment or addendum accurately reflects the obligation; and

(b) in the case of an application under subsection (2), that there is an inaccuracy which may be amended under this section.

(5) In relation to any application under this section if it appears to the sheriff—

(a) that the proposed amendment or addendum accurately reflects the obligation; or

(b) that the inaccuracy arose from mistake,

as the case may be, the sheriff shall certify the fact accordingly.

(6) A certificate relating to an application under subsection (2) shall state in what respect any matter is misstated or wrongly described.

(7) If any counter-notice is given pursuant to subsection (4), the sheriff shall, before making any decision on the application cause a hearing to be held.

(8) The certificate shall be deposited in the office of the Clerk of the Parliament.
(9) On the making of the deposit required by subsection (8)—
   (a) the Parliamentary plans and the book of reference shall be deemed to be corrected or amended according to the certificate; and
   (b) it shall be lawful for the authorised undertaker to take the land or, as the case may be, a right over the land in accordance with the certificate.

(10) The Clerk of the Parliament shall keep every certificate deposited under this section with the Parliamentary plans or book of reference to which it relates.

(11) An application under subsection (1) or (2) may only be made in respect of land identified in the book of reference or on the Parliamentary plans.

(12) In this section “the sheriff” means the sheriff principal of, or any sheriff appointed for, the sheriffdom in which the land is located.

Section 32

Janis Hughes
24 In section 32, page 16, line 31, leave out <10> and insert <five>

Janis Hughes
25 In section 32, page 16, line 35, leave out <10> and insert <five>

Janis Hughes
26 In section 32, page 16, line 36, leave out <from> and insert <beginning on>

Janis Hughes
27 In section 32, page 16, line 40, leave out subsection (3)

After section 32

Janis Hughes
28 After section 32, insert—
   <Extension of time>
   (1) On the application of the authorised undertaker, the Scottish Ministers may, by order, extend, or further extend, the period referred to in subsection (1) of section 32 provided that—
      (a) such application is made prior to the expiry of the period or any extension to it; and
      (b) the period referred to in that subsection, taken together with any extension to it, shall not exceed ten years in total.
   (2) If the Scottish Ministers extend, or further extend, the period referred to in subsection (1) of section 32, subsection (2) of that section shall have effect as if, for the period referred to in it, there were substituted the extended, or further extended, period.
(3) The power of the Scottish Ministers to make orders under subsection (1) above shall be exercisable by statutory instrument.

(4) A statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of the Parliament.

After section 34

Janis Hughes

29 After section 34, insert—

<Application of Crichel Down Rules>

(1) The authorised undertaker shall apply the Crichel Down Rules in relation to surplus land.

(2) In this section—

“the Crichel Down Rules” means the rules set out in the Scottish Development Department Circular 38 of 1992 (“Disposal of Surplus Government Land – the Crichel Down Rules”) as amended or superseded from time to time;

“surplus land” means any land acquired compulsorily under section 17 which is subsequently declared by the authorised undertaker to be surplus to the authorised undertaker’s requirements for the provision of the authorised works.

Section 37

Janis Hughes

30 In section 37, page 19, line 4, leave out from <“functions”> to end of line 5 and insert <“disposal” includes sale, lease, excambion and charge.>

After section 38

Cathy Peattie

31 After section 38, insert—

<Historic obligations relating to former railway>

(1) As from—

(a) the acquisition of any land by the authorised undertaker, whether compulsorily or by agreement; or

(b) the entry on the land by the authorised undertaker under section 29, whichever occurs earlier, BRBR shall be discharged from any obligation to which it is subject in relation to that land under any statutory provision in a private Act or provisional order specifically relating to the former railway, including any provision of the 1845 Act or the Railways Clauses Act 1863 (c.92) that is incorporated in such a private Act or provisional order.
(2) As from the date of such discharge, all access and other rights (wherever exercisable) in respect of any structure located on land mentioned in subsection (1)(a) and of which, immediately before the discharge, BRBR had the benefit, being rights which arise under a statutory provision of the sort mentioned in subsection (1), shall have effect for the benefit of the authorised undertaker as statutory successor to BRBR in respect of any such structure.

(3) In this section—

“BRBR” means BRB (Residuary) Limited (company no. 04146505) and its successors;

“the former railway” means any railway which at any time prior to the passing of this Act, was situated within the limits of deviation of Work No. 1, Work No. 1A or Work No. 1AA;

“provisional order” means an order made under the Private Legislation Procedure (Scotland) Act 1936 (c.52) or any earlier Act which that Act replaced.

After section 40

Alasdair Morgan

32 After section 40, insert—

<Assessment of effects on natural habitats

In the application of the Conservation (Natural Habitats &c.) Regulations 1994 (SI 1994/2716) to the authorised works, the Parliament is the competent authority.

Alasdair Morgan

33 After section 40, insert—

<Mitigation of environmental impacts

(1) The authorised undertaker shall employ all reasonably practicable means to ensure—

(a) that the environmental impacts of the construction and operation of the authorised works as described in the environmental statement are not worse than the residual impacts identified in the environmental statement in relation to those works; and

(b) that—

(i) the additional environmental mitigation measures identified in the promoter’s undertakings are carried out; or

(ii) the environmental impacts of the construction or operation of the authorised works as so described are not worse than they would have been had the mitigation measures referred to in sub-paragraph (i) been carried out.

(2) In this section—

“environmental statement” means the environmental statement submitted to the Parliament as an accompanying document with the Bill for this Act;

“the promoter’s undertakings” means all undertakings given by Network Rail as Promoter of the Bill for this Act—

(a) to the Committee during the Consideration Stage of the Bill for this Act; or
(b) to any person in connection with that Bill;

“residual impacts” means the environmental impacts of the construction or operation of the authorised works after the mitigation measures proposed in the environmental statement have been carried out.

Alasdair Morgan

34 After section 40, insert—

<Compliance with code of construction practice, noise and vibration policy and mitigation commitment documents>

(1) The authorised undertaker shall employ all reasonably practicable means to ensure that—

(a) the authorised works are carried out in accordance with the code of construction practice as approved by the local planning authority for each area in which the authorised works are located and from time to time amended or replaced in accordance with schedule (Code of construction practice); and

(b) the noise and vibration policy and any mitigation commitment document, as from time to time amended or replaced, is applied to the use and operation of the authorised works as described in that policy and the environmental statement.

(2) None of the code of construction practice, the noise and vibration policy or any mitigation commitment document shall be amended or replaced so as to reduce the standards of mitigation and protection provided for in the versions being amended or replaced.

(3) Schedule (Code of construction practice) has effect in relation to the approval, amendment and replacement of the code of construction practice.

(4) In this section “noise and vibration policy” means the ‘Airdrie to Bathgate Noise and Vibration Policy’ dated 12 March 2007, a copy of which has been lodged with the Clerk of the Parliament to be held with the accompanying documents relating to the Bill for this Act.

Alasdair Morgan

35 After section 40, insert—

<Regulation of mitigation measures>

(1) The requirements imposed by or pursuant to the following provisions, that is to say—

(a) sections (Mitigation of environmental impacts) and (Compliance with code of construction practice, noise and vibration policy and mitigation commitment documents); and

(b) schedule (Code of construction practice) to this Act,

shall be enforceable, and the local planning authority shall have the responsibility to enforce them, as valid planning conditions.

(2) For the purposes only of such enforcement and any appeal against a decision of the local planning authority under this Act, planning permission for the construction of the authorised works shall be deemed to have been granted under section 37 of the 1997 Act subject to the imposition of those conditions under section 41 of that Act.
(3) The authorised undertaker shall maintain a directory containing the code of construction practice, the noise and vibration policy and any mitigation commitment document.

(4) North Lanarkshire Council, West Lothian Council and City of Edinburgh Council shall appoint a single Planning Monitoring Officer to be responsible for the discharge by each of those councils of its functions under this section.

Alasdair Morgan

36 After section 40, insert—

<Protection of the water environment

Nothing in this Act affects the operation of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348) in relation to Works Nos. 1, 1G, 2B, 2C, 2E, 2F, 2J, 2L, 2S, 9, 10, 15, 16A, 18, 20A, 20B and 46, the attachment of overhead line equipment to Birdsmill Viaduct or any ancillary work described in paragraph 7 of schedule 2 to this Act.

Alasdair Morgan

37 After section 40, insert—

<Saving for Railways Act 1993

Section (Mitigation of environmental impacts) and section (Compliance with code of construction practice, noise and vibration policy and mitigation commitment documents) do not affect the carrying out of any activity that is—

(a) subject to regulation under the Railways Act 1993 (c.43); or

(b) connected with such an activity and subject to standards, guidance or other measures that form part of the terms of such regulation.

After schedule 8

Alasdair Morgan

38 After schedule 8, insert—

<SCHEDULE

(introduced by section (Compliance with code of construction practice, noise and vibration policy and mitigation commitment documents))

CODE OF CONSTRUCTION PRACTICE

1 Before commencing construction of the authorised works located in the area of a local planning authority the authorised undertaker shall secure that the code of construction practice is submitted to that local planning authority for its written approval.

2 The local planning authority shall send a copy of every code submitted pursuant to paragraph 1, and any amendment or replacement proposed by the authorised undertaker pursuant to paragraph 3, to SNH and SEPA and shall take account of any representations made to the local planning authority by either of those bodies.

3 The authorised undertaker may with the approval of the local planning authority amend or replace the code of construction practice.
4  In approving the code of construction practice or any amendment or replacement submitted under this schedule, the local planning authority may require the authorised undertaker to make amendments to the code or to the amendment or replacement as the case may be.

5  For the purpose of any appeal against a decision of a local planning authority under this schedule, an application for approval under paragraph 1 or 3 shall be deemed to be an application for planning permission made under section 32 of the 1997 Act.

6  In this schedule—
   “SEPA” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995 (c.25); and
   “SNH” means Scottish Natural Heritage established under section 1 of the Natural Heritage (Scotland) Act 1991 (c.28).>

Section 41

Cathy Peattie

39  In section 41, page 19, line 33, leave out <Accordingly.>

After section 41

Jeremy Purvis

40  After section 41, insert—
   <Real burdens and servitudes, etc. affecting land acquired
   Any land acquired under or by virtue of this Act shall be treated as if it were acquired by virtue of a compulsory purchase order and the provisions of section 106 of the Title Conditions (Scotland) Act 2003 (asp 9) shall apply to it.>

Section 43

Cathy Peattie

41  Leave out section 43 and insert—
   <Certification of plans, etc.
   (1)  As soon as practicable after the coming into force of this Act, the authorised undertaker shall submit copies of the book of reference, the Parliamentary plans and the Parliamentary sections to the Clerk of the Parliament for certification under this section.
   (2)  On being satisfied as to the accuracy of documents submitted under subsection (1), the Clerk shall certify them as being, respectively the book of reference, Parliamentary plans and Parliamentary sections referred to in this Act.
   (3)  A document certified under subsection (2) shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.>
After section 43

Jeremy Purvis

42 After section 43, insert—

<Registration of new rights

(1) A servitude or other right acquired by the authorised undertaker under section 18 or 19 shall, unless otherwise expressly stated in the instrument by which it is created, be treated for all purposes as benefiting the land from time to time held by the authorised undertaker for the purposes of the authorised works.

(2) Notwithstanding section 75 of the Title Conditions (Scotland) Act 2003 (asp 9), where a servitude falls to be treated as mentioned in subsection (1), the deed by which it is created shall be effective whether or not it is registered against the benefited property.>

Section 44

Jeremy Purvis

43 In section 44, page 20, line 9, at beginning insert <Except as provided in sections 6(6B) and 7(6),>

Section 46

Cathy Peattie

44 In section 46, page 21, line 20, leave out <, 8, 9, 11, 12, 13, 14>

Cathy Peattie

45 In section 46, page 21, line 21, leave out from <79> to <117> and insert <40 to 50, 52 to 56, 58, 59, 66, 68, 87 and 88>

Cathy Peattie

46 In section 46, page 21, line 22, leave out from <Part> to end of line 23 and insert <section 12>

Cathy Peattie

47 In section 46, page 21, line 28, at end insert—

<( ) sections 18 and 21 of the 1845 Act shall not apply in any case where the relations between the authorised undertaker and any other person are regulated by sections 143 and 144 of the 1991 Act; and

( ) section 60 of the 1845 Act shall have effect with the omission of the words from “Such and” to “formation thereof” and from “together with all necessary gates” to “all necessary stiles”>
Section 47

Jeremy Purvis

48 In section 47, page 21, line 38, at end insert—
<“associated land”, in relation to a private road or private access, means the land on which the road or access is constructed, together with any other road or land acquired by the authorised undertaker under this Act for the purpose of such construction;> 

Alasdair Morgan

49 In section 47, page 22, line 6, at end insert—
<“code of construction practice” means the edition of the Code of Construction Practice (which sets out the measures to be employed in the construction of the authorised works so to mitigate the impact of those works) dated 12 March 2007, a copy of which has been lodged with the Clerk of the Parliament to be held with the accompanying documents relating to the Bill for this Act;> 

Alasdair Morgan

50 In section 47, page 22, line 6, at end insert—
<“the Committee” means the Airdrie-Bathgate Railway and Linked Improvements Bill Committee to which the Bill for this Act was referred, and includes any assessor appointed in respect of that Bill under Rule 9A.9.1B of the Standing Orders of the Parliament;> 

Janis Hughes

51 In section 47, page 22, line 14, at end insert—
<“functions” includes powers, duties and obligations;> 

Alasdair Morgan

52 In section 47, page 22, line 17, at end insert—
<“mitigation commitment document” means a document setting out the authorised undertaker’s commitments in terms of policy, plans or specific measures for mitigation of the environmental impacts of the authorised works or their construction;> 

Section 48

Jeremy Purvis

53 In section 48, page 23, line 1, leave out subsection (2) and insert—
<(2) Without prejudice to the generality of subsection (1), nothing in this Act authorises the acquisition of land (including any rights or interests in land) held or used by a minister of the Crown, a government department or the Scottish Ministers without the consent in writing of that minister or government department or of the Scottish Ministers.>