

**STIRLING-ALLOA-KINCARDINE RAILWAY
AND LINKED IMPROVEMENTS BILL
COMMITTEE**

Wednesday 9 June 2004
(Afternoon)

Session 2

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STIRLING-ALLOA-KINCARDINE RAILWAY AND LINKED IMPROVEMENTS BILL COMMITTEE

11th Meeting 2004, Session 2

CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

DEPUTY CONVENER

*Rob Gibson (Highlands and Islands) (SNP)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)

*David Mundell (South of Scotland) (Con)

*Nora Radcliffe (Gordon) (LD)

*attended

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Fergus Cochrane

LOCATION

Committee Room 2

Scottish Parliament

Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee

Wednesday 9 June 2004

(Afternoon)

[THE CONVENER *opened the meeting at 12:57*]

Stirling-Alloa-Kincardine Railway and Linked Improvements Bill: Consideration Stage

The Convener (Bill Butler): Good afternoon and welcome to the 11th meeting in 2004 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill Committee. All members are present. I remind them and members of the public to switch off mobile phones or pagers. Today, we are dealing with the consideration stage of the bill.

Sections 1 and 2 agreed to.

Schedule 1 agreed to.

Section 3 agreed to.

Schedule 2 agreed to.

Section 4—The ancillary works

The Convener: Amendment 1, in the name of Rob Gibson, on behalf of the promoter, is in a group on its own.

Rob Gibson (Highlands and Islands) (SNP): Amendment 1 is a drafting amendment to the definition of the expression “ancillary works” in section 4. Section 1 authorises the construction of the proposed railway, which is called “the railway works”, and a new link road that is necessitated by the railway works, which is called “the major road works”. Section 1 also authorises the construction of ancillary works, as described in section 4. Amendment 1 would substitute “or” for “and” in section 4(1) so that the ancillary works are correctly defined as being ancillary to either the railway works or the major road works and not to both, as the present wording implies.

I move amendment 1.

Amendment 1 agreed to.

Section 4, as amended, agreed to.

Schedule 3 agreed to.

Sections 5 to 7 agreed to.

Section 8—Level crossings

The Convener: Amendment 2, in the name of Rob Gibson, on behalf of the promoter, is grouped with amendments 3 to 7 and 17.

Rob Gibson: Amendments 2 to 7 are proposed, following discussions between the promoter and Her Majesty’s railway inspectorate, in relation to level-crossings and level-crossing equipment. Railway safety is within the matters that are reserved to the secretary of state. Amendments 2 to 7 are drafting amendments to clarify that the arrangements at any level-crossing will be as required by the secretary of state in accordance with the legal requirements that are applicable to level-crossings generally. HMRI was concerned that it should be clearer in the bill that the bill will not alter the current legal framework. The amendments will ensure that HMRI will have the final say on safety approvals in relation to level-crossings before the railway can be opened.

Amendments 2 and 3 relate to level-crossings that are crossings of public roads. Amendment 2 will clarify that level-crossing equipment may only be as required by the secretary of state as a reserved function. The wording of the bill as introduced was questioned as implying that the Parliament was requiring the type of equipment by reference to level-crossings generally.

Amendment 3 relates to section 8(8). The existing regulatory provision will be replaced, in relation to continuing level-crossings, by the arrangements to be approved by HMRI and it will become obsolete in relation to the crossings that are to be stopped up and discontinued. Therefore, subsection (8) will disapply the relevant provisions as listed in part 3 of schedule 4. Amendment 3 makes it clear that, in relation to orders made under section 42 of the Road and Rail Traffic Act 1933, section 66 of the British Transport Commission Act 1957 or section 1 of the Level Crossings Act 1983, the disapplication will apply only to orders made before the act comes into force, so removing any implication that the use of those powers might be restricted after the act is passed.

Amendments 4 to 7 relate to private crossings of the railway. Amendments 4, 5 and 6 seek to amend subsection (3). As it appears in the bill, subsection (3) introduces the specific crossing equipment that is listed in column (4) of schedule 5 as being required at private crossings. That was done because the promoter mistakenly understood the schedule 5 list to reflect what HMRI wanted. Amendments 4, 5 and 6 will provide instead that the equipment to be installed will be as required by the secretary of state. Amendment 7 will remove the list of equipment in schedule 5.

I move amendment 2.

The Convener: I ask Nora Radcliffe to speak to amendment 17.

Nora Radcliffe (Gordon) (LD): I have no comment on the other amendments in the group. Amendment 17, which is a manuscript amendment, is a drafting amendment that is proposed following discussion with HMRI. As drafted, the disapplication of current regulatory controls under section 8(8) will apply immediately on the act coming into force. The intended purpose of section 8(8) is to disapply those controls only at the point at which they cease to be relevant, which is when the level-crossings in question have been refurbished as contemplated by the bill or stopped up and discontinued. Amendment 17's substitute subsection (8) will achieve that.

The Convener: Do any members wish to comment?

Rob Gibson: I have no further words on this.

Amendment 2 agreed to.

Amendment 17 moved—[Nora Radcliffe]—and agreed to.

Section 8, as amended, agreed to.

Schedule 4

LEVEL CROSSINGS

Amendment 3 moved—[Rob Gibson]—and agreed to.

Schedule 4, as amended, agreed to.

Section 9—Private crossings

Amendments 4, 5 and 6 moved—[Rob Gibson]—and agreed to.

Section 9, as amended, agreed to.

Schedule 5

PRIVATE CROSSINGS

Amendment 7 moved—[Rob Gibson]—and agreed to.

The Convener: Amendment 8, in the name of Rob Gibson, on behalf of the promoter, is in a group on its own.

Rob Gibson: Amendment 8, when considered alongside section 9 of the bill, provides for the closure of Balfour Street level-crossing in Alloa. The bill does not at present refer to that crossing in the list of private crossing closures, because it had been thought that it was no longer a crossing of the railway to which rights of way attached. Now that the fact that there are existing rights to use the crossing has come to light, it is necessary to amend the bill so as to provide for the closure of a

crossing that cannot be accommodated in the context of a modern railway.

The committee took the view that such an amendment might affect the interests of persons who were not affected by the bill as introduced. Accordingly, notice of the amendment was given and advertised by the promoter. One objection—from Messrs Anderson and Brydie—was received and considered by the committee, but the committee concluded that it was satisfied by the promoter on the merits of closing the crossing and recommended in paragraph 186 of its report that the amendment should be lodged.

I move amendment 8.

Amendment 8 agreed to.

Schedule 5, as amended, agreed to.

Section 10 agreed to.

Schedule 6 agreed to.

Section 11 agreed to.

Section 12—Discharge of water

The Convener: Amendment 9, in the name of Richard Baker, on behalf of the promoter, is in a group on its own.

Richard Baker (North East Scotland) (Lab): Amendment 9 is required to correct an incorrect reference to section 30A of the Control of Pollution Act 1974.

I move amendment 9.

Amendment 9 agreed to.

Section 12, as amended, agreed to.

Section 13 agreed to.

Schedule 7 agreed to.

Sections 14 to 17 agreed to.

Schedule 8 agreed to.

Sections 18 to 26 agreed to.

Section 27—Compensation for depreciation in value of interest in land subject to standard security

The Convener: Amendment 10, in the name of Richard Baker, on behalf of the promoter, is in a group on its own.

Richard Baker: Section 27 of the bill provides in detail for the treatment of compensation payable in respect of mortgaged land. It alters the general law in this respect in accordance with precedents that have on occasion been included in Scottish provisional orders. The effect of section 27 is that compensation for the depreciation in value of land, when agreed or determined, may be paid to the

lender and not to the landowner or borrower. Such compensation will be applied to reduce the amount due under a heritable security. Section 2(1)(b) would allow for such payment to be made to a lender even where the total amount of compensation exceeds what is due to the lender and whether or not the landowner or borrower wishes to reduce the amount owed.

On reconsidering the operation of the provision in practice, the promoter has concluded that it does not wish the authorised undertaker to be placed in the position that it has discretion to alter the status quo between borrower and lender. The treatment of mortgaged property in the Lands Clauses Consolidation (Scotland) Act 1845 is tried and tested. The promoter is content to operate within that framework and, in particular, within the framework of section 99, which concerns the redemption of heritable securities, and section 101, which deals with negative equity.

Amendment 10 therefore seeks to delete section 27 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill.

I move amendment 10.

Nora Radcliffe: I think that the act that Richard Baker mentioned was from 1945.

The Convener: No, Mr Baker was correct. It is from 1845.

Amendment 10 agreed to.

Section 28 agreed to.

Section 29—Powers of disposal, agreements for operation, etc

The Convener: Amendment 11, in the name of David Mundell, on behalf of the promoter, is grouped with amendment 12.

David Mundell (South of Scotland) (Con): The purpose of section 29(6) is to provide that any authorised undertaker will be bound by all relevant obligations or liabilities to which a previous authorised undertaker is subject. Amendment 11 makes it clear that that includes, but is not limited to, obligations or liabilities resulting from any undertaking or agreement given as regards the authorised undertaker.

The intention is that the transferred obligations include anything done by Clackmannanshire Council as promoter before the bill receives royal assent and undertakings or agreements given by the council or any other authorised undertaker after it receives royal assent. Amendment 12 clarifies that intention.

I move amendment 11.

Amendment 11 agreed to.

Amendment 12 moved—[David Mundell]—and agreed to.

Section 29, as amended, agreed to.

Section 30 agreed to.

Schedule 9

STATUTORY UNDERTAKERS, ETC

The Convener: Amendment 13, in the name of David Mundell, on behalf of the promoter, is grouped with amendment 14.

David Mundell: Amendments 13 and 14 are consequential to the passing of the Communications Act 2003. The purpose of schedule 9 is to apply the statutory codes relating to utility apparatus. The statutory code governing the provision of telecommunications apparatus is the code set out in schedule 2 to the Telecommunications Act 1984, which was originally called the telecommunications code. Under the 1984 act, a person to whom the telecommunications code applied was a public telecommunications operator.

The 2003 act altered the regulatory regime and in doing so changed some of the nomenclature in the 1984 act. The telecommunications code is extended to all electronic communications and under section 106(1) of the 2003 act is renamed the electronic communications code. The code can be applied to any person who is providing an electronic transmission system under section 106(3) and section 106(4) of that act. In the 2003 act, such a system is called an electronic communications network, as set out in section 32 of the act.

Amendments 13 and 14 reflect those new expressions. The schedule relates to the operator of any electronic communications code network so as to make clear that it captures only those electronic communications networks to which the electronic communications code has been applied.

I move amendment 13.

Amendment 13 agreed to.

Amendment 14 moved—[David Mundell]—and agreed to.

Schedule 9, as amended, agreed to.

Sections 31 to 33 agreed to.

Schedule 10 agreed to.

Sections 34 and 35 agreed to.

After section 35

The Convener: Amendment 18, in the name of Nora Radcliffe, on behalf of the promoter, is in a group on its own.

Nora Radcliffe: In order to ensure that the authorised undertaker provides the necessary mitigation measures to avoid an adverse environmental impact on the River Teith candidate special area of conservation, the promoter will enter into an enforceable agreement with Scottish Natural Heritage, enabling SNH to oversee the relevant works and mitigation. Such an agreement is akin to a management agreement in relation to the relevant land.

However, as the authorised undertaker may not acquire rights amounting to an interest in land, it appears that SNH's statutory powers are not wide enough to enable it to enter into the proposed agreement. Amendment 18 provides the legal framework for the agreement to be treated as a management agreement under section 49A of the Countryside (Scotland) Act 1967, which authorises SNH to enter into management agreements with landowners.

I move amendment 18.

Amendment 18 agreed to.

Section 36—Application of existing enactments, etc

The Convener: Amendment 15, in the name of Nora Radcliffe, on behalf of the promoter, is grouped with amendment 16.

Nora Radcliffe: Amendments 15 and 16 are the product of discussions with BRB (Residuary) Ltd. In its objection to the bill, BRB (Residuary) Ltd was concerned to ensure that the statutory burdens that it inherited on railway privatisation in relation to former operational railway assets, which were largely structures, would, as far as they related to the railway works and the functions of the authorised undertaker, be assumed by the authorised undertaker. It was contended that section 36(2) of the bill failed to achieve that. The promoter has lodged amendments 15 and 16 to meet the case and BRB (Residuary) Ltd agrees that the amendments make the provision that it was seeking.

I move amendment 15.

Amendment 15 agreed to.

Amendment 16 moved—[Nora Radcliffe]—and agreed to.

Section 36, as amended, agreed to.

Sections 37 to 39 agreed to.

Long title agreed to.

The Convener: Thank you. That ends the consideration stage of the bill.

Meeting closed at 13:16.

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