



**NETWORK RAIL INFRASTRUCTURE LIMITED  
AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS ACT 2007 (the Act)**

## **GUIDE TO COMPULSORY PURCHASE PROCEDURES AND COMPENSATION – AUGUST 2007**

**Disclaimer:** The law and procedures relating to compulsory purchase and compensation are very complex and technical. The information set out in this paper is a simple summary and is not intended to cover every possible circumstance. Neither is this paper intended to be a guide to the law and it has no legal force. If your property is, or seems likely to be, affected by the Airdrie-Bathgate Project you should consider seeking advice from a professionally qualified person such as a surveyor or solicitor. Network Rail cannot provide you with advice in relation to this matter and does not accept any liability in relation to reliance on this document.

### **1. Introduction**

It is inevitable that the construction of this project will affect land/property. Where that happens, the land/property owners and occupiers concerned may be entitled to claim compensation but this area of law is very complex and technical. To assist affected land/property owners and occupiers, Network Rail has produced this leaflet to give a simple summary of the procedures involved and rights to compensation. This is only intended to be a basic guide and some useful sources of more detailed information are given at the end of the leaflet.

### **2. The Airdrie-Bathgate Rail Link Project**

The Airdrie-Bathgate Rail Link Project has been promoted by a Private Bill through the Scottish Parliament and attained Royal Assent on 8 May 2007. The Airdrie-Bathgate Railway & Linked Improvements Act 2007 authorises, amongst others, the land / property acquisition and the construction of the new railway line between Drumgelloch and Bathgate and linked improvements on the existing operational railway line between Airdrie and Drumgelloch in the west and Bathgate and Edinburgh in the east.

You can get more information about the Airdrie-Bathgate Rail Link Project on the website [www.airdriebathgaterailink.co.uk](http://www.airdriebathgaterailink.co.uk)

### **3. Parliamentary Process**

The Private Bill was introduced to the Scottish Parliament on 31 May 2006 and at the same time, land/property owners whose interests might be directly affected were duly notified. There then followed a 60 day period during which objections against the Private Bill could be made to Parliament. The plots of land affected are shown on the Maps, Plans & Sections to the Bill and the owners and other parties with an interest in these plots are recorded in the Books of Reference. The Act, passed on 8 May 2007, has given Network Rail the authority to use or acquire through compulsory purchase the land/property required to construct the rail link.

## **4. Procedures Where Land/Property is to be Temporarily Occupied or Permanently Acquired**

### **4.1 General**

Among other things this Act gives Network Rail as the authorised undertaker the power to:

- Temporarily possess property/land/rights required for the construction of the Project
- Acquire permanent rights (such as access) over land/property for maintenance of the railway infrastructure; and
- Permanently acquire title to, and other property interests in or over land/property needed for the Project.

In all of these cases the acquisition or possession can be taken whether or not this is with the agreement of the relevant owners, leaseholders or occupiers.

The Maps, Plans & Sections show which land/property and rights can be acquired temporarily and those which can be acquired permanently. Once the final design has been drawn in detail, it may become clear that Network Rail does not actually require all the land/property defined in the Maps, Plans & Sections. If so, Network Rail will only acquire the land/property and rights in land that are needed and it will not use its powers of acquisition and possession for the remaining land.

While land/property and rights can now be acquired for the Airdrie-Bathgate Rail Link Project without the agreement of the owners, leaseholders and occupiers, this cannot be done until legal procedures have been completed which are designed to protect those parties' rights. In many cases the affected parties will be able to claim compensation (See Section 5).

### **4.2 Temporary Possession of Land/Property**

Where the Act identifies land/property for temporary possession, this will usually be because the land/property is needed to carry out temporary works connected with carrying out the project, for example for access and storage. Network Rail does not believe that there is any need to permanently acquire such land/property and it did not seek the power to do so.

Network Rail has the right to take temporary possession of this land/property for the purposes specified in the Act. If you own such land/property you will be notified at least 28 days before temporary possession is needed. Existing rights (such as rights of way) will be temporarily suspended. Once the land/property has been used for the purpose required, it will be returned to you.

After the works are completed Network Rail will remove all temporary works and restore the land/property as far as reasonably practicable to its original condition, although Network Rail is not obliged to replace any buildings which might be removed.

You may be entitled to compensation if you have property/rights in land/property affected in this way (see section 5 below).

### **4.3 Permanent acquisition of land/property, or new rights in land/property, without the owner's permission**

You may own land/property identified in the Act for permanent acquisition. If the land is described in this way, this is because Network Rail requires ownership of the land/property to construct the railway infrastructure on that land/property and to operate the railway afterwards. However in some cases, Network Rail may only need to create a permanent right (such as a right of access for maintenance purposes) over that land/property and, where that is the case, it may not be necessary to acquire the land from you.

Except where it has been possible to agree otherwise, Network Rail will generally need to acquire land/property/rights in land through the compulsory purchase procedures prescribed by law. It is expected that this will be done through a General Vesting Declaration (GVD). All affected owners, occupiers, leaseholders and charge holders must be formally notified that the Act has received Royal Assent and that Network Rail is considering using this process at least 2 months before a GVD is made. In this Guide, this type of notice will be referred to as a "Pre-General Vesting Declaration Notice". Once a GVD has been made, the owners, occupiers and leaseholders will be notified of this and title will "vest" in Network Rail on the date specified in the notice. In this Guide, this type of notice will be referred to as a "Post-General Vesting Declaration Notice". This means that ownership of the land and/or rights will automatically be transferred to Network Rail and Network Rail will be able to take entry to the land or exercise the rights at the end of the period specified in the notice. That date needs to be at least 28 days after the GVD has been made. Any existing private rights of way or other burdens in title over land/property permanently acquired by Network Rail through a GVD will be extinguished. If you are affected by the GVD then you may be entitled to claim compensation (See section 5 below).

## **Surveys and Monitoring**

As part of the design phase for the Project, it may be necessary to enter land/property to carry out survey work. If you have land/property affected in this way then you will be issued with a notice, on the first occasion of at least 7 days, and at least 3 days in each subsequent instance, before the survey(s) is (are) due to start. It is possible that some surveys may need to be intrusive, for example taking core samples, and there may need to be some ongoing monitoring. Network Rail has provided their contractors with a protocol to ensure that disruption is minimised as far as reasonably practicable. You may be entitled to compensation for losses incurred as a result of such survey and monitoring works (See section 5 below)

## **5 Compensation**

### **5.1 General**

The most common situation where compensation may be payable is where you have had your land/property/rights to property acquired compulsorily (whether permanently or temporarily). However, even if you have no land/property taken, you may still be able to claim compensation in certain circumstances and these are outlined below.

All compensation claims will be assessed and negotiated by Network Rail or their consultant surveyors. It is likely to be in your interest to appoint your own professional advisers, e.g. a chartered surveyor or qualified solicitor, to represent you in your compensation claim. While you are likely to have to pay professional fees to those advisers, you may be able to claim these back. For general guidance about such claims you may wish to refer to the Valuation Office Agency and Compensation Manual which can be viewed at [www.voa.gov.uk](http://www.voa.gov.uk). You should be aware that this is focused on the law as it applies in England but it does give a good introduction to the general principles and many of the Scottish provisions are similar. More references about compulsory purchase and compensation claims which you may find useful, including a legal textbook which is focused on Scots Law, are given at the end of this leaflet.

Where property is subject to compulsory purchase, affected proprietors have a right to seek an advance payment of compensation for the compulsory acquisition of their interest. A request for an advance payment should be made in writing to Network Rail giving particulars of the claimant's interest in the land in response to the Pre-General Vesting Declaration Notice or subsequently. The amount of advance payment will be equal to 90 per cent of the compensation agreed between the claimant and Network Rail or if agreement has not been reached, 90 per cent of Network Rail's estimate of compensation. However, there are exceptions to this in respect of any land which is subject to a mortgage the principal of which exceeds 90 per cent of such an amount. The advance payment should be made no later than three months after the date of the request or on possession, whichever is the later.

If you are not happy with the amount of compensation that you are offered for the loss or damage to your land/property then you can apply to the Lands Tribunal for Scotland who will make the final decision. More information about the Lands Tribunal and the procedures involved in approaching that body can be found at its official website [www.lands-tribunal-scotland.org.uk](http://www.lands-tribunal-scotland.org.uk). In assessing the amount of compensation to be paid, the Lands Tribunal will not take into account any interests created in property or works to property where it is satisfied that these were undertaken with a view to obtaining compensation or increased compensation.

## **5.2 Compensation for Temporary possession of Land/Property**

Owners and occupiers of the land/property may be entitled to compensation for any loss or damage arising from the temporary works. If you need to vacate your home or business during the work you may be entitled to claim compensation for this disturbance.

## **5.3 Compensation for Permanent Acquisition of Land/Property**

If Network Rail needs to permanently acquire land/property that you own, you will get compensation for its "market value". In other words, the price at which the land/property might be expected to sell for on the open market by a willing seller and ignoring the effects of the project and compulsory purchase process. Compensation may also be payable for disturbance (e.g. the costs involved in vacating your property, and any relocation process but excluding the price to be paid for any replacement property). Overall you should end up no worse or better off financially than you would have been if the Airdrie-Bathgate Railway had never happened.

If Network Rail only needs to acquire part of your land/property, you may be entitled to claim not just for the value of part of your land/property taken but also for compensation due to any injurious affection to the value of the land/property you are left with. Injurious affection can occur in 2 main ways which are as follows:

### **Severance:**

In general terms, this occurs when, as a result of Network Rail acquiring only part of your land/property, the value of the land/property you retain is reduced due to the physical loss of the land taken. An example of this would be if part of your land/property is acquired and the land/property you are left with is not big enough for the purpose you use it for (for example if part of an open storage area is acquired, the remaining area may no longer be big enough to store all of the materials needed). Another example would be if the access to your remaining land/property is not as good as it was before. Where possible Network Rail may be able to agree to carry out work that removes the affects of severance instead of paying compensation (for example, a solution to access difficulties might be to build a new access provided either you or Network Rail has an interest in the land required to provide for such a new access).

If the effects of severance on your land/property are particularly severe then you may be able to get Network Rail to buy the whole of the land/property. To do so you would have to show that your land/property would suffer *material detriment* as a result of severance.

### **Injurious Affection:**

In general terms, this occurs when the value of the land/property you retain is reduced by adverse effects arising from the Project (for example because of noise or vibration). You may be able to claim compensation for this. Any injurious affection claims may be set against improvements in the value of your remaining land/property resulting from the Project (e.g. due to improved accessibility to say a new station). Such improvements in the value are known as *betterment*.

## **Blight:**

If you try to sell your land/property before Network Rail needs to acquire it and you are unable to do so (or can only sell it at a reduced price) as a result of the Project then Network Rail might acquire it from you earlier than planned on request. If Network Rail is unwilling to accept your request, you may be able to serve a Blight Notice. If successful this becomes a compulsory purchase in reverse (i.e. Network Rail is forced to buy your land/property). However, for this to happen, you will normally need to satisfy the legal requirements necessary to serve a Blight Notice. Generally these are that you must be an owner/occupier and your land/property should be residential, whole or part of an agricultural unit or, if commercial, be worth less than the Limit of Rateable Annual Value set by law (currently £28,000). You will also need to show that you have made reasonable endeavours to sell your land. If Network Rail does not agree that your property is "blighted", Network Rail may serve a counter-notice objecting to the blight notice. There are seven grounds on which such an objection may be made and the counter-notice must specify the grounds on which it is made. Where a counter notice is served on you, you will have a period of two months to require that the objection is referred to the Lands Tribunal for Scotland.

## **5.4 Compensation where no Land/Property Acquired Occupied**

You may be entitled to claim compensation if you can show that the value of your land/property has been significantly reduced by physical factors caused by the construction or subsequent use of the Project. Different legal rules and procedures apply depending on whether you wish to claim as a result of the construction works or from the operation of the railway.

Where your claim relates to matters arising out of the construction of the Project then by law there are 4 criteria which must be met, these being:

- The works must be carried out under statutory authority
- The injury caused must be such that it would normally be actionable under common law
- The damage must arise from the execution of the works not their subsequent use
- Any compensation due is limited to the damage caused to the property interest.

In other words there needs to be a direct impact on your rights (such as loss of private parking) which affects the value of your land/property. The House of Lords has held that indirect factors such as noise, dust and general damage arising from the construction works will not justify compensation.

Where your claim relates to reduction in land/property value resulting from operation of the new railway then this must be based on one of seven physical factors set by law: noise, vibration, smell, smoke, fumes, artificial light and the release of solid or liquid substances onto the land.

More information can be obtained via the following:

- The Royal Institution of Chartered Surveyors Compulsory Purchase Helpline – 0870 333 1600
- List of solicitors maintained by the Law Society of Scotland [www.lawscot.org.uk](http://www.lawscot.org.uk)
- Rowan-Robinson J "Compulsory Purchase & Compensation- the Law in Scotland" 2<sup>nd</sup> Edition, Thomson/W Green, Edinburgh 2003
- Lands Tribunal For Scotland [www.lands-tribunal-scotland.org.uk](http://www.lands-tribunal-scotland.org.uk)
- VOC Land Compensation Manual [www.voa.gov.uk](http://www.voa.gov.uk)
- (Stair Memorial Encyclopaedia Chapter on Compulsory Purchase and Compensation (Out of date at present but expected to be updated as from publication expected to be October/November)

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