

GLASGOW AIRPORT RAIL LINK BILL (“THE BILL”)

STRATHCLYDE PARTNERSHIP FOR TRANSPORT (“THE PROMOTER”)

POLICY PAPER ON BEHALF OF THE PROMOTER IN RESPECT OF COMPULSORY PURCHASE & COMPENSATION 2 MAY 2006

Introduction

1. The purpose of this policy paper is to assist those whose property is affected by the Glasgow Airport Rail Link project to obtain additional information on the opportunities to claim compensation as a result of the project.
2. ‘Compulsory purchase’ is the term given where a public body acquires land and rights in land without the consent of the owner and at the same time provision is made for the payment of compensation. Compulsory purchase is only authorised for an identified public purpose and the justification is that the needs of the public must, in certain circumstances, over-ride the property rights of the individual.
3. The Bill applies the body of rules (known as ‘the Compensation Code’) applicable to any compulsory purchase in Scotland. The Compensation Code is the collective term commonly used to describe the body of law (including various existing Acts of Parliament and case law) governing the procedures for entitlement to compensation following compulsory purchase. The Bill will simply apply that existing law. The way in which these rules operate is described in greater detail below.
4. The law and procedure relating to compulsory purchase and the eligibility for and assessment of compensation are complex. Of necessity, the information in this policy paper is a simplification and cannot cover every circumstance. This policy paper is not intended to be a complete guide. Its purpose is to provide an outline of the principles relating to compulsory purchase and compensation. It does not constitute legal advice and should not be relied upon by any individual in relation to their rights to compensation. If a proprietor thinks that his or her property is likely to be affected by the Bill, independent professional advice should be sought from a professionally qualified person such as a surveyor or solicitor.

5. In this policy paper references to the “Bill” are references to the Glasgow Airport Rail Link Bill, references to the “Act” are references to the Bill once Royal Assent is received, and references to the “Project” are references to the Glasgow Airport Rail Link project.

Compulsory Purchase

The granting of compulsory purchase powers

6. Once the Bill is passed by the Scottish Parliament and it receives Royal Assent, it becomes an Act. The powers of compulsory purchase conferred by the Act will trigger a set of legal procedures to allow for the purchase of the necessary property for the Project and the related claims for compensation to be made. The Bill will authorise the compulsory purchase of land for the construction of the Project and associated infrastructure and to acquire the necessary rights in land¹.
7. The land to be acquired compulsorily is shown on the Parliamentary Plans which accompany the Bill. The Bill specifies the property or rights within defined limits which are required for the Project, whether temporarily² or permanently³, and the proposals, including all limits of land to be acquired, are shown on the Parliamentary Plans.
8. Where land is only required for a temporary period the Bill authorises this temporary use⁴. However, property will only be purchased compulsorily to the extent that it is actually required⁵. Therefore, if after the works have been designed in complete detail it emerges that a particular property (including part of an individual holding) is not required, it (or the relevant part) cannot be compulsorily purchased, even though it is within the defined limits on the Parliamentary Plans. For this reason, there will be close working between the Promoter and affected proprietors to ensure that only land and rights in land that are actually required will be compulsorily purchased. All these provisions, as described in this policy paper, will only take effect once the Bill has received Royal Assent and becomes the Act.
9. The powers of compulsory purchase are to be exercised by the “authorised undertaker”⁶ who is also the party responsible for paying compensation. The identity of the authorised undertaker who is to construct the railway has yet to be determined. Initially it will be the Promoter, but the powers may be transferred to another organisation, such as Network Rail⁷. Once the railway is built it is likely to be owned and operated by Network Rail.

¹ sections 12– 16 of the Bill

² Schedule 6 to the Bill

³ Schedule 5 to the Bill

⁴ section 16 of the Bill

⁵ section 12(a)(ii) and 12(b)(ii) of the Bill

⁶ defined in section 43 of the Bill

⁷ section 31 of the Bill

10. For the purpose of this policy paper and for reasons of simplicity it is assumed that the authorised undertaker will be the Promoter.

The procedure when property or rights in property are permanently purchased

11. Once the Bill is passed and becomes law, the Promoter still requires to purchase the property or existing rights over it, or to create new rights. There are two procedures available to the Promoter to facilitate this. The first procedure is by the execution of a General Vesting Declaration⁸ and the second is by the service of a Notice to Treat⁹. In both instances, an initial notice will be issued to each relevant proprietor and to any other party having an interest in the property. This initial notice will contain the details of the procedure that the Promoter will use and it will have different consequences in terms of taking entry; taking title; and the timing and payment of compensation. The Explanatory Notes which accompany the Bill explain these procedures in further detail.¹⁰
12. Where the land is subject to a lease, the Promoter can simply acquire the landlord's interest and allow the lease to expire. Where the Promoter is unable to wait for a lease to expire they will acquire the interests of the tenant who will be entitled to a notice and to claim compensation. Where the tenant is on a short tenancy basis¹¹ such an interest is not acquired but the Promoter will be entitled to terminate such a tenancy and the tenant will be entitled to claim compensation for any consequent loss¹².
13. A heritable creditor is also entitled to a notice¹³.

The procedure for acquisition when property is temporarily possessed

14. In some cases the Promoter will not need to purchase land but does need to take temporary possession of it for the purposes of building or commissioning the railway. This is called "temporary possession"¹⁴ and the sites to which it applies are specifically detailed in the Bill¹⁵. Once the Bill becomes law, proprietors or occupiers of property subject to temporary possession will be notified 28 days before temporary possession of the property is required¹⁶.
15. Once the property has been used for the necessary purposes (which are detailed in the Bill¹⁷), it will be returned to the proprietor¹⁸. All temporary works

⁸ Town and Country Planning (Scotland) Act 1997 (c.8), s.195 and Sched. 15

⁹ Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.17

¹⁰ Paragraphs 61-64 and 184-188 of the Bill's Explanatory Notes

¹¹ Where the tenant has no greater an interest in the land for over a year or from year to year or a lesser interest.

¹² Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.114 (amended by the Planning and Compensation Act 1991 (c.34), s.79 and Sched. 17, para 1)

¹³ *Martin v London, Cheltenham etc. Railway Co* (1866) 1L.R. Ch 501

¹⁴ section 16 of the Bill

¹⁵ Schedule 6 to the Bill

¹⁶ section 16(2) of the Bill

¹⁷ Schedule 6 (col. 4) to the Bill

¹⁸ section 16(3) of the Bill

will be removed and the property will be restored to the proprietor's reasonable satisfaction, but the Promoter will not be obliged to replace any building which is removed¹⁹. Owners and occupiers will be entitled to compensation for any loss or damage arising from the temporary possession²⁰. The amount will depend on the loss or damage involved and disputes will be settled by the Lands Tribunal for Scotland²¹.

Compensation

16. Compensation will be payable to those whose property is acquired²² (this includes the purchase of rights over property²³). Those entitled to compensation include owners²⁴, certain tenants under leases²⁵, and can also include heritable creditors²⁶ and those holding servitude rights²⁷. In certain circumstances compensation will also be payable to a landowner or occupier whose property is affected by the Project even though no land is acquired²⁸.
17. Under the Compensation Code compensation is not payable until after the property is acquired. The procedure for compulsory purchase is commenced by the authorised undertaker serving an initial notice on parties²⁹. The timing of the payment of compensation, will be dependent upon the type of initial notice that is served.
18. The Promoter will endeavour to reach an early agreement with all parties on all legitimate and reasonable claims for compensation. If the level of compensation cannot be agreed, the case may be referred by the claimant to the Lands Tribunal for Scotland³⁰. Where there is a valid claim and compensation is payable parties may also recover any reasonable valuation or legal expenses incurred in the preparation of their claim together with interest due on the principal claim³¹.

Compensation where property is purchased by Agreement

19. If as the result of discussions with the Promoter, land is acquired through agreement³², rather than compulsorily, the total amount paid and the extent to which it reflects disturbance³³ or home loss³⁴ will be a matter for negotiation and agreement with the Promoter at that time.

¹⁹ section 16(4) of the Bill

²⁰ section 16(5) and (7) of the Bill

²¹ section 16(6) of the Bill; and Land Compensation (Scotland) Act 1963 (c.51), s.8

²² section 42 of the Bill; Railways Clauses Consolidation (Scotland) Act 1845 (c.33), s.6; and Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.61

²³ section 14(7) of the Bill; and Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.61

²⁴ defined in Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.3

²⁵ see paragraph 12 above

²⁶ see paragraph 13 above

²⁷ Railways Clauses Consolidation (Scotland) Act 1845 (c.33), s.6

²⁸ see paragraphs 37–39 below

²⁹ either under (i) Town and Country Planning (Scotland) Act 1997 (c.8), s.195 and Sched. 15, para 2; or (ii) Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.17

³⁰ Land Compensation (Scotland) Act 1963 (c.51), s.8

³¹ Land Compensation (Scotland) Act 1973 (c.56) 48 A; Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.60 and s.84; and Land Compensation (Scotland) Act 1963 (c.51), s.40

³² Lands Clauses Consolidation (Scotland) Act 1845 (c.19), s.6

³³ see paragraphs 33-36

Compensation where property is acquired

The Calculation of a Compensation Claim

20. There are three main elements to compensation that may be paid as a result of a compulsory acquisition under the Act. These are:
- a. compensation for land acquired (the open market value of the Property taken at the date of purchase)³⁵;
 - b. compensation for severance or injurious affection (the depreciation in value of any remaining land caused by the Project³⁶); and
 - c. compensation for disturbance (any losses caused by the compulsory purchase)³⁷.
21. The total of these three elements must not add up to more than the claimant's actual loss³⁸. For the purposes of valuation, the effect of the Project will be disregarded in the valuation exercise as it is the proprietor's loss that is being compensated for.
22. The calculation will not take into account any increase or decrease in the value of the land attributable to the Project³⁹, and no allowance is made for the fact that the acquisition of the land was compulsory⁴⁰. The calculation will also not take account of any buildings or other developments if it is considered that those buildings or developments are put in place for the sole reason of increasing compensation⁴¹.
23. The Bill recognises that the Project may have the effect of enhancing the value of adjoining or nearby land, and in these circumstances, there is provision for compensation to be reduced by an amount equivalent to any enhanced value of contiguous or adjoining land of a person seeking compensation⁴².
24. Although it is convenient to deal with these as three separate heads in this Policy paper, in practice the distinction between them may not be straightforward. For example, a valuer may compare the values of a property in pre and post Project situations rather than calculating the value of land taken and injurious affection separately. It is also important to bear in mind

³⁴ see paragraphs 40-43

³⁵ Land Compensation (Scotland) Act 1963 (c.51), s.12 rule (2)

³⁶ Railways Clauses Consolidation (Scotland) Act 1845 (c.33), s.6; and Lands Clauses Consolidation (Scotland) Act 1845 (c.19), ss 4861, 113, 114, 103

³⁷ Lands Clauses Consolidation (Scotland) Act 1845 (c.19), ss 48. & 61; Land Compensation (Scotland) Act 1963 (c.51), s.12 rule (6); Land Compensation (Scotland) Act 1973 (c.56) ss 34 and 35

³⁸ *Horn v Sunderland Corp* [1941] 2 KB 26, [1941] 1 All ER 480

³⁹ Land Compensation (Scotland) Act 1963 (c.51), s.13 and Sched. 1; and *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565, PC.

⁴⁰ Land Compensation (Scotland) Act 1963 (c.51), s. 12 rule (1) and s.16

⁴¹ section 17 of the Bill

⁴² section 18 of the Bill

that the total of the various elements of compensation awarded must not add up to more than the claimant's actual total loss⁴³.

Compensation for the land acquired

25. The underlying principle is to put the claimant, in financial terms, in the same position as if the property had not been taken. The amount of compensation will therefore depend on the facts of each case.
26. Broadly, the assessment of compensation will be calculated to reflect the open market value of the land taken, which will be the amount the property if sold in the open market by a willing seller might be expected to realise ignoring the effects of the Project (taking into account any planning permission or potential for planning permission)⁴⁴.
27. In the absence of agreement between the Promoter and claimants on the amount of compensation they are entitled to receive, including the open market value of the property, claimants will be entitled to refer this matter to the Lands Tribunal for Scotland for a formal determination⁴⁵.
28. Additionally, where agreement is not reached claimants may also, in certain circumstances, be entitled to an advance payment of compensation of a sum amounting to 90% of the Promoter's estimate of the entire claim, which will include the open market value of any property⁴⁶. This sum may only be applied for after the property has been acquired by the Promoter. If an advance payment is made this will be deducted from any further sum which will be paid either as a result of reaching agreement with the Promoter on the total sum payable or alternatively from any award which may be made by the Lands Tribunal for Scotland.
29. Where there is no general market demand for a property (for example, a place of worship) the compensation will be the cost of relocating and reinstating the use in new premises⁴⁷.

Compensation for severance or injurious affection

30. If only part of a property is required, compensation may be claimed for what is known as material detriment to the value of the property that is left⁴⁸. There are two ways in which material detriment might occur and these are known as severance and injurious affection.

⁴³ *Horn v Sunderland Corpn* [1941] 2 KB 26, [1941] 1 All ER 480

⁴⁴ Land Compensation (Scotland) Act 1963 (c.51), s.12 rule (2); ss. 22-24 and 25-30

⁴⁵ Land Compensation (Scotland) Act 1963 (c.51), s.8

⁴⁶ Land Compensation (Scotland) Act 1973 (c.56), s.48

⁴⁷ Land Compensation (Scotland) Act 1963 (c.51), s.12 rule (5)

⁴⁸ "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.

31. Severance occurs when, as a result of part of the property being acquired, the value of the property that is retained is reduced. An obvious example of severance is where the only access route to a property is taken. Compensation for severance will be payable for any depreciation in the value of the remaining land if the part of the land purchased contributed to the value of the land retained⁴⁹. In certain circumstances, where the effects of severance are particularly serious, instead of claiming compensation for severance, a landowner may be able to require the authorised undertaker to acquire all of the land⁵⁰.
32. Injurious affection is concerned with the adverse effects caused to remaining land, for example noise generated. Compensation for injurious affection will be payable if there is some depreciation in the value of the retained land caused by the effect of the Project⁵¹.

Compensation for Disturbance

33. A landowner or occupier who is displaced from land as a result of compulsory purchase may be faced with losses over and above losses in the value of the land itself.
34. There is no list of approved items of loss and each claim will depend upon the particular circumstances of each case. Compensation for disturbance will reflect costs incurred by the landowner or occupier as a result of the acquisition. This will be the result of the person being forced to move his home or his business.⁵²
35. The losses must be reasonable and must not be too remote from the requirement to relocate⁵³.
36. A claim for costs incurred in removal, adapting fixtures, fittings and furnishings at a home for use at an alternative home will be allowed.

Business Disturbance

37. In the case of business property, depending upon the particular circumstances of the acquisition, disturbance may be based on either the costs of relocating the business or extinguishing the business. Normally it would be expected to relocate a business. For example if the owner of a car repair centre is forced to relocate his business elsewhere, he will incur costs in dismantling and

⁴⁹ Lands Clauses Consolidation (Scotland) Act 1845 (c.19), ss. 48 & 61

⁵⁰ section 21 of the Bill and paragraphs 19 to 29 (inclusive) of Schedule 15 to the Town and Country Planning (Scotland) Act 1997

⁵¹ Lands Clauses Consolidation (Scotland) Act 1845 (c.19), ss. 48 & 61

⁵² *Inland Revenue Comrs v Glasgow and South-Western Rly Co* (1887) 14 R (HL) 33; *Venables v Department of Agriculture for Scotland* 1932 SC 573, 1932 SLT 411.

⁵³ *Director of Buildings and Lands v Shung Fung Ironworks Ltd* [1995] 1 All E.R. 846; *McGhee v National Coal Board* 1973 S.C. (H.L.) 37; *Harvey v Crawley Development Corpn* [1957] 1 QB 485, [1957] 1 All ER 504, CA. This decision has been cited with approval in a number of Scottish decisions: see e.g. *Evans v Glasgow District Council* 1978 SLT (Lands Trib) 5; *Smith v Strathclyde Regional Council* 1982 SLT (Lands Trib) 2; and *Aberdeen District Council v Sim* 1983 SLT 250;

moving heavy machinery and other fixtures, forced sale or removal of machinery and loss of business. Compensating him for these losses accords with the philosophy of putting him in the position he would have been in were it not for the Project.

38. If it is not possible to relocate the business, it may be necessary for the business to close, in which case compensation will be based on the cost of the total extinguishment of the business. There may be circumstances where the costs of relocating the business are greater than the value of the business. In these circumstances, there is a case that can be made that compensation is based on extinguishment. However each case will be considered on its own merits.
39. A certain amount of relief is given to claimants who carry on a business and are over sixty. Where, as a consequence of compulsory acquisition a person is required to give up possession of land on which he is carrying on a business, the assessment of the disturbance compensation, if certain criteria is satisfied, is on the basis of the total extinguishment of the business. This basis of assessment will usually be more advantageous to the claimant than compensation being based on the cost of transferring the business elsewhere.

Compensation where no land is acquired

40. A claim for compensation for injurious affection, may in certain circumstances be made where no land is acquired, but the value of the land depreciates as a result of the construction of the railway⁵⁴. There are four rules that appear to have been established in a House of Lords decision for a claim to be successful.⁵⁵ These rules require that the following criteria must be satisfied in order for a compensation claim for the construction (as opposed to operation) of the Project to be successful:
1. the depreciation in the value of the land is as a result of works authorised by the Act;
 2. the Project would have given rise to an action at law had they not been authorised by the Act;
 3. the depreciation in the value of the land arises from a physical interference with a right lawfully enjoyed by the landowner that enhances the value of the property; and
 4. the depreciation is as a result of the execution of works rather than the use of the railway.
41. In addition to the above, any person with a qualifying interest whose land or buildings are depreciated in value by prescribed physical factors arising from

⁵⁴ Railways Clauses Consolidation (Scotland) Act 1845 (c.33), s.6 (as amended by the Land Compensation (Scotland) Act 1973 (c.56), s.61)

⁵⁵ *Metropolitan Board of Works v McCarthy* (1874) L.R. (H.L.) 243

the use of the Project may claim compensation⁵⁶. The 'prescribed physical factors' referred to include noise, vibration, smell, fumes, smoke, artificial light and the release of solid or liquid substances onto the land. Those who will qualify for compensation in these circumstances include owners of a dwelling, a farm and a small business⁵⁷. Such claims cannot be lodged until twelve months after the Project is operational⁵⁸.

42. As is applicable where compensation is due for land compulsorily acquired, if the Project increases the value of the remaining property, any compensation which is payable will be reduced by the amount of the increase⁵⁹.

Home Loss Payments

43. Separate from any claim for compensation, are Home Loss Payments. If a claimant suffers personal upset, discomfort and inconvenience as a consequence of the acquisition, they may be entitled to claim what is called a home loss payment if their dwelling is compulsory acquired and they are displaced⁶⁰.
44. Claimants must have been in their homes for one year preceding the displacement⁶¹.
45. For an owner-occupier displaced from a dwelling, the amount of the home loss payment is currently 10% of the market value of the interest in the property, with a maximum of £15,000 and a minimum of £1,500⁶².
46. A tenant is also entitled to a home loss payment if they are displaced from a dwelling. A tenant is not displaced if he gives up his occupation before the date on which the Promoter is authorised to acquire the interest⁶³. A tenant is entitled to a payment where the Promoter acquires the landlord's interest by agreement, provided he does not give up occupation before the date of the agreement. To qualify the tenant has to have been in occupation of the dwelling a period of one year preceding displacement and that this has been his main residence and he has been in occupation by virtue of an interest or right⁶⁴. The payment is currently a flat rate payment of £1,500⁶⁵.

⁵⁶ Land Compensation (Scotland) Act 1973 (c.56), s.1 (as amended by the Local Government, Planning and Land Act 1980 (c.65), s.112)

⁵⁷ Land Compensation (Scotland) Act 1973 (c.56), s.2

⁵⁸ Land Compensation (Scotland) Act 1973 (c.56), s.3 (as amended by the Local Government, Planning and Land Act 1980 (c.65), s.112)

⁵⁹ Land Compensation (Scotland) Act 1973 (c.56), s.6

⁶⁰ Land Compensation (Scotland) Act 1973 (c.56), ss.27- 30

⁶¹ Land Compensation (Scotland) Act 1973 (c.56), s.27(2) (as substituted by the Planning and Compensation Act 1991 (c.34), s.71)

⁶² Land Compensation (Scotland) Act 1973 (c.56), s.28 (as substituted by the Planning and Compensation Act 1991 (c.34), s.71)

⁶³ Land Compensation (Scotland) Act 1973 (c.56), s.27(3) (3A)

⁶⁴ Land Compensation (Scotland) Act 1973 (c.56), s.27(2) (as substituted by the Planning and Compensation Act 1991 (c.34), s.71)

⁶⁵ Land Compensation (Scotland) Act 1973 (c.56), s.28(2) (as substituted by the Planning and Compensation Act 1991 (c.34), s.71) This figure may be altered by Scottish Ministers under s.28(5)

Survey Work

47. Before purchasing or taking possession of any property, it may be necessary to first carry out surveys or other investigations of land within the defined limits. Although the Promoter would be able to carry out survey work without agreement⁶⁶, it will strive to agree the survey arrangements with proprietors or occupiers in the first place.
48. In the absence of agreement, notice will be given prior to any survey commencing, on the first occasion of at least seven days and at least three days in each subsequent instance, before the survey is due to start⁶⁷.
49. Some surveys may be intrusive, for example, there may be ongoing monitoring and the taking of samples. Compensation based upon applicable scales may be payable for losses incurred as a result of such survey and monitoring work⁶⁸.

Blight

50. Blight in its strict legal sense is a technical term for the reduction in value of a property that results when a development proposal would authorise its compulsory acquisition. Essentially, if a property is blighted within the statutory definition⁶⁹ the landowner will be able to serve notice on the Promoter, requiring it to purchase the property and compensate the landowner in the same way as if the Promoter had initiated a compulsory purchase⁷⁰. Generally, a property will be treated as blighted if the landowner has tried to sell it and found that he cannot, except at a price lower than its previous market value⁷¹.
51. The categories of landowner who are entitled to serve a blight notice⁷² are:
 - a. resident owner-occupier of a residential dwelling;
 - b. an owner-occupier of land with an annual (i.e. in most cases rateable) value of (currently) £28,000⁷³; or
 - c. an owner-occupier of an agricultural unit.
52. The cases when the Project can be required to acquire blighted property are strictly limited by the terms of the relevant legislation (sections 101 to 122 of the Town and Country Planning (Scotland) Act 1997)⁷⁴. These provisions are

⁶⁶ section 23(1) of the Bill

⁶⁷ section 23(2) of the Bill

⁶⁸ section 23(6) of the Bill

⁶⁹ Town and Country Planning (Scotland) Act 1997 (c.8), s.100 and Sched. 14

⁷⁰ Town and Country Planning (Scotland) Act 1997 (c.8), s.101

⁷¹ Town and Country Planning (Scotland) Act 1997 (c.8), s.101(1)(c)

⁷² Town and Country Planning (Scotland) Act 1997 (c.8), s.100

⁷³ Previously £21,500, with effect from 19 December 2005, the amount prescribed increased to £28,000 – Acquisition of Land, The Town and Country Planning (Limit of Annual Value) (Scotland) Order 2005 SSI 2005/594

⁷⁴ section 37 of the Bill

also only triggered once the Act has passed and received Royal Assent. The Promoter is entitled to challenge the service of a Blight Notice⁷⁵ and, in such an event, the matter will be determined by the Lands Tribunal for Scotland⁷⁶.

53. If the Blight Notice is not challenged, or if it is upheld by the Lands Tribunal for Scotland, the Promoter must acquire the property⁷⁷ and compensation is payable, as explained in this policy paper. Disputes regarding the level of compensation are determined by the Lands Tribunal for Scotland⁷⁸.

Assessment of Claims

54. Every loss will be considered on its merits. The onus is on claimants to justify their claim(s) i.e. to prove that they should be compensated. It is therefore extremely important that claimants keep a detailed record of losses sustained and costs incurred in connection with the compulsory acquisition of part or all of their property. Records should also be kept by claimants where business disturbance, injurious affection, severance, or blight are claimed.

Professional Advisers' Fees and Costs

55. The Promoter is not obliged by law to make advance payments for professional fees or to pay the costs and expenses (i) incurred by third parties/objectors prior to submission of the Glasgow Airport Rail Link Bill to the Scottish Parliament or (ii) incurred by third parties/objectors in preparing and pursuing an objection to the Glasgow Airport Rail Link Bill during its Parliamentary stages.
56. However, properly incurred professional fees may well form a legitimate element of any compensation claim in connection with, in anticipation of, or as a consequence of, compulsory acquisition. Such costs and expenses may be recoverable from the Promoter to the extent that they:
- a. are incurred by landowners and others entitled to claim compensation; and
 - b. directly relate to compulsory acquisition of the person's land or to that person's compensation claim; and
 - c. are reasonable (e.g. surveyor's fees will principally be based upon the Ryde's Scale⁷⁹).

Costs and expenses covered by paragraph (b) above include costs and expenses related to mitigating the impact of the works such as to reduce the amount of compensation that might otherwise be payable.

⁷⁵ Town and Country Planning (Scotland) Act 1997 (c.8), s.102-103

⁷⁶ Town and Country Planning (Scotland) Act 1997 (c.8), s.104

⁷⁷ Town and Country Planning (Scotland) Act 1997 (c.8), s.105

⁷⁸ Land Compensation (Scotland) Act 1963 (c.51), s.8

⁷⁹ This is subject to a maximum of up to 25% above the Ryde's Scale.

Physical/ non-monetary mitigation measures

57. With regard to noise, various physical/non-monetary measures can potentially be put in place during construction of a railway or once it is operational, so that the impacts upon nearby properties can be reduced. These measures can include the installation of trackside noise barriers, the installation of secondary glazing or replacement double glazing at affected properties and temporary rehousing for residents of affected houses.

58. The Promoter's policy on the implementation of physical/non-monetary measures with regard to noise during railway construction is set out in a separate Policy Paper on the Promoter's Code of Construction Practice.

59. The Promoter's policy on the implementation of physical/non-monetary measures with regard to noise during railway operation is set out in a separate Policy Paper on behalf of the Promoter in respect of Noise and Vibration.