



British Railways (No. 2) Order Confirmation Act 1994

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ELIZABETH II



1994 CHAPTER ii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to British Railways (No. 2).

[24th March 1994]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament: 1936 c. 52.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed.
2. This Act may be cited as the British Railways (No. 2) Order Confirmation Act 1994.

Confirmation of Order in Schedule.

Short title.

SCHEDULE

British Railways (No. 2)

Provisional Order to empower the British Railways Board to construct works and to purchase or use land; to confer further powers on the Board; and for connected purposes.

WHEREAS—

1962 c. 46. (1) It is the duty of the British Railways Board (hereinafter referred to as “the Board”) under the Transport Act 1962 (inter alia) to provide railway services in Great Britain and, in connection with the provision of railway services, to provide such other services and facilities as appear to the Board to be expedient, and to have due regard, as respects all those railway and other services and facilities, to efficiency, economy and safety of operation:

(2) It is expedient that the Board should be empowered to construct in the Central Region the works authorised by this Order and to purchase or use the land referred to in this Order and that the other provisions in this Order contained should be enacted:

(3) A plan and section showing the line or situation and levels of the work to be constructed under this Order, and a plan of the lands authorised to be purchased or used by this Order, and a book of reference to that plan containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the said lands were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the sheriff clerk of the sheriff court district of Alloa, which plan, section and book of reference are respectively referred to in this Order as the deposited plan, the deposited section and the deposited book of reference:

1936 c. 52. (4) The purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now therefore, in pursuance of the powers contained in the last-mentioned Act, the Secretary of State orders as follows:—

PART I

PRELIMINARY

Short title. 1. This Order may be cited as the British Railways (No. 2) Order 1994.

Interpretation. 2.—(1) In this Order, unless the context otherwise requires, words and expressions to which meanings are assigned by the enactments incorporated herewith have the same respective meanings; and—

1845 c. 33. “the Act of 1845” means the Railways Clauses Consolidation (Scotland) Act 1845;

1991 c. 22. “the Act of 1991” means the New Roads and Street Works Act 1991;

- “the Board” means the British Railways Board;
- “enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;
- “the limit of deviation” means the limit of deviation shown on the deposited plan;
- “road” has the meaning assigned to it by section 107 of the Act of 1991;
- “the sheriff” means the sheriff principal of, or any sheriff appointed for, the Sheriffdom of Tayside, Central and Fife;
- “the tribunal” means the Lands Tribunal for Scotland;
- “the works” means the works authorised by Part II (Works, etc.) of this Order; and
- “Work No. 1” means the work of that number authorised by section 4 (Power to make railway) of this Order.

PART I
—cont.

(2) Except in relation to section 6 (Power to deviate) of this Order, all directions, distances and lengths stated in any description of works, powers or lands in this Order shall be construed as if the words “or thereby” were inserted after each such direction, distance and length.

3.—(1) The following enactments, so far as the same are applicable for the purposes of and are not inconsistent with, or varied by, the provisions of this Order, are incorporated with this Order, and this Order shall be deemed to be the special Act for the purposes of the said incorporated enactments:—

Incorporation of
enactments.

- (a) the Lands Clauses Acts, except sections 120 to 124 and section 127 of the Lands Clauses Consolidation (Scotland) Act 1845;
- (b) the Act of 1845, except sections 1, 7, 8, 9, 17, 19, 20, 22 and 23 thereof; and
- (c) in the Railways Clauses Act 1863, Part I (relating to construction of a railway) except sections 13, 14, 18 and 19 thereof.

1845 c. 19.

1863 c. 92.

(2) (a) In the application of the enactments incorporated by subsection (1) (b) and (c) above the expression “the company” means the Board.

(b) Sections 18 and 21 of the Act of 1845 shall not extend to regulate the relations between the Board and any other person in respect of any matter or thing concerning which those relations are regulated in any respect by the provisions of Part IV of the Act of 1991 or by section 27 (For protection of electricity, gas, water and sewerage undertakers) of this Order.

PART II

WORKS, ETC.

Works

4. Subject to the provisions of this Order, the Board may, in the line or situation and within the limit of deviation shown on the deposited plan and according to the levels shown on the deposited section, make and maintain the following work in the Clackmannan District, Central Region, with all necessary works and conveniences connected therewith:—

Power to make
railway.

Work No. 1—A railway (3,530 metres in length), being a reinstatement of part of the former Stirling to Dunfermline Railway, commencing at Cambus by a junction with the Stirling to Menstrie Railway at a point 14 metres north-west of Station Road and terminating at Alloa at a point on the former Stirling to Dunfermline Railway 142 metres east of the bridge carrying the footpath known as Station Bridge over the site of the last-mentioned railway.

(Railway
between Cambus
and Alloa)

PART II
—cont.

Level crossings
of Station Road,
Cambus, and
Grange Road,
Alloa.
1984 c. 27.

5.—(1) In this section—

“the level crossings” means the level crossings provided under subsection (2) below, or either of them; and

“traffic sign” has the same meaning as in the Road Traffic Regulation Act 1984.

(2) The Board may in the construction of Work No. 1 provide level crossings comprising a single line of railway across and on the level of—

(a) Station Road, Cambus; and

(b) Grange Road, Alloa;

(which roads are respectively numbered on the deposited plan 3 and 5 in the Clackmannan District), but shall not be required to erect or maintain a station or lodge thereat.

(3) (a) The Board may, with the consent in writing of the Secretary of State and subject to such requirements as he may from time to time lay down, provide, maintain and operate at or near the level crossings such barriers, lights, traffic signs, and automatic or other devices and appliances as may be approved by the Secretary of State.

(b) So long as the consent referred to in paragraph (a) above continues in force, the provisions (in so far as they are inconsistent with any such consent) of the Highway (Railway Crossings) Act 1839, section 9 of the Railway Regulation Act 1842, section 40 of the Act of 1845 and section 6 of the Railways Clauses Act 1863 shall not apply to the level crossings.

(c) Section 65 (1) of the Road Traffic Regulation Act 1984 (placing of traffic signs by highway authorities) shall have effect with respect to the erection and display of a traffic sign by the Board as if it were a traffic sign erected and displayed by a traffic authority within the meaning of that Act.

1839 c. 45.
1842 c. 55.
1863 c. 92.

Power to deviate.

6.—(1) In the construction of Work No. 1, the Board may—

(a) deviate from the line or situation thereof shown on the deposited plan to the extent of the limit of deviation; and

(b) subject to subsection (2) below, deviate vertically from the levels shown on the deposited section to any extent not exceeding 1 metre upwards or downwards.

(2) Subsection (1) (b) above shall not apply to the construction of Work No. 1 across and on the level of Station Road, Cambus, and Grange Road, Alloa.

Station works at
Alloa.

7. In the construction of Work No. 1, the Board may—

(a) on any part of the land numbered on the deposited plan 16, 17, 20 and 21 in the Clackmannan District which lies within the line marked “Limit of station works” on the deposited plan make, maintain and operate a station at Alloa for the purposes of serving that work, with all necessary works and conveniences connected therewith; and

(b) form and lay out means of pedestrian access at the point marked “A” on the deposited plan from and to Station Bridge to and from that station.

General works provisions

Temporary
stoppage of
roads.

8.—(1) The Board, during and for the purpose of the execution of Work No. 1, may temporarily stop up and divert and interfere with the specified roads, or either of them, and may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the specified roads, or either of them, from passing along and using the same.

(2) The Board shall provide reasonable access for persons on foot bona fide going to or from any such land, house or building.

PART II
—cont.

(3) (a) The Board shall not exercise the powers of this section without the consent of the road works authority.

(b) Any such consent may be given subject to such reasonable conditions as the road works authority may require but shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld or whether any such condition is reasonable shall be determined by arbitration.

(4) In this section —

“the specified roads” means so much of Station Road, Cambus, and Grange Road, Alloa, as is numbered on the deposited plans 3 and 5, respectively, in the Clackmannan District; and

“road works authority” has the meaning assigned to it by section 108 of the Act of 1991.

9. The Board at their own expense may, subject as hereinafter provided, underpin or otherwise strengthen any building within 30 metres of any part of the works and the following provisions shall have effect: —

Underpinning of
buildings near
works.

(1) At least 14 days' notice shall (except in case of emergency) be given to the owner, lessee and occupier of the building intended to be so underpinned or otherwise strengthened:

(2) If any owner, lessee or occupier of any such building, within 10 days after the giving of such notice, gives a counter-notice in writing that he disputes the necessity of such underpinning or strengthening, the question of the necessity shall be determined by arbitration; and, if the arbiter decides that such underpinning or strengthening is not necessary, the Board shall not proceed therewith:

(3) In any case in which any building shall have been underpinned or strengthened under the powers of this section the Board may, from time to time after the completion of such underpinning or strengthening, and during the execution of the work in connection with which such underpinning or strengthening was done, or within 5 years after the opening for traffic of that work, after giving reasonable notice to the occupier, enter upon and survey such building and, after complying with the foregoing provisions of this section, do such further underpinning or strengthening as they may deem necessary or expedient:

(4) The Board shall be liable to compensate the owner, lessee and occupier of every such building for any loss or damage which may result to them by reason of the exercise of the powers of this section:

(5) Nothing in this section shall affect liability to compensate under any enactment in respect of loss or damage arising from the execution of any works, except so far as compensation is payable under paragraph (4) above:

(6) Every case of compensation to be ascertained under this section shall be ascertained according to the provisions of the Land Compensation (Scotland) Act 1963.

1963 c. 51.

10.—(1) The Board may use for the discharge of any water pumped or found by them during the construction of the works any available stream or watercourse, or any sewer or drain vested in, or under the control of, the regional council, and for that purpose may lay down, take up and alter conduits, pipes and other works and may make any convenient connections with any such stream, watercourse, sewer or drain within the limit of deviation.

Use of sewers,
etc., for
removing water.

PART II
—cont.

(2) The Board shall not —

- (a) discharge any water into any such sewer or drain except with the consent of the regional council, whose consent shall not be unreasonably withheld, and subject to such terms and conditions (including the taking of steps to remove as far as may be reasonably practicable from water so discharged any gravel, soil or other solid substance or matter in suspension) as the regional council may reasonably impose; or
- (b) make any opening into any such sewer or drain except in accordance with plans approved by, and under the superintendence (if given) of, the regional council but approval of those plans by the regional council shall not be unreasonably withheld.

(3) Any difference arising between the Board and the regional council under this section shall be determined by arbitration.

1974 c. 40.

(4) Section 31 of the Control of Pollution Act 1974 shall apply to, or to the consequence of, a discharge under the powers of this section into any controlled waters within the meaning assigned to that expression by section 30A(1) of that Act as if this section were not a provision of a local Act or a statutory order for the purposes of section 31(2)(b)(ii) of that Act.

(5) Nothing in this section shall affect the operation of Part IV of the Act of 1991.

(6) In this section “the regional council” means the Central Regional Council.

PART III

LAND

Meaning of new rights.

11. In this Part references to the purchase by the Board of new rights are references to the purchase of rights (whether heritable or moveable) to be created in favour of the Board.

Purchase of land.

12. —(1) The Board may purchase compulsorily and use such of the land within the limit of deviation and described in the deposited book of reference as they require for the purposes of the works or their undertaking.

(2) The Board may enter upon, use and appropriate so much of the subsoil and undersurface of, or airspace over, any public road or place within the limit of deviation and described in the deposited book of reference as shall be necessary for the purposes of subsection (1) above without being required to purchase the same or any servitude or other right therein or thereunder or to make any payment therefor.

1979 c. 33.

(3) For the purpose of section 28 of the Land Registration (Scotland) Act 1979 subsection (2) above shall be taken to create a real right over such land as is referred to in that subsection without any necessity to record a deed in the Register of Sasines or to register the right.

Purchase of new rights over land.

13. —(1) Subject to the provisions of this Order, the Board may for the purpose of constructing, maintaining, protecting, altering, renewing and using the works, or for the purpose of obtaining access to the works or for the purpose of doing any other thing necessary in connection with the works, purchase compulsorily and use so much of the subsoil and undersurface of, or may purchase compulsorily such new rights as they require in, under or over any of the land within the limit of deviation and described in the deposited book of reference instead of purchasing that land under section 12 (Purchase of land) of this Order.

(2) Subject to subsection (3) below, the Lands Clauses Acts, as applied by this Order, shall have effect with the modifications necessary to make them apply to the compulsory purchase of new rights under subsection (1)

above and under section 14 (Purchase of specific new rights over land) of this Order as they apply to the compulsory purchase of land so that, in appropriate contexts, references in the Lands Clauses Acts to land are read as referring, or as including references, to the new rights or to land over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.

PART III
—cont.

(3) Notwithstanding anything in subsection (2) above, section 90 of the Lands Clauses Consolidation (Scotland) Act 1845 shall not apply to any compulsory purchase by the Board under this section or section 14 (Purchase of specific new rights over land) of this Order.

1845 c. 19.

14.—(1) The Board may, in addition to such new rights as they may purchase under section 13 (Purchase of new rights over land) of this Order, purchase compulsorily such new rights as they require in or over the land numbered on the deposited plan 19 in the Clackmannan District within the line marked “Limit of land to be used” for the purpose of providing means of access—

Purchase of specific new rights over land.

- (a) in connection with the construction and maintenance of the works; and
- (b) following completion of the works, for pedestrians proceeding to and from the station authorised by section 7 (Station works at Alloa) of this Order.

(2) For the avoidance of doubt, nothing in this section shall be taken as conferring a power to carry out works.

15. Except as may be provided under section 16 (Extension of time) of this Order, the powers of the Board of compulsory purchase of land and new rights in, under or over land under this Order shall cease on 31st December 1998.

Time for compulsory purchase of land or rights over land.

16.—(1) In this section “lessee” means a lessee under a lease having a period of not less than 21 years to run at the date of his notice under subsection (3) below; and any reference to the purchase of an interest in land includes reference to the purchase of a new right in, under or over that land.

Extension of time.

(2) (a) Subject to the provisions of this section, the Secretary of State may, by order under this subsection, extend the period for the exercise of powers of compulsory purchase of land and new rights in, under or over land under this Order.

(b) An order under this subsection shall be subject to special parliamentary procedure.

(3) If any owner or lessee of any land subject to an order under subsection (2) above shall give notice in writing to the Board of his desire for the purchase as soon as may be by the Board of his interest in any part of the land specified in the notice, the Board shall within a period of three months after the receipt of such notice—

- (a) enter into a contract with him for the purchase of his interest in the land or such part thereof as may be specified in the contract; or
- (b) serve on him a notice to treat for the compulsory purchase of his interest in the land specified in his notice, or in such part thereof as may be required by the Board; or
- (c) serve on him notice in writing of the Board’s intention not to proceed with the purchase of his interest in the land specified in his notice.

(4) Where notice is given under subsection (3) above by any owner or lessee, then—

PART III
—cont.

(a) if the Board—

- (i) fail to comply with that subsection; or
- (ii) withdraw in pursuance of any statutory provision a notice to treat served on him in compliance with subsection (3) (b) above; or
- (iii) serve notice on him in compliance with subsection (3) (c) above;

the powers conferred by this Order for the compulsory purchase of his interest in the land so specified shall cease;

- (b) if his interest in part only of the land so specified is purchased in pursuance of such a notice to treat, the powers conferred by this Order for the compulsory purchase of his interest in the remainder of the land so specified shall cease.

Correction of errors in deposited plan and book of reference.

17.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Board may apply by summary application to the sheriff for the correction thereof.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake, he shall certify accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, the Scottish Office, London, the office of the Secretary of State for Scotland, Edinburgh, the office of the Health and Safety Executive, Edinburgh, and with the sheriff clerk of the sheriff court district of Alloa and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate.

(4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

Purchase of part of certain properties.

1845 c. 19.

18.—(1) Where a copy of this section is endorsed on, or annexed to, a notice to treat served under the Lands Clauses Acts, as incorporated with this Order, the following provisions of this section shall apply to the land subject to the notice instead of section 90 of the Lands Clauses Consolidation (Scotland) Act 1845.

(2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house together with any park or garden belonging thereto, then, if the person on whom the notice is served, within 21 days after the day on which the notice is served on him, serves on the Board a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (in this section referred to as “the land subject to the counter-notice”), the question whether he shall be required to sell the part shall, unless the Board agree to take the land subject to the counter-notice, be referred to the tribunal.

(3) If the said person does not serve such a counter-notice as aforesaid within 21 days after the day on which the notice to treat is served on him, or if on such a reference to the tribunal the tribunal determines that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, in the case of part of land consisting of a house together with a park or garden belonging thereto, without such detriment and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.

(4) If, on such a reference to the tribunal, the tribunal determines that part only of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice

or, as the case may be, without such detriment and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.

PART III
—cont.

(5) If, on such a reference to the tribunal, the tribunal determines that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Board are authorised to purchase compulsorily under this Order.

(6) If the Board agree to take the land subject to the counter-notice, or if the tribunal determines that —

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without such detriment and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Board are authorised to purchase under this Order.

(7) In any case where, by virtue of a determination by the tribunal under subsection (4), (5) or (6) above, a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice, the Board may, within 6 weeks after the tribunal makes its determination, withdraw the notice to treat and, if they do so, shall pay to the said person compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice to be determined, in default of agreement, by the tribunal:

Provided that the determination of the tribunal shall not be deemed to be made so long as —

- (a) the time for requiring the tribunal to state a case with respect thereto has not expired and any proceedings on the points raised by a case so stated have not been concluded; or
- (b) any proceedings on appeal from any decision on the points raised by a case so stated have not been concluded.

(8) (a) Where a person is under this section required to sell part only of a house, building or factory, or of land consisting of a house, together with any park or garden belonging thereto, the Board shall pay to him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.

(b) Any dispute as to a person's entitlement to compensation under this section or as to the amount of the compensation shall be determined by the tribunal.

19. In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land under this Order, the tribunal shall not take into account —

- (a) any interest in land, or
- (b) any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made (whether on the land purchased or on any other land with

Disregard of
recent
improvements
and interests.

PART III
—cont.

which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned),

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works, or the making of the improvement or alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Set-off for enhancement in value of retained land.

20.—(1) In this section “relevant land” means any land or new rights over land required by the Board for the purposes of, or in connection with, the works.

(2) In assessing the compensation payable to any person on the purchase by the Board from him of any relevant land, the tribunal shall set off against the value of the relevant land any increase in value of any contiguous or adjacent lands belonging to the same person in the same capacity, or of the land over which new rights are acquired, which will accrue to him by reason of the construction of any of the works.

1963 c. 51.

(3) The Land Compensation (Scotland) Act 1963 shall have effect subject to the provisions of this section.

Power to enter, survey, etc., land.

21.—(1) The Board and their surveyors and officers may at all reasonable times in the day, upon giving on the first occasion not less than 7 days’, and on subsequent occasions not less than 3 days’, previous notice in writing to the occupier and to the owner if he is not the occupier, enter upon, examine and lay open any land which may be purchased compulsorily under this Order for the purpose of surveying, measuring, taking levels, examining works and valuing that land or for any other purpose ancillary to the powers conferred by this Order.

(2) Any person entering land under subsection (1) above on behalf of the Board shall, if so required, produce written evidence of his identity and of his authority to do so.

(3) In the exercise of the powers of subsection (1) above the Board and their surveyors and officers shall cause as little detriment or inconvenience to any person as circumstances allow, and the Board shall, subject to the provisions of this Order, make compensation to the owners and occupiers of any land injuriously affected by the exercise of those powers, to be determined in case of dispute by the tribunal.

Further powers of entry.

22. At any time after notice to treat has been served for any land which may be purchased compulsorily under this Order the Board may, after giving to the owner and occupier of the land not less than 3 months’ notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845, but subject to the payment of the like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if those sections had been complied with.

1845 c. 19.

Extinction or suspension of private rights of way.

23.—(1) All private rights of way over any land which may be purchased compulsorily under this Order shall be extinguished on the purchase of the land whether compulsorily or by agreement, or on the entry on the land under section 22 (Further powers of entry) of this Order.

(2) All private rights of way over any land of which the Board may take temporary possession under this Order shall be suspended and unenforceable against the Board for so long as the Board shall remain in lawful possession thereof.

(3) Any person who suffers loss by the extinction or suspension of any right under this section shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

PART III
—cont.

24. Paragraph 19 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply and have effect with respect to any notice or other document required or authorised to be served under or by virtue of this Order as if such notice or other document were required or authorised to be served under that Schedule.

Service of
notices, etc.
1947 c. 42.

PART IV

PROTECTIVE PROVISIONS

25. Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, without prejudice to the generality of the foregoing, nothing in this Order authorises the Board to take, use, or interfere with, any land or rights —

Crown rights.

- (a) belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department;

without the consent in writing of those commissioners on behalf of Her Majesty or, as the case may be, that government department.

26. For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Board and the telecommunications operators concerned, have effect: —

For protection of
telecommunications
operators.

- (1) In this section expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act:
- (2) The temporary stopping up or diversion of any part of Station Road, Cambus, or Grange Road, Alloa, under section 8 (Temporary stoppage of roads) of this Order shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that part of the road.

1984 c. 12.

27. For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Board and the undertakers concerned, have effect: —

For protection of
electricity, gas,
water and
sewerage
undertakers.

- (1) In this section —

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means —

(a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by such undertakers; or

1989 c. 29.

(b) in the case of gas, water or sewerage undertakers any mains, pipes, sewers or other apparatus belonging to or maintained by such undertakers;

(not being, except in paragraph (2) below, apparatus in respect of which the relations between the Board and the undertakers are regulated by the provisions of Part IV of the Act of 1991) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“functions” includes powers and duties;

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—cont.

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertakers” means any person authorised to carry on, in any area within which the Board are by this Order authorised to purchase land or execute works, an undertaking for the supply of gas or water, for the generation, transmission or supply of electricity or for the provision of sewerage services; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained:

- (2) The temporary or permanent stopping up or diversion of a road under the powers of this Order shall not affect any right of undertakers to inspect, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that road:
- (3) The Board, in the case of the powers conferred by section 9 (Underpinning of buildings near works) of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus:
- (4) Notwithstanding anything in section 10 (Use of sewers, etc., for removing water) of this Order, no use shall be made by the Board in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water:
- (5) Notwithstanding anything in this Order or shown on the deposited plan, the Board shall not acquire any apparatus under the powers of this Order otherwise than by agreement:
- (6) If the Board, in the exercise of the powers of this Order, acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this section and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers:
- (7) If the Board, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, require the removal of any apparatus placed in that land, they shall give to the undertakers written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertakers reasonably require to remove any apparatus) the Board shall, if it is reasonably practicable to do so, afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Board and thereafter for the maintenance, repair, renewal and inspection of that apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Board, or the Board are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or that part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Board, forthwith use their best endeavours to obtain the necessary facilities and rights in that last-mentioned land:

- (8) (a) Any alternative apparatus to be constructed in land of the Board under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Board or in default of agreement determined by arbitration;
- (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or determined by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (7) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Board to be removed under the provisions of this section:
- (9) Notwithstanding anything in paragraph (8) above, if the Board give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Board, that work, in lieu of being executed by the undertakers, shall be executed by the Board with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers;

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—cont.

Provided that nothing in this paragraph shall authorise the Board to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus:

- (10) Where, in accordance with the provisions of this section, the Board afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Board of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Board and the undertakers or in default of agreement determined by arbitration:

Provided that —

(a) in determining those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the Board, the arbiter shall —

(i) give effect to all reasonable requirements of the Board for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Board or the traffic on the railway; and

(ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, constructed in or along the railway for which the alternative apparatus is to be substituted and to any other reasonable operational requirements of the undertakers;

(b) if the facilities and rights to be afforded by the Board in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbiter less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbiter shall make such provision for the payment of

PART IV
—cont.

compensation by the Board to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:

- (11) (a) Not less than 28 days before commencing to execute any part of the works which will or may be within 15 metres of, or may otherwise affect, any apparatus the removal of which has not been required by the Board, the Board shall submit to the undertakers a plan, section and description of the works to be executed;
- (b) Those works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of those works:

Provided that —

(i) if the undertakers within 14 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Board, reasonably require the removal of any apparatus and give written notice to the Board of that requirement, the foregoing provisions of this section shall apply as if the removal of the apparatus had been required by the Board;

(ii) nothing in this sub-paragraph shall preclude the Board from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description;

- (c) The Board shall not be required to comply with sub-paragraph (a) above in a case of emergency but in that case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances:

- (12) Subject to paragraph (13) below, the Board shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (7) above, less the value of any apparatus removed under the provisions of this section (that value being calculated after removal) and shall also make compensation to the undertakers —

(a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and

(b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Board of the powers of this Order:

- (13) If the cost of maintaining, using, repairing or renewing any apparatus is reduced by reason of any of the works, including the provision of alternative apparatus under this section, a capitalised sum representing that saving shall be paid by the relevant undertakers to the Board or set off against any sums payable by the Board to the relevant undertakers under this section:

- (14) Any difference arising between the Board and the undertakers under this section shall be determined by arbitration:
- (15) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Board and the undertakers in respect of any apparatus laid or erected in land belonging to the Board at the date of the passing of the Act confirming this Order.

PART IV
—cont.

PART V
GENERAL

28.—(1) The Town and Country Planning (Scotland) Act 1972, and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised by this Order.

Saving for town
and country
planning.
1972 c. 52.

(2) Subject to subsection (3) below, in their application to development authorised by this Order, article 3 of, and Class 29 in Part 11 of Schedule 1 to, the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (which permit development authorised by any local or private Act or by any order approved by both Houses of Parliament, being an Act or order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Order were limited to development begun within 10 years after the passing of the Act confirming this Order.

S.I. 1992/223
(S. 17).

(3) Subsection (2) above shall not apply to the carrying out of any development consisting of the alteration, maintenance or repair of works or the substitution of new works therefor.

29. Where under any provision of this Order any difference (other than a difference to which the provisions of the Lands Clauses Acts apply) is to be determined by arbitration, then, unless otherwise provided, the difference shall be referred to, and settled by, a single arbiter to be agreed between the parties or, in default of agreement, to be appointed on the summary application of any party (after notice in writing to the other) by the sheriff.

Arbitration.

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