



British Railways (No. 3) Order Confirmation Act 1994

1994 CHAPTER iii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to British Railways (No. 3). [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:

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 Confirmation of Order in Schedule

The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed.

2 Short title

This Act may be cited as the British Railways (No. 3) Order Confirmation Act 1994.

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SCHEDULE

BRITISH RAILWAYS (NO. 3)

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—

- (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 Strathclyde 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) Plans and sections showing the lines or situations and levels of the works to be constructed under this Order, and plans of the lands authorised to be purchased or used by this Order, and a book of reference to those plans 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 Hamilton, which plans, sections and book of reference are respectively referred to in this Order as the deposited plans, the deposited sections and the deposited book of reference:
- (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. 3) 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—
 - “the Act of 1845” means the Railways Clauses Consolidation (Scotland) Act 1845;
 - “the Act of 1991” means the New Roads and Street Works Act 1991;
 - “the Board” means the British Railways Board;

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“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“the regional council” means the Strathclyde Regional Council;

“road” has, except in section 31 (For protection of roads and road traffic, etc.) of this Order, the meaning assigned to it by section 107 of the Act of 1991;

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

“the sheriff” means the sheriff principal of, or any sheriff appointed for, the Sherriffdom of South Strathclyde, Dumfries and Galloway;

“the tribunal” means the Lands Tribunal for Scotland; and

“the works” means the works authorised by Part II (Works, etc.) of this Order.

- (2) Except in relation to section 8 (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) Any reference in this Order to a work identified by the number of that work shall be construed as a reference to the work of that number authorised by this Order.
- (4) References in this Order to points identified by letters shall be construed as references to the points so lettered on the deposited plans.
- (5) References in this Order to access to any place shall include reference to egress from that place.

Incorporation of enactments.

- 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:—
 - (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.

(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 29 (For protection of electricity, gas and water undertakers) of this Order.

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PART II

WORKS, ETC.

Works

Power to make railway

- 4 Subject to the provisions of this Order, the Board may, in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the following works in the Hamilton District, Strathclyde Region, with all necessary works and conveniences connected therewith:—

(Railway between Hamilton and Larkhall)

A reinstatement of part of the former railway between Hamilton and Stonehouse comprising—

Work No. 1 A railway (2,325 metres in length) commencing at Ferniegair by a junction with the Hamilton to Motherwell Railway at a point 160 metres north-east of the bridge carrying Carlisle Road (A74) over that railway and terminating at a point on the said former railway 130 metres west of the bridge carrying Lanark Road (A72) over that former railway; and

Work No. 2 A railway (2,328 metres in length) commencing by a junction with the termination of Work No. 1 and terminating at Larkhall at a point on the said former railway 68 metres north-west of the junction of Caledonian Road with Macneil Street.

Application of Act of 1845 to certain existing bridges

- 5 (1) In this section “the existing bridges” means the bridges in Hamilton District carrying Clyde Avenue and Hamilton Road over the route of the former railway between Hamilton and Stonehouse.
- (2) Nothing in the Act of 1845, as incorporated with this Order, shall be taken to—
- (a) require the Board in constructing Works Nos. 1 and 2 beneath the existing bridges to alter or reconstruct those bridges, or
 - (b) impose any responsibility on the Board for the repair and maintenance of those bridges.

Station works at Larkhall

- 6 In the construction of Works Nos. 1 and 2, the Board may—
- (a) on any part of the land numbered 34 in the Hamilton District which lies within the line marked “Limit of station works” on the deposited plans make, maintain and operate at Larkhall a railway station for the purpose of serving those works, with all necessary works and conveniences connected therewith; and
 - (b) form and lay out means of pedestrian access at points C, D and E from Caledonian Road to that station.

Stopping up of paths

- 7 (1) Subject to the provisions of this Order, the Board may in connection with the construction of Works Nos. 1 and 2 stop up and discontinue—

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- (a) so much of the path between Fairholm Street and High Avon Street, Larkhall, as lies between points X, Y and Z; and
 - (b) so much of any other path as lies within the limits of deviation other than the path between Fairholm Street and Glen View Park, Larkhall.
- (2) After any stopping up under subsection (1) above all rights of way over or along the path or portion thereof authorised to be stopped up shall be extinguished and the Board may, subject to the provisions of the Act of 1845 with respect to mines lying under or near the railway, appropriate without making any payment therefor and use for the purposes of their undertaking the site thereof.
- (3) The Board shall, at least seven days before exercising the powers of subsection (1) above, post notices at each end of every defined path or portion thereof which they intend to stop up stating that they intend to stop it up and setting out the effect of subsection (4) below.
- (4) Any person who suffers loss by the extinguishment of any private right under this section shall be entitled to be paid by the Board compensation to be determined in case of dispute by the tribunal.

Power to deviate

- 8 In the construction of the works the Board may—
- (a) deviate from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation; and
 - (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or downwards.

General works provisions

Temporary stoppage of roads

- 9
- (1) The Board, during and for the purpose of the execution of the works may temporarily stop up and divert and interfere with any road 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 road 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.
 - (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) The provisions of this section shall not apply to any road of which temporary possession is taken under section 16 (Temporary use of land) of this Order.

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Underpinning of buildings near works

- 10 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:—
- (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.

Use of sewers, etc., for removing water

- 11 (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 limits of deviation.
- (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

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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.
- (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.

PART III

LAND

Meaning of new rights

- 12 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

- 13 (1) The Board may purchase compulsorily and use such of the land within the limits 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 limits 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.
- (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

- 14 (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 limits of deviation and described in the deposited book of reference instead of purchasing that land under section 13 (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

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compulsory purchase of new rights under subsection (1) above and under section 15 (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.

- (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 15 (Purchase of specific new rights over land) of this Order.

Purchase of specific new rights over land

- 15 The Board may, in addition to such new rights as they may purchase under section 14 (Purchase of new rights over land) of this Order, purchase compulsorily such new rights as they require in or over the lands numbered on the deposited plans 5 to 7, 14, 15 and 17 in the Hamilton District within the lines marked “Limit of land to be used” for the purpose of providing means of access in connection with the construction and maintenance of the works.

Temporary use of land

- 16 The provisions set out in the Schedule to this Order shall have effect with respect to the temporary use of land by the Board for working sites and related movement of equipment, materials and plant.

Time for compulsory purchase of land or rights over land

- 17 Except as may be provided under section 18 (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 1999.

Extension of time

- 18 (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.

(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

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- (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—
- (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 plans and book of reference

- 19 (1) If the deposited plans 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 Hamilton and thereupon the deposited plans 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

- 20 (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

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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.
- (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.

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(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.

Disregard of recent improvements and interests

21 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 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

- 22 (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.
- (3) The Land Compensation (Scotland) Act 1963 shall have effect subject to the provisions of this section.

Power to enter, survey, etc., land

- 23 (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.

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- (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

- 24 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.

Extinction or suspension of rights of way

- 25 (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 24 (Further powers of entry) of this Order.
- (2) All public or private rights of way over any land of which the Board may take temporary possession under section 16 (Temporary use of land) of this Order shall be suspended and unenforceable against the Board for so long as the Board shall remain in lawful possession thereof.
- Provided that the Board shall provide reasonable access for persons on foot bona fide exercising such rights to go to or from any land, house or building abutting on any such land.
- (3) Any person who suffers loss by the extinction or suspension of any private right under this section shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

Service of notices, etc

- 26 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.

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PART IV

PROTECTIVE PROVISIONS

Crown rights

- 27 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—
- (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.

For protection of telecommunications operators

- 28 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:—
- (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 road under section 9 (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.

For protection of electricity, gas and water undertakers

- 29 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:—
- (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
 - (b) in the case of gas or water undertakers any mains, pipes 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;

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“functions” includes powers and duties;

“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 or for the generation, transmission or supply of electricity; 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 10 (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 this Order or shown on the deposited plans the Board shall not acquire any apparatus under the powers of this Order otherwise than by agreement:
- (5) 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:
- (6) 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:

- (7) (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

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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 (6) 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:

- (8) Notwithstanding anything in paragraph (7) 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:

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:

- (9) 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;
- (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 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:

- (10) (a)

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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:
- (11) Subject to paragraph (12) 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 (6) 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:
- (12) 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:

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- (13) Any difference arising between the Board and the undertakers under this section shall be determined by arbitration:
- (14) 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.

For protection of sewers of Strathclyde Regional Council

30 For the protection of the sewers of the regional council the following provisions shall, unless otherwise agreed in writing between the Board and the regional council, have effect:—

- (1) In this section—
 - “sewer” means, subject to paragraph (2) below, any sewer of the regional council and includes any manholes, ventilating shafts, pumps or other accessories of a sewer; and
 - “specified work” means any part of the works which will or may be situated within 15 metres measured in any direction of a sewer:

- (2) Nothing in this section shall apply to apparatus of the regional council in respect of which the relations between the Board and the regional council are regulated by the provisions of Part IV of the Act of 1991:
- (3) Wherever in this section provision is made with respect to the approval or consent of the regional council, that approval or consent shall be in writing and shall not be unreasonably withheld:
- (4) The Board shall not commence the execution of any specified work until they have given to the regional council not less than 56 days' notice in writing of their intention to commence the same, together with plans as described in paragraph (9) below (in this section referred to as “the said plans”), for their approval and until the regional council have signified their approval of those plans:

Provided that, if within 56 days after the submission of the said plans the regional council have not approved or disapproved them, they shall be deemed to have approved the said plans as submitted:

- (5) The Board shall comply with, and conform to, all reasonable orders, directions and regulations of the regional council in the execution of any specified work and shall provide new, altered or substituted works in such manner as the regional council reasonably require for the protection of, and for preventing injury or impediment to, any existing sewer by reason of the specified work and shall indemnify the regional council against all expenses occasioned thereby:
- (6) All new, altered or substituted works shall, where so required by the regional council, be done by or under the direction, superintendence and control of an officer of the regional council duly appointed for the purpose at the cost of the Board, and all costs, charges and expenses reasonably incurred by the regional council by reason of those works, whether in the execution thereof, or in the preparation or examination of plans or designs, or in such direction, superintendence or control as aforesaid, or otherwise, shall be paid to the regional council by the Board:

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- (7) When any new, altered or substituted works or any work of defence connected therewith are completed by or at the cost of the Board under the provisions of this section, they shall thereafter be as fully and completely under the direction, jurisdiction and control of the regional council as any sewers or works now or hereafter may be:
- (8) The regional council may require the Board in constructing any specified work to make any reasonable deviation within the limits of deviation from the lines or levels shown upon the said plans for the purpose of avoiding injury, or risk of injury, to any sewer and the Board shall in constructing those works deviate accordingly:
- (9) The plans to be submitted to the regional council for the purposes of this section shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed to be constructed and shall accurately describe the position of all sewers of the regional council within the limits of deviation (for which purpose the regional council shall allow the Board access to plans in their possession and to any of their sewers in order to enable the Board to obtain reliable information) and shall comprise detailed drawings of every alteration which the Board may propose to make in any sewer:
- (10) The regional council may require such modifications to be made in the said plans as may be reasonably necessary to secure the main drainage system of the district in which any specified work is situated against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer:
- (11) The Board shall be liable to make good, or, if the regional council so decide, to bear any expense reasonably incurred by the regional council in making good, all injury or damage caused by, or resulting from, the construction of any specified work to any sewer, drain or work vested in the regional council:
- (12) If the Board in the construction of any specified work or any new, altered or substituted work or any work of defence connected therewith provided in accordance with this section, damage or, without the consent of the regional council, alter or in any way interfere with any existing sewer, the Board shall—
 - (a) pay to the regional council any additional expense which may be reasonably incurred by the regional council in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary by reason of the said construction; and
 - (b) give to the regional council full, free and uninterrupted access at all times to any such new, altered or substituted sewer and every reasonable facility for the inspecting, maintenance, alteration and repair thereof:
- (13) It shall be lawful for an officer of the regional council duly appointed for the purpose at any reasonable time, on giving to the Board such notice as may in the circumstances be reasonable, to enter upon and inspect any specified work or any other work constructed under the powers of this section:
- (14) The approval by the regional council of any plans, or the superintendence by them of any work, under the provisions of this section, shall not exonerate the Board from any liability or affect any claim for damages under this section or otherwise:

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- (15) Any difference arising between the Board and the regional council under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.

For protection of roads and road traffic, etc

31 The following provisions shall, unless otherwise agreed in writing between the Board and the road works authority or Hamilton District Council, as the case may be, have effect:—

(1) In this section—

“the appropriate council” means the road works authority or the district council, as the case may be;

“the district council” means the Hamilton District Council;

“road” has the same meaning as in the Roads (Scotland) Act 1984; and

“road equipment” means any works or apparatus on or under any road comprising any refuge, lamp column, traffic sign, bollard, bin for refuse or road materials, surface water drain, gully or sewer for conducting road drainage or apparatus respectively connected therewith:

(2) Wherever in this section provision is made with respect to the approval or consent of the appropriate council, that approval or consent shall be in writing and shall not be unreasonably withheld:

(3) The Board shall not, without the consent of the road works authority, construct any part of the works which will involve interference with any road, except in accordance with plans and sections submitted to, and approved by, the road works authority:

Provided that, if within 56 days after those plans and sections have been submitted the road works authority have not approved or disapproved them, they shall be deemed to have approved the plans and sections as submitted:

(4) Before commencing to construct any part of the works, or any works or conveniences connected therewith, which will involve interference with a road, or the traffic in any road, the Board shall consult the road works authority as to the time when that part shall be commenced, and as to the extent of the surface of the road which it may be reasonably necessary for the Board to occupy or the nature of the interference which may be caused to the said traffic in the construction of that part, and as to the time during which, and the extent to which, the road shall be interfered with, and as to the conditions under which that part shall be constructed, so as to reduce so far as possible inconvenience to the public and to ensure the safety of the public, and that part shall not be constructed, and the surface of the road shall not be occupied by the Board, and the said interference with traffic shall not be caused, except at such time, to such extent, and in accordance with such conditions as may be agreed between the Board and the road works authority or determined by arbitration:

(5) At least 56 days before commencing to make any hole from the surface of any part of any road the Board shall serve notice in writing on the road works authority of their intention to commence the same and that notice shall describe the place at which any hole is intended to be made, and the steps, if any, to be taken by the Board to safeguard pedestrians using any footway, footpath or other way in which the hole is intended to be made, and, if within 21 days after the receipt of the notice any objection is made by the road works authority, the matter shall (unless otherwise agreed) be determined

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by arbitration before the making of the hole is commenced, but if no objection is made the Board may proceed with the making of the hole:

- (6) The Board shall secure that so much of the works as is constructed under, or so as to affect, any road is so designed, constructed and maintained as to carry the appropriate loading for that road recommended at the time of construction of those works by the Secretary of State, and the Board shall indemnify the road works authority against, and make good to the road works authority, all expenses which they may reasonably incur or be put to in the maintenance or repair of any road, or any tunnels, sewers, drains or apparatus therein, by reason of any non-compliance by the Board with the provisions of this paragraph:
- (7) It shall be lawful for an authorised officer of the appropriate council at all reasonable times to enter upon and inspect any part of the works which is in or under any road or which may affect any road or any property or work of the appropriate council, during the execution thereof, and the Board shall give to that officer all reasonable facilities for such inspection and, if he is of the opinion that the construction of that part of the works is attended with danger to any road or to any road equipment or any other property or work belonging to, or under the jurisdiction or control of, the appropriate council on or under any road, the Board shall adopt such measures and precautions as may be reasonably necessary for the purpose of preventing any damage or injury thereto:
- (8) The Board shall not alter, disturb or in any way interfere with any road equipment or any other property or work belonging to, or under the jurisdiction or control of, the appropriate council on or under any road, or the access thereto, without the consent of the appropriate council, and any alteration, adaptation, diversion, replacement or reconstruction of any road equipment or any other property or work as aforesaid which may be necessary shall be made by the appropriate council or the Board as the appropriate council think fit and any costs, charges and expenses reasonably incurred by the appropriate council in so doing shall be repaid to the appropriate council by the Board:
- (9) The Board shall not remove any soil or material from any road except such as must be excavated in the execution of the works:
- (10) (a)
- The Board shall not, except with the consent of the road works authority, deposit any soil, subsoil or materials, or stand any vehicle or plant, on any road so as to obstruct the use of such road by any person or, except with the like consent, deposit any soil, subsoil or materials on any road except within a hoarding;
- (b) All costs, charges and expenses reasonably incurred by the road works authority in removing any soil, subsoil or materials deposited on any road in contravention of this paragraph shall be repaid to the road works authority by the Board:
- (11) Where any part of any road has been temporarily broken up or disturbed by the Board, the Board shall make good the subsoil, foundations and surface of such part of the road to the reasonable satisfaction of the road works authority and maintain the same to the reasonable satisfaction of the road works authority for such time as may be reasonably required for the permanent reinstatement of the road:

Provided that the reinstatement of such part of the road shall in the first instance be of a temporary nature only and the permanent reinstatement thereof shall be carried out

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by the road works authority as soon as reasonably practicable after the completion of the temporary reinstatement, and the costs, charges and expenses reasonably incurred by the road works authority in so doing shall be repaid to the road works authority by the Board:

- (12) The Board shall compensate the appropriate council for any subsidence of, or damage to, any road or any road equipment or any other property or work belonging to, or under the jurisdiction or control of, the appropriate council on or under any road which may be caused by, or in consequence of, any act or default of the Board, their contractors, servants or agents and whether such damage or subsidence happens during the construction of the works or at any time thereafter:
- (13) Any difference arising between the Board and the appropriate council under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.

PART V

GENERAL

Saving for town and country planning

- 32 (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.
- (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.
- (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.

Arbitration

- 33 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.

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SCHEDULE

Section 16.

TEMPORARY WORKING SITES

- 1 In this Schedule “the designated lands” means any of the lands shown on the deposited plans within a line marked “Limit of land to be used” and numbered on those plans 5 to 11, 22 and 23 in the Hamilton District.
- 2 The Board, in connection with the construction of Works Nos. 1 and 2 and after giving to the owners and occupiers of the designated lands not less than 28 days' notice in writing of intended entry, may—
- (a) enter upon and take possession temporarily of the designated lands;
 - (b) remove any structures and vegetation on the designated lands; and
 - (c) construct on the designated lands such temporary works or structures as may be required by them.
- 3 The Board may form and lay out temporary means of access to the lands numbered 8 and 22 in the Hamilton District from—
- (a) Carlisle Road, Ferniegair, at point A; and
 - (b) Merryton Road, Merryton, at point B.
- 4 The Board shall not, by reason of the exercise of the powers of paragraph 2 or 3 above, be required to purchase any part of the designated lands.
- 5 On the exercise of the powers conferred by paragraph 2 or 3 above, the following provisions shall have effect:—
- (1) The Board shall not, without the agreement of the owners and occupiers of the designated lands, remain in possession of any part thereof after a period of one year from the completion of the works for which such possession has been taken:
 - (2) Before giving up possession of the designated lands, the Board shall remove all temporary works or structures and restore the designated lands to the reasonable satisfaction of the owners and occupiers thereof:
 - (3) The Board shall compensate the owners and occupiers of the designated lands for any loss or damage which may result to them by reason of the exercise of the powers of this Schedule:
 - (4) Nothing in this Schedule shall relieve the Board from liability to compensate under section 6 or 43 of the Act of 1845 or under any other enactment, in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under sub-paragraph (3) above:
 - (5) Any dispute as to a person's entitlement to compensation under sub-paragraph (3) above or as to the amount thereof shall be determined by the tribunal.
- 6 The provisions of paragraph 5 above are without prejudice to the powers conferred by section 15 (Purchase of specific new rights over land) of this Order in respect of the land numbered on the deposited plans 5 to 7 in the Hamilton District.