



CHAPTER xxxvi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to the British Transport Commission.

[29th July 1959.]

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

Confirmation
of Order in
schedule.

2. This Act may be cited as the British Transport Commission Order Confirmation Act 1959.

SCHEDULE

BRITISH TRANSPORT COMMISSION

Provisional Order to empower the British Transport Commission to construct works and to acquire lands to confer further powers on the Commission and for other purposes.

Whereas by the Transport Act 1947 the British Transport Commission (hereinafter referred to as "the Commission") were established:

And whereas it is the duty of the Commission under the Transport Act 1947 as amended by the Transport Act 1953 (inter alia) to provide railway services for Great Britain due regard being had to efficiency economy and safety of operation and to the needs of the public and of agriculture commerce and industry:

And whereas it is expedient that the Commission should be empowered to construct the works authorised by this Order and to acquire the lands referred to in this Order:

And whereas it is expedient that the other powers contained in this Order should be conferred upon the Commission:

And whereas plans and sections showing the lines and levels of the works to be constructed under the powers of this Order and plans of the lands authorised to be acquired by this Order and a book of reference to such 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 each county within which the said works will be constructed and the said lands are situated 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":

And whereas the purposes aforesaid 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:—

1.—(1) This Order may be cited as the British Transport Commission Order 1959.

(2) The British Transport Commission Orders 1948 to 1958 and this Order may be cited together as the British Transport Commission Orders 1948 to 1959.

Short and
collective
titles.

Interpretation.

2.—(1) In this Order unless there be something in the subject or context repugnant to such construction the several words and expressions to which meanings are assigned by the Acts wholly or

partly incorporated herewith have in relation to the relative subject-matter the same respective meanings and—

- “ the Act of 1845 ” means the Railways Clauses Consolidation (Scotland) Act 1845;
- “ the Commission ” means the British Transport Commission;
- “ enactment ” includes any public general local or private Act and any order or other instrument having the force of an Act;
- “ the Lands Clauses Acts ” means the Lands Clauses Acts as modified by the Acquisition of Land (Assessment of Compensation) Act 1919 as such last-mentioned Act is amended by the Acquisition of Land (Assessment of Compensation) (Scotland) Act 1931 the Town and Country Planning (Scotland) Act 1947 the Lands Tribunal Act 1949 and the Town and Country Planning (Scotland) Act 1954;
- “ the limits of deviation ” means the limits of deviation shown on the deposited plans;
- “ the Order of 1948 ” means the British Transport Commission Order 1948;
- “ the Order of 1951 ” means the British Transport Commission Order 1951;
- “ the Order of 1953 ” means the British Transport Commission Order 1953;
- “ the Order of 1958 ” means the British Transport Commission Order 1958;
- “ the tribunal ” means the Lands Tribunal for Scotland;
- “ the works ” means the works authorised by this Order.

(2) Any reference in this Order to any enactment shall be construed as a reference to that enactment as applied extended amended or varied by or by virtue of any subsequent enactment including this Order.

(3) Unless the context otherwise requires any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

(4) Until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland “ the tribunal ” shall be construed as meaning an official arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act 1919 and sections 3 5 and 6 of the last-mentioned Act shall apply subject to the necessary modifications in relation to the determination of any question under this Order by an arbiter so appointed.

3. The following Acts and parts of Acts so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Order are incorporated with and form part of this Order and this Order shall be deemed to be the special Act for the purposes of the said incorporated enactments:—

the Lands Clauses Acts except sections 120 to 124 and section 127 of the Lands Clauses Consolidation (Scotland) Act 1845;

the Act of 1845 except sections 7 8 9 19 20 22 23 103 and 104 thereof:

Provided that—

- (a) for the purposes of this Order the expression “ the company ” where used in the incorporated provisions of the Act of 1845 means the Commission;
- (b) for the purposes of sections 16 and 25 to 37 of the Act of 1845 as incorporated with this Order the works shall be deemed to be railways authorised by the special Act;
- (c) the provisions of sections 18 and 21 of the Act of 1845 shall not extend to regulate the relations between the Commission and any other person in respect of any matter or thing concerning which those relations are regulated in any respect—
 - (i) by the provisions of Part II of the Public Utilities Street Works Act 1950; or
 - (ii) by the provisions of section 14 (For protection of gas water and electricity undertakers) of the Order of 1953 as incorporated with this Order.

Power to make works.

4.—(1) Subject to the provisions of this Order the Commission may in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections make and maintain the works hereinafter described with all necessary works and conveniences connected therewith:—

In the county of Lanark—

Work No. 1 A raising and reconstruction of the bridge in the county of the city of Glasgow and parish of Govan carrying Kilbirnie Street over the Cathcart District railway.

Work No. 2 A raising and reconstruction of the bridge in the county of the city of Glasgow and parish of Cathcart carrying Muirend Road over the Lanarkshire and Ayrshire railway.

Work No. 3 A raising and reconstruction of the bridge in the Lanark eighth district and parish of Cambuslang carrying Mill Road over the Clydesdale Junction railway and the Lanarkshire and Ayrshire railway.

Work No. 4 A raising and reconstruction of the bridge in the Lanark sixth district and parish of Bothwell carrying Bellshill Road over the Clydesdale Junction railway.

In the county of Renfrew—

Work No. 5 A raising and reconstruction of the bridge in the Renfrew second district and parish of Neilston carrying High Street over the Lanarkshire and Ayrshire railway.

(2) Subject to the provisions of this Order and within the limits of deviation the Commission may in carrying out the works make junctions with and may alter the line or level of any street or way interfered with by or contiguous to the works and may alter and interfere with any steps walls gateways railings passages pipes and pavements and may execute any works for the protection of any adjoining land or building.

5.—(1) Subject to the provisions of this Order the Commission may enter upon take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of the works or for any purpose connected with or ancillary to their undertaking. Power to acquire lands.

(2) Subject to the provisions of this Order the Commission may enter upon use and appropriate so much of the subsoil and under-surface of any public street road footpath or place delineated on the deposited plans and described in the deposited book of reference as may be necessary for the purposes of the works without being required to purchase the same or any servitude therein or thereunder or to make any payment therefor.

6.—(1) Whereas in the construction of the works or otherwise in the exercise by the Commission of the powers of this Order it may happen that portions only of the properties whereof the whole or part is described in the First Schedule to this Order will be sufficient for the purposes of the Commission and that such portions or some other portions less than the whole can be severed from the remainder of the said properties respectively without material detriment thereto Acquisition of part only of certain properties. Therefore the following provisions shall have effect:—

- (a) The owner of and persons interested in any of the said properties whereof a portion only is required for the purposes of the Commission or each or any of them are or is hereafter in this section included in the term “the owner”;
- (b) If for twenty-one days after the service of notice to treat in respect of a specified portion of any of the said properties the owner fails to notify the Commission in writing that he alleges that such portion cannot be severed from the remainder of the property without material detriment thereto he may be required to sell and convey to the Commission such portion only without the Commission being obliged or compellable to purchase the whole the Commission paying for the portion so taken and making compensation for any loss sustained by the owner by severance or otherwise;
- (c) If within such twenty-one days the owner alleges by notice in writing to the Commission that such portion cannot be so severed the tribunal shall in addition to the other questions required to be determined by it determine whether the portion of the property specified in the notice to treat can be severed from the remainder without material detriment thereto and if not whether any and what other portion less than the whole (but not exceeding the portion that may be acquired compulsorily under this Order) can be so severed;
- (d) If the tribunal determine that the portion of the property specified in the notice to treat or any such other portion as aforesaid can be severed from the remainder without material detriment thereto the owner may be required to sell and convey to the Commission the portion which the tribunal has determined to be so severable without the Commission being obliged or compellable to purchase the whole the Commission paying such sum for the portion taken by them

including compensation for any damage sustained by the owner by severance or otherwise as shall be awarded by the tribunal;

- (e) If the tribunal determine that the portion of the property specified in the notice to treat can notwithstanding the allegation of the owner be severed from the remainder without material detriment thereto the tribunal may determine and order that the costs charges and expenses incurred by the owner incident to the determination of any matters under this section or such part (if any) of the said costs charges and expenses as it thinks fit shall be borne and paid by the owner;
- (f) If the tribunal determine that the portion of the property specified in the notice to treat cannot be severed from the remainder without material detriment thereto (and whether or not it determines that any other portion can be so severed) the Commission may withdraw their notice to treat and thereupon they shall pay to the owner all costs charges and expenses reasonably and properly incurred by him in consequence of such notice;
- (g) If the tribunal determine that the portion of the property specified in the notice to treat cannot be severed from the remainder without material detriment thereto but that any such other portion as aforesaid can be so severed the Commission if they do not withdraw the notice to treat shall pay to the owner all costs charges and expenses reasonably and properly incurred by him in consequence of such notice or such portion thereof as the tribunal thinks fit having regard to the circumstances of the case and its final determination.

(2) The provisions of this section shall be in force notwithstanding anything contained in the Lands Clauses Consolidation (Scotland) Act 1845 and nothing contained in or done under this section shall be held as determining or as being or implying an admission that the said properties or any of them or any part thereof is or is not or but for this section would or would not be subject to the provisions of section 90 of the Lands Clauses Consolidation (Scotland) Act 1845.

(3) The provisions of this section shall be stated in or endorsed on every notice to treat served under this Order in respect of any portion of the said properties.

Power to enter
for survey and
valuation.

7. Any person acting on behalf of the Commission and duly authorised in writing in that behalf and showing his authority if required may at all reasonable times enter upon any land authorised to be acquired compulsorily under this Order for the purpose of surveying or valuing the land:

Provided that land shall not be entered under this section unless the Commission not less than seven days before the first entry and not less than twenty-four hours before any subsequent entry have given notice in writing to the owner lessee and occupier of the land in manner provided by section 101 of the Town and Country Planning (Scotland) Act 1947.

8. In determining any question of disputed compensation or purchase money in respect of land acquired under this Order the tribunal shall not take into account—

Disregard of recent improvements and interests.

(a) any improvement or alteration made or building erected after the fifth day of December nineteen hundred and fifty-eight; or

(b) any interest in the land created after the said date;

which in the opinion of the tribunal was made erected or created with a view to obtaining or increasing the compensation or purchase money.

9. The powers of the Commission for the compulsory purchase of the lands which they are authorised to acquire by section 5 (Power to acquire lands) of this Order shall cease on the thirty-first day of December nineteen hundred and sixty-two.

Period for compulsory purchase of lands.

10.—(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 Commission after giving ten days' notice to the owner lessee and occupier of the land in question may apply to the sheriff of the county in which the land is situated for the correction thereof.

Correction of errors in deposited plans and book of reference.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake the sheriff shall certify the fact 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 and in the office of the sheriff clerk of the said county and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Commission to take the land in accordance with the certificate.

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

11. The following provisions of the under-mentioned Orders are incorporated with and form part of this Order:—

Incorporation of provisions of Orders of 1948 1951 1953 and 1958.

The Order of 1948—

Section 13 (Power to acquire servitudes compulsorily in certain cases);

Section 21 (Provision as to repair of roads and footpaths);

Section 22 (Power to make agreements with road authorities);

Section 24 (As to minerals under and near to lands to be acquired):

The Order of 1951—

Section 9 (Extinction of private rights of way);

Section 11 (Grant of servitudes by persons under disability);

Section 13 (Power to expedite entry):

The Order of 1953—

Section 6 (Power to deviate);

Section 14 (For protection of gas water and electricity undertakers):

The Order of 1958—

Section 5 (Use of sewers etc. for removing water).

Stopping up
Inchbelly level
crossing.

12. The Commission may stop up and discontinue the level crossing known as Inchbelly level crossing in the city county and parish of Glasgow in the county of Lanark whereby the road known as Springburn Road is crossed on the level by the railway between Robroyston and St. Rollox goods station and thereupon all rights of way over or across the said level crossing shall be extinguished.

Stopping up
Phoenix level
crossing.

13. The Commission may stop up and discontinue the level crossing known as Phoenix level crossing in the burgh and parish of Dunfermline in the county of Fife whereby the road known as Phoenix Lane is crossed on the level by the railway between Dunfermline and Oakley and thereupon all rights of way over or across the said level crossing shall be extinguished.

As to certain
level crossings.

14.—(1) As from the commencement of this Order all rights of way over or across the level crossings referred to in Parts I and II of the Second Schedule to this Order other than a right of way for all persons to use those level crossings on foot shall be extinguished and the Commission shall provide and maintain on both sides of the railway at each of the said level crossings wicket gates or stiles for the convenience of persons on foot.

(2) The provisions of the Highway (Railway Crossings) Act 1839 of section 9 of the Railway Regulation Act 1842 of section 40 of the Act of 1845 and of sections 5 6 and 7 of the Railways Clauses Act 1863 and any other provisions to the same or similar effect incorporated with or contained in any enactment relating to any of the level crossings referred to in the said schedule shall cease to apply to those level crossings.

(3) The level crossings referred to in Part II of the said schedule (including the gates thereof other than the gates provided in pursuance of subsection (1) of this section) shall be deemed for all purposes to be works provided by the Commission at the commencement of this Order pursuant to section 60 of the Act of 1845 for the accommodation of the owners and occupiers of the lands adjoining the railway at each of the said level crossings respectively (that is to say) for the purpose of making good any interruptions caused by such railway to the use of the lands through which the same has been made as if the making of such railway had been authorised by this Order.

Execution of
deeds.

15. A deed to which the Commission are a party shall be held to be validly executed on behalf of the Commission according to the law of Scotland if it is sealed with the common seal of the Commission and subscribed on behalf of the Commission by a member of the Commission and by the secretary of the Commission or some person

authorised by the Commission to act in his stead in that behalf and such subscriptions on behalf of the Commission shall be binding whether attested by witnesses or not.

16. The words "with approaches thereto not steeper than one in twenty" in paragraph (1) of section 25 (Provisions as to certain streets) of the Caledonian Railway (Gordon Street Glasgow Station) Act 1873 are hereby repealed.

17. If in pursuance of section 13 (Stopping up Phoenix level crossing) of this Order the Commission stop up and discontinue the level crossing in that section referred to the Postmaster-General shall have the same powers in respect of any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by him which immediately before such stopping up and discontinuance was in use upon or over or across the said level crossing as if the said level crossing had not been so stopped up and discontinued:

For protection
of Postmaster-
General.

Provided that if at any time the Commission require that the telegraphic line should be altered paragraphs (1) to (8) of section 7 of the Telegraph Act 1878 shall apply to the alteration and accordingly shall have effect subject to the necessary modifications as if references therein to undertakers included references to the Commission.

18. This Order shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning (Scotland) Act 1947 for the purposes of subsection (4) of section 11 and subsection (1) of section 112 of that Act.

Saving for
town and
country
planning.

19. Where under this Order any difference (other than a difference to which the provisions of the Lands Clauses Acts apply) is to be referred to or settled by arbitration then unless otherwise provided such difference shall be referred to and settled by a single arbiter to be agreed between the parties or failing agreement to be appointed on the application of either party (after notice in writing to the other) by the sheriff of the county in which the works or lands to which the difference relates are situated.

Arbitration.

20. All costs charges and expenses of and incident to the preparing for obtaining and confirming of this Order or otherwise in relation thereto shall be paid by the Commission and may in whole or in part be defrayed out of revenue.

Costs of
Order.

SCHEDULES

Section 6.

FIRST SCHEDULE

DESCRIBING PROPERTIES WHEREOF PORTIONS ONLY MAY BE
TAKEN COMPULSORILY

Area (1)	No. on deposited plans (2)
Parish of Cathcart	WORK No. 2 3 4 5 7.
Parish of Cambuslang	WORK No. 3 2 3 5.
Parish of Bothwell	WORK No. 4 2 4 5.
Parish of Neilston	WORK No. 5 3 8.

Section 14.

SECOND SCHEDULE

LEVEL CROSSINGS REFERRED TO IN SECTION 14 (AS TO
CERTAIN LEVEL CROSSINGS) OF THIS ORDER

PART I

Area	Description of level crossing
In the county of Dumfries— In the parish of Gretna	The level crossing known as Woodfield level crossing whereby the road leading from Birkhill Farm to the Gretna Green to Annan road is crossed on the level by the railway between Gretna Green and Eastriggs.
In the county of East Lothian— In the parish of Innerwick	The level crossing known as Skateraw level crossing whereby the road leading from the Innerwick to Thornton Loch road to the Berwick to Dunbar road is crossed on the level by the railway between Innerwick and Dunbar.

PART II

2ND SCH.
—cont.

Area	Description of level crossing
<p>In the county of Aberdeen— In the parish of Old Deer</p>	<p>The level crossing known as Nethermuir level crossing whereby the road leading from the Auchnagatt to New Deer road to the Auchnagatt to Old Deer road is crossed on the level by the railway between Auchnagatt and Maud Junction.</p>
<p>In the parish of Udney</p>	<p>The level crossing known as Tillyeve level crossing whereby the road leading from Linkshill Farm to the Aberdeen to Udney road is crossed on the level by the railway between Newmachar and Udney.</p>
<p>In the county of Fife— In the parish of Cults</p>	<p>The level crossing known as Cults Mill level crossing whereby the road leading from Cults Mill Farm to Springfield is crossed on the level by the railway between Springfield and Ladybank.</p>



Table of Statutes referred to in this Act

Short title	Session and chapter
Highway (Railway Crossings) Act 1839 ...	2 & 3 Vict. c. 45.
Railway Regulation Act 1842	5 & 6 Vict. c. 55.
Lands Clauses Consolidation (Scotland) Act 1845	8 & 9 Vict. c. 19.
Railways Clauses Consolidation (Scotland) Act 1845	8 & 9 Vict. c. 33.
Railways Clauses Act 1863	26 & 27 Vict. c. 92.
Caledonian Railway (Gordon Street Glasgow Station) Act 1873	36 & 37 Vict. c. clxxxviii.
Telegraph Act 1878	41 & 42 Vict. c. 76
Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5 c. 57.
Acquisition of Land (Assessment of Compensation) (Scotland) Act 1931	21 & 22 Geo. 5 c. 11.
Private Legislation Procedure (Scotland) Act 1936	26 Geo. 5 & 1 Edw. 8 c. 52.
Transport Act 1947	10 & 11 Geo. 6 c. 49.
Town and Country Planning (Scotland) Act 1947	10 & 11 Geo. 6 c. 53.
Lands Tribunal Act 1949	12 13 & 14 Geo. 6 c. 42.
Public Utilities Street Works Act 1950 ...	14 Geo. 6 c. 39.
Transport Act 1953	1 & 2 Eliz. 2 c. 13.
Town and Country Planning (Scotland) Act 1954	2 & 3 Eliz. 2 c. 73.

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7 & 8 ELIZ. 2 Ch. xxxvi

ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in schedule.
2. Short title.

SCHEDULE

BRITISH TRANSPORT COMMISSION

1. Short and collective titles.
2. Interpretation.
3. Incorporation of general Acts.
4. Power to make works.
5. Power to acquire lands.
6. Acquisition of part only of certain properties.
7. Power to enter for survey and valuation.
8. Disregard of recent improvements and interests.
9. Period for compulsory purchase of lands.
10. Correction of errors in deposited plans and book of reference.
11. Incorporation of provisions of Orders of 1948 1951 1953 and 1958.
12. Stopping up Inchbelly level crossing.
13. Stopping up Phoenix level crossing.
14. As to certain level crossings.
15. Execution of deeds.
16. Repeal.
17. For protection of Postmaster-General.
18. Saving for town and country planning.
19. Arbitration.
20. Costs of Order.

SCHEDULES:

First Schedule—Describing properties whereof portions only may be taken compulsorily.

Second Schedule—Level crossings referred to in section 14 (As to certain level crossings) of this Order.

Part I.

Part II.