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## SCHEDULE

### SCOTTISH BORDERS COUNCIL (JIM CLARK MEMORIAL RALLY)

*Provisional Order to authorise the Jim Clark Memorial Rally to take place on certain public roads in the former district of Berwickshire in the Scottish Borders; to confer powers on The Scottish Borders Council in relation thereto; and for other purposes.*

#### WHEREAS—

- (1) The Scottish Borders Council (hereinafter referred to as “the Council”) are by virtue of sections 133 and 146 of the Local Government (Scotland) Act 1973 vested with the functions of roads authority for the area of the Scottish Borders:
- (2) As roads authority and traffic authority the Council are responsible for administering the provisions of the Roads (Scotland) Act 1984 and the Road Traffic Regulation Act 1984:
- (3) By virtue of Part VI of the Road Traffic Regulation Act 1984 public roads in the former district of Berwickshire (hereinafter referred to as “the district”) are subject to speed limits for motor vehicles:
- (4) For more than twenty years a motor car rally (hereinafter called “the rally”) known as the Jim Clark Memorial Rally has taken place annually on private roads and tracks in the district in memory of the late Jim Clark, the Berwickshire farmer who became world motor-racing champion in 1963 and 1965 and was killed in a motor-racing accident at Hockenheim, Germany on 7th April 1968:
- (5) It would generate more public interest in the rally and enhance its reputation and, by encouraging tourism in the district and benefiting the local economy, it would be of public and local advantage, if the rally were to take place on closed public roads in the district:
- (6) For the purposes aforesaid it is expedient to authorise the Council to permit certain public roads in the district to be used for the rally on certain days of the year and for this purpose to empower the Council on certain days and at certain times to close to the public or restrict access to the whole or parts of those public roads in the district and to suspend the operation of certain enactments in respect of those roads:
- (7) It is expedient that other provisions in this Order be enacted:
- (8) 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 said Act of 1936, the Secretary of State orders as follows:—

#### *Short title*

- 1 This Order may be cited as the Scottish Borders Council (Jim Clark Memorial Rally) Order 1996.

#### *Interpretation*

- 2 In this Order, except where the context otherwise requires—  
“apparatus” means—

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- (a) in relation to a public gas supplier, mains, pipes and other apparatus belonging to or maintained by that supplier;
  - (b) in relation to a water and sewerage undertaker, water mains and communication and supply pipes as defined in section 109 of the Water (Scotland) Act 1980 and public sewers as defined in section 59 of the Sewerage (Scotland) Act 1968;
  - (c) in relation to a telecommunications operator, telecommunication apparatus as defined in paragraph 1(1) of Schedule 2 to the Telecommunications Act 1984, including such apparatus belonging to or used by British Telecommunications plc;
  - (d) in relation to Scottish Power plc, an electric line as defined in section 64 of the Electricity Act 1989;
- “authorising agent” means the Royal Scottish Automobile Club;
- “authorised days” has the meaning given by section 3 (Authorised days) of this Order;
- “competition rules” shall mean the rules for the time being in force of the RAC Motor Sports Association Limited relative to motor rallies;
- “Chief Constable” means the Chief Officer of Lothian and Borders Police;
- “contravention” includes failure to comply;
- “the Council” means The Scottish Borders Council;
- “district” means the former local government area existing at 31st March 1996 known as the district of Berwickshire and shown delineated in red on the signed plan;
- “motor vehicle” has the meaning given by sections 185 and 186 of the Road Traffic Act 1988;
- “occupier” has the meaning given by section 151 of the Roads (Scotland) Act 1984;
- “owner” has the meaning given by section 151 of the Roads (Scotland) Act 1984;
- “premises” includes land and any interest in land or building thereon;
- “promoter” means the person primarily responsible for the organisation and arrangement of the rally in the district;
- “public road” means a road in the district which is a public road as defined in section 151 of the Roads (Scotland) Act 1984;
- “Railtrack” means Railtrack PLC, a public limited company registered under the Companies Act 1985 to which there was transferred on 1st April 1994, under a scheme made on 30th March 1994, pursuant to section 85(1) of the Railways Act 1993 and by direction of the Secretary of State pursuant to section 85(4) of that Act, that part of the undertaking of the British Railways Board which consisted of the management of the railway network in Great Britain and related property, rights and liabilities;
- “the rally” means the Jim Clark Memorial Rally, being a competition or trial of average speed consisting of one or more events;
- “rally route”, in respect of any year, means the route of the rally in so far as it—
- (a) is on public roads, and
  - (b) has been approved by the Council in accordance with the provisions of section 4(3) of this Order;

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“signed plan” means the plan marked “Scottish Borders Council (Jim Clark Memorial Rally) Order 1996: Berwickshire District: Boundary at 31st March 1996” of which five copies have been signed by Gavin Douglas QC, Senior Counsel to the Secretary of State for the purposes of the Private Legislation Procedure (Scotland) Act 1936, one of which copies has been deposited with the sheriff clerk of the Duns sheriff court district, one in the office of the Clerk of the Parliaments, House of Lords, one in the Private Bill Office of the House of Commons, one in the Scottish Office, London, and one in the Office of the Secretary of State, Edinburgh;

“statutory undertakers” means a public gas supplier, public water or sewerage undertaker, telecommunications operator or Scottish Power plc;

“telecommunications operator” means the operator of a telecommunications code system; and “operator” and “telecommunications code system” have the respective meanings given by paragraph 1 of Schedule 4 to the Telecommunications Act 1984; and

“traffic sign” has the meaning given by section 64 of the Road Traffic Regulation Act 1984.

#### *Authorised days*

- 3
- (1) In this Order the expression “authorised days” means in respect of any calendar year, any three consecutive days approved by the Council in consultation with the Chief Constable and the authorising agent on receipt of at least four months' written notice from the promoter.
  - (2) The promoter shall give not less than three months' notice of the authorised days to Railtrack and to any statutory undertakers having apparatus in, under or adjoining the rally route.

#### *Arrangements for rally*

- 4
- (1) Subject to the provisions of this Order the Council may authorise the organisation and arrangement of the rally in the district by the promoter on the authorised days.
  - (2) The rally shall follow the rally route, and a proposed route for that purpose will be notified to the Council in writing by the promoter at least four months prior to the authorised days and shall be subject to the approval of the Council in consultation with the Chief Constable and the authorising agent.
  - (3) The Council may approve the proposed route as the rally route if after such consultation they are satisfied that such provisions have been made with regard to public safety and alternative routes for vehicular and pedestrian traffic as they consider necessary, but if the Council are not so satisfied they may refuse to approve the proposed route as the rally route or approve it subject to such alterations as they think fit.
  - (4) Subject to such directives as may be given by—
    - (a) the Chief Constable;
    - (b) the Council; or
    - (c) the authorising agent;the rally shall be run in accordance with the competition rules:

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Provided that in case of conflict between any directives given under this subsection a directive given by the Chief Constable shall prevail over any conflicting directive given by the authorising agent or the Council and a directive given by the authorising agent shall prevail over any conflicting directive given by the Council.

*Power to carry out works*

- 5
- (1) The Council may carry out on public roads such works as they may consider to be necessary or convenient for the purposes of, or in connection with, the provisions of this Order.
  - (2) The cost of any works carried out by the Council under subsection (1) above may be recovered by the Council from the promoter.
  - (3) The Council shall not undertake any works under subsection (1) above which would render the road unsuitable for use at any time as a public road.
  - (4) The Council may give such assistance (other than such financial assistance as is not permitted by virtue of section 83 of the Local Government (Scotland) Act 1973) to the promoter as may be required to enable the promoter to carry out the purposes of this Order.

*Power to close public roads*

- 6
- (1) Subject to the provisions of subsections (2) to (6) below the Council may, for the purposes of this Order, on the authorised days close to the public or restrict access to the whole or part of any public road or roads comprised in the rally route and may exclude therefrom all or any persons, vehicles, goods and things (including persons seeking to go to or from any premises abutting any such road and whether or not in exercise or purported exercise of any public or private right of way over any part of the public roads) except with the consent of the Council in consultation with the promoter.
  - (2) The Council shall not on any of the authorised days close any part of the public roads comprised in the rally route—
    - (a) more than twice; or
    - (b) for a continuous period of more than five hours; or
    - (c) if that part has not been open to the public for at least two hours since the last closure.
  - (3) The Council shall ensure that, where any premises or any place of public religious worship is affected by the road closure or any restriction of access to a road under the powers contained in this section, the owner or occupier of such premises or any person attending such place (whether for the purpose of worship or education) shall have reasonable access to and egress from the said premises or place of public religious worship as the case may be in so far as it is safe to grant such access or egress, during the period of closure or restriction.
  - (4) Notice of the closing of public roads under this section and any revised traffic arrangements and alternative routes shall be indicated by traffic signs.
  - (5) The Council shall—
    - (a) not less than one month before the closing of a public road under this section cause to be published in a local newspaper circulating in the district notice

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- thereof stating the public roads or parts of public roads to be closed and the periods during which such public roads shall be closed to vehicular and pedestrian traffic respectively;
- (b) not later than the date on which such notice is published under paragraph (a) above serve a copy thereof on the Chief Constable, Railtrack and any statutory undertaker having apparatus in, under or adjoining the rally route;
  - (c) display copies of such notice in the public road or part of a public road to be closed in places where they can conveniently be read by the public for a period of not less than 14 days immediately preceding the closing.
- (6) Either—
- (a) a copy of any such newspaper containing any such notice, or
  - (b) a photostatic or other reproduction certified by the proper officer of the Council to be a true reproduction of a page, or part of a page, of any such newspaper bearing the date of its publication and containing any such notice,
- shall be evidence of the publication of the notice and of the date of the publication.
- (7) If any person without the consent of the Council knowingly and without reasonable excuse enters or remains upon any public road which is closed to him, or drives or causes or permits to be driven a vehicle upon any public road or part of a public road which is closed to that vehicle under this section, or fails to comply with any condition subject to which the Council have given their consent under this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In proceedings for an offence under subsection (7) above, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (9) Notwithstanding the closure of any public road or part of a public road by the Council under this section, in the case of emergency any emergency service of the Council, Railtrack, the police, the ambulance service, the fire service, the Borders Health Board or the statutory undertakers may require the promoter to stop the rally and may enter upon such public road or part of a public road with any necessary vehicles, plant and equipment for the purpose of exercising any of their functions in relation to the emergency.
- (10) Nothing in this section shall prejudice or affect the operation of any of the relevant statutory provisions as defined in Part I of the Health and Safety at Work etc. Act 1974.
- (11) The Council may recover from the promoter all or any of the costs incurred by them in exercising any of the powers contained in this section.

#### *Removal of vehicles*

- 7
- (1) Where a vehicle is on any public road or part of a public road which is closed in pursuance of section 6 (Power to close public roads) of this Order, otherwise than for the purposes of subsection (9) of that section, the Council may remove or arrange for the removal of the vehicle to a place other than the rally route.
  - (2) Any person removing a vehicle under subsection (1) above may do so by towing or driving the vehicle or in such other manner as he may reasonably think necessary

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and may take such measures in relation to the vehicle as he may reasonably think necessary to enable him to remove it as aforesaid.

- (3) While the vehicle is in the custody of the Council in pursuance of this section it shall be the duty of the Council to take such steps as are reasonably necessary for the safe custody of the vehicle and for complying with a request for its return made by or on behalf of its owner.
- (4) The owner of any vehicle removed by the Council in pursuance of this section shall be liable to pay the Council's costs incurred in carrying out such a removal.
- (5) In this section "vehicle" means any vehicle whether or not it is in a fit state for use on public roads and includes any chassis or body with or without wheels appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle.

*Road traffic enactments not to apply to closed roads*

- 8 (1) Subject to subsections (2) and (3) below and to the provisions of section 9 (Road traffic regulations) of this Order, while the rally route is closed under section 6 (Power to close public roads) of this Order, no enactment relating to road traffic shall apply to any motor vehicle which is on the rally route with the consent of the Council or to any closed public road forming part of the rally route.
- (2) The Motor Vehicles (Competitions and Trials) (Scotland) Regulations 1976 shall apply to the rally authorised by this Order so far as those regulations are not inconsistent with the provisions of this Order and the authorisation thereby of a rally on the rally route at speeds greater than the speed limit imposed under any enactment in respect of any public road which forms part of the rally route.
- (3) Sections 4 to 11 of the Road Traffic Act 1988 are not disapplied by this section.

*Road traffic regulations*

- 9 In its application to the district, section 14 of the Road Traffic Regulation Act 1984 (which empowers a roads authority to make an order or give a notice temporarily prohibiting or restricting traffic on roads) shall have effect on the authorised days in relation to any road other than a trunk road as if after the words "of serious damage to the road" where those words occur in subsection (1)(b) there were added the words "or in order to facilitate the operation of the Scottish Borders Council (Jim Clark Memorial Rally) Order 1996":

Provided that no order made or notice given under the said section 14, which could not have been made or given but for this Order, shall prevent any statutory undertaker obtaining access to any apparatus with any necessary plant and machinery.

*Compensation*

- 10 (1) Without prejudice to any right to compensation enjoyed apart from this section, a person who sustains injury or damage by reason of the exercise of the powers of this Order shall be entitled to recover full compensation from the promoter to the extent that that person has not himself been in default.

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- (2) The promoter will maintain an insurance policy to provide such cover as will fulfil the obligations of the promoter under this section in an amount to be determined by, and to the satisfaction of, the RAC Motor Sports Association Limited.

#### *Application of New Roads and Street Works Act 1991*

- 11 The provisions contained in sections 142 to 144 of the New Roads and Street Works Act 1991 shall apply in relation to any works executed under section 5 (Power to carry out works) of this Order.

#### *For protection of Post Office*

- 12 For the protection of the Post Office the following provisions shall, unless otherwise agreed in writing between the Council, the promoter and the Post Office, apply and have effect:—
  - (1) Not less than four months before the first of the days proposed by the promoter to be the authorised days in any year for the purposes of this Order, the promoter shall, in order to minimise disruption of rural postal collection and delivery services, consult the Post Office as to the proposed route of the rally, the proposed authorised days and the proposed periods during which roads are to be closed under the powers of this Order.
  - (2) The Council shall not approve the proposed rally route under section 4 (Arrangements for rally) of this Order unless they are satisfied that the promoter has consulted the Post Office in accordance with paragraph (1) above.
  - (3) After the authorised days have been determined in accordance with the provisions of this Order the promoter shall give not less than three months' notice to the Post Office of those days.
  - (4) After the route of the rally and the periods during which any public roads will be closed have been determined in accordance with the provisions of this Order the Council shall give not less than one month's notice to the Post Office of that route and those periods.

#### *Discontinuance of rally and cesser of Order*

- 13
  - (1) Not later than 31st March in the year preceding any calendar year after the year 2001 in which the promoter intends to hold the rally, the promoter shall give written notice of such intention to the Secretary of State.
  - (2) If the Secretary of State is satisfied from a review of the effects of the rally that on grounds of public safety the rally should be discontinued or that it should be permitted to continue only upon certain terms or conditions, the Secretary of State may by order, within three months after the service of a notice by the promoter under subsection (1) above, either prohibit the holding of the intended rally or permit it to continue subject to such terms or conditions as he thinks fit.
  - (3) If the Secretary of State prohibits the holding of the intended rally under subsection (2) above, the rally shall not take place in the year of the intended rally or in any later year and on 31st December following such prohibition this Order shall cease to have effect.