



Railways Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 33 8 and 9 Vict

Construction of railway

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows:

6 The construction of the railway to be subject to the provisions of this Act and the Lands Clauses Consolidation (Scotland) Act.

In exercising the power given to the company by the special Act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the said Lands Clauses Consolidation (Scotland) Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Act shall be applicable to determine the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

[^{F1}(2) For the avoidance of doubt it is hereby declared that in this section the reference to the construction of the railway includes a reference to the execution of works in connections therewith.]

Textual Amendments

F1 S. 6(2) added by [Land Compensation \(Scotland\) Act 1973 \(c. 56\)](#), s. 61

Changes to legislation: There are currently no known outstanding effects for the Railways Clauses Consolidation (Scotland) Act 1845, Cross Heading: Construction of railway. (See end of Document for details)

Modifications etc. (not altering text)

- C1** S. 6 incorporated (S.) (27.5.1997) by 1997 c. 8, **ss. 188(2)**, 278(2)
 S. 6 modified (S.) (27.5.1997) by 1997 c. 8, ss. 195, 278(2), **Sch. 15 Pt. I para. 6**
 S. 6 applied (S.) (27.5.1997) by 1997 c. 8, **ss. 196(4)(a)**, 278(2)
 S. 6 modified (S.) (27.5.1997) by 1997 c. 8, **ss. 200(4)**, 278(2)
 S. 6 applied (with modifications) (S.) (27.5.1997) by 1997 c. 9, **ss. 47(2)(3)(4)**, 83(2) (with s. 45(4))
 S. 6 incorporated (S.) (17.7.1995) by 1994 c. 39, **s. 98(2)(a)**; S.I. 1995/1898, **art. 2**
 S. 6 incorporated (with modifications) (1.4.2002) by 2002 asp 3, **s. 46(3)** (with s. 67); S.S.I. 2002/118, **art. 2**
- C2** S. 6 applied by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), **s. 36(3)**
- C3** S. 6 extended by Telecommunications Act 1984 (c. 12, SIF 96), s. 10, **Sch. 2 para. 16(1)(4)**
- C4** S. 6 incorporated (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp 6), **s. 80(2)(3)** (with s. 75)
- C5** S. 6 incorporated (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp 7), **s. 81(2)(3)** (with ss. 76, 84)
- C6** S. 6 applied (1.3.2010) by Planning Act 2008 (c. 29), ss. 152(5), 236, 241(8), 241(8), **Sch. 12 paras. 20(b)** (with s. 226); S.I. 2010/101, art. 3(h) (with art. 6)
- C7** S. 6 incorporated (with modifications) (3.2.2011) by Forth Crossing Act 2011 (asp 2), **ss. 21**, 80(2) (with ss. 69, 78); S.S.I. 2011/38, art. 2, Sch.
- C8** S. 6 applied by 2003 c. 21, Sch. 3A para. 85(3) (as inserted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), **Sch. 1** (with Sch. 2); S.I. 2017/1286, reg. 2(b))

7 Errors and omissions in plans to be corrected.

If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special Act, or in the schedule to the special Act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to the sheriff for the correction thereof; and if it shall appear to such sheriff that such omission, mis-statement, or erroneous description arose from mistake, he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described; and such certificate shall be deposited in the office of the principal sheriff clerk in every county in which the lands affected thereby shall be situate, and shall also be deposited with the schoolmasters of the several parishes (or in royal burghs with the town clerk) in which the lands affected thereby shall be situate; and such certificate shall be kept by such sheriff clerks, schoolmasters, and other persons respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

Modifications etc. (not altering text)

- C9** Reference to sheriff clerk of a county to be construed as reference to sheriff clerk of sheriff court district: Local Government (Scotland) Act 1973 (c. 65), **Sch. 27 Pt. I para. 1(3)**

8 Works not to be proceeded with until plans of all alterations authorized by Parliament have been deposited.

It shall not be lawful for the company to proceed in the execution of the railway, unless they shall have previously to the commencement of such work deposited in the office

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of the principal sheriff clerk in every county in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the schoolmasters of the several parishes, (or in royal burghs with the town clerk,) in or through which such alterations shall have been authorized to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Modifications etc. (not altering text)

C10 Reference to sheriff clerk of a county to be construed as reference to sheriff clerk of sheriff court district: [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 27 Pt. 1 para. 1\(3\)](#)

9 Sheriff clerks, &c. to receive plans of alterations, and allow inspection.

The said sheriff clerks, schoolmasters, and town clerks shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of the original plans and sections by the ^{M1}Parliamentary Documents Deposit Act 1837.

Marginal Citations

M1 [1837 c. 83.](#)

10 Copies to be evidence.

True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such sheriff clerk in Scotland, which certificate such sheriff clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

11 Limiting deviation from datum line described on sections, &c.

In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, [^{F2}road], or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any [^{F3}road] shall be affected by such deviation, then the same shall not be made without the consent of the [^{F4}roads authority] having the control of such [^{F3}road], or, if there be no such [^{F4}roads authority], without the consent of the sheriff, or without the consent of the trustees or commissioners for any public sewers, or the proprietors of any canal, navigation, gas-works, or water-works, affected by such deviation: Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by Act of Parliament be left for roads, . . . ^{F5}, or canals passing under the same: Provided also, that notice of every application

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to the sheriff for the purpose of considering the matter shall, fourteen days previous to such application, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no such church, some other place to which notices are usually affixed.

Textual Amendments

- F2** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(3)(a)**
- F3** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(3)(b)**
- F4** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(3)(c)**
- F5** Word repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), ss. 156(1)(3), **Sch. 9 para. 3(3)(d)**, Sch. 11

12 Previous notice of such deviation to be given.

Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, [^{F6}road], or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days notice to the company, to decide whether, having regard to the interests of such applicant, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation, or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Textual Amendments

- F6** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(4)**

13 Arches, tunnels, &c. to be made as marked on deposited plans.

Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

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14 Limiting deviations from gradients, curves, &c.

It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions; (that is to say,)

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade.

15 Lateral deviations.

It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing through a town than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special Act provided for in cases of unintentional errors in the said book of reference.

16 Works to be executed. Inclined planes, &c. Alteration of course of rivers, &c. Drains, &c. Warehouses, &c. Alterations and repairs. General power. Proviso as to damages.

Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, herein-after mentioned, to execute any of the following works; (that is to say,)

They may make or construct, in, upon, across, under, or over any lands, or any . . .^{F7} hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences, as they think proper;

They may alter the course of any rivers not navigable, canals, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being

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themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, [^{F8}or roads], or raise or sink the level of any such rivers or streams, [^{F8}or roads], in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from the railway;

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences, as they think proper;

They may from time to time alter, repair, or discontinue the before mentioned works or any of them, and substitute others in their stead; and

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:

Provided always, that in the exercise of the powers by this or the special Act granted the company shall do as little damage as can be, and shall make full satisfaction, in manner herein and in the special Act, and any Act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.

Textual Amendments

F7 Word repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), [Sch. 9 para. 3\(5\)\(a\)](#), Sch. 11

F8 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(5\)\(b\)](#)

Modifications etc. (not altering text)

C11 S. 16 incorporated (21.5.1992) by [S.I. 1992/1267](#), [art. 4\(1\)](#)

C12 S. 16 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\)](#), [arts. 1, 5\(1\)](#)

17 Works on the shore of the sea, &c. not to be constructed without the authority of the commissioners of woods and forests and commissioners of the Admiralty.

It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows, and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of her Majesty, to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and of the lord high admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of lord high admiral aforesaid for the time being, to be signified in writing . . . ^{F9}, and then only according to such plan and under such restrictions and regulations as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said lord high admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents and approvals; and if any such work, railway, or bridge

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shall be commenced or completed contrary to the provisions of this Act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said lord high admiral, or the said commissioners for executing the office of lord high admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the costs and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

Textual Amendments

F9 Words repealed by [S.I. 1965/145, Sch. 2](#)

Modifications etc. (not altering text)

C13 Functions of commissioners and Admiralty under s. 17 now exercisable concurrently by Board of Trade and Secretary of State: [Harbours Transfer Act 1862 \(c. 69\), s. 6](#), [Ministry of Transport Act 1919 \(c. 50\), s. 2](#), [S.I. 1965/145, art. 2, Sch. 1](#) and [1970/1537, art. 2](#).

18 Alteration of water and gas pipes, &c.

It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, or gas pipes, belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees or persons having control of the . . . ^{F10} sewers, roads . . . ^{F10} and other public . . . ^{F10} places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours notice for that purpose.

Textual Amendments

F10 Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(3\), Sch. 11](#)

Modifications etc. (not altering text)

C14 S. 18 incorporated (21.5.1992) by [S.I. 1992/1267, art. 4\(1\)](#)

S. 18 excluded (24.3.1994) by [1994 c. iii, s. 1, Sch. Pt. I para. 3\(2\)\(b\)](#)

C15 S. 18 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\), arts. 1, 5\(1\)](#)

19 Company not to disturb pipes until they have laid down others.

Provided always, that it shall not be lawful for the company to remove or displace any of the mains or pipes, (other than private service pipes,) syphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes

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proposed to be removed or displaced, shall, at the expence of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

Modifications etc. (not altering text)

C16 S. 19 incorporated (21.5.1992) by [S.I. 1992/1267](#), [art. 4\(1\)](#)

C17 S. 19 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\)](#), [arts. 1, 5\(1\)](#)

20 Pipes not to be laid contrary to Act of Parliament, and 18 inches surface road to be retained.

It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Modifications etc. (not altering text)

C18 S. 20 incorporated (21.5.1992) by [S.I. 1992/1267](#), [art. 4\(1\)](#)

C19 S. 20 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\)](#), [arts. 1, 5\(1\)](#)

21 Company to make good all damage.

The company shall make good all damage done to the property of the water or gas company or society by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the main pipes or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

Modifications etc. (not altering text)

C20 S. 21 incorporated (21.5.1992) by [S.I. 1992/1267](#), [art. 4\(1\)](#)

S. 21 excluded (24.3.1994) by [1994 c. iii, s. 1, Sch. Pt. I para. 3\(2\)\(b\)](#)

C21 S. 21 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\)](#), [arts. 1, 5\(1\)](#)

22 When railway crosses pipes, company to make a culvert.

If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expence, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs.

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Modifications etc. (not altering text)

- C22** S. 22 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\)](#), arts. 1, **5(1)**

23 Penalty for obstructing supply of gas or water.

If by any such operations as foresaid the company shall interrupt the supply of water or gas, they shall forfeit twenty pounds for every day that such supply shall be so interrupted; and such penalty shall be appropriated to [^{F11}that fund of the local authority or water board to which their revenues in respect of water are appropriated or, in the case of an interruption of a supply of gas, shall be paid to the Area Gas Board.]

Textual Amendments

- F11** Words substituted by [S.I. 1952/1334](#) (1952 II, p. 2029), art. 2, Sch.

Modifications etc. (not altering text)

- C23** Functions of regional water boards now exercisable by water authorities: [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), s. **148**
- C24** S. 23 incorporated (21.5.1992) by [S.I. 1992/1267](#), art. 4(1)
- C25** S. 23 incorporated (28.12.2012) by [The Banchory and Crathes Light Railway Order 2012 \(S.S.I. 2012/345\)](#), arts. 1, **5(1)**

24 Penalty for obstructing construction of railway.

If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding [^{F12}level 1 on the standard scale] for every such offence.

Textual Amendments

- F12** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. **289G**

Changes to legislation:

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