

ELIZABETH II



1982 CHAPTER xxv

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Highland Region (Banavie Level Crossing).

[22nd December 1982]

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 1936 c. 52. 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 Highland Region (Banavie Level Crossing) Order Confirmation Act 1982. Short title.

SCHEDULE

HIGHLAND REGION (BANAVIE LEVEL CROSSING)

Provisional Order to provide for the construction and maintenance of a level crossing at Banavie in the district of Lochaber; and for purposes connected therewith.

1973 c. 65.

Whereas the Highland Regional Council (hereinafter referred to as "the Council") are vested with all the functions of a regional council by virtue of section 2 of the Local Government (Scotland) Act 1973 for the area of the Highland Region as the said area is described in column 2 of Part I of Schedule 1 to the said Act:

And whereas for the purpose of relieving traffic conditions at the existing junction of the B8006 road with the A830 trunk road it is expedient that the Council should construct a new road connecting the B8006 road with A830 trunk road at a point on the A830 road 140 metres or thereby south-east of the said existing junction:

And whereas for the purpose of carrying the said new road over the Fort William-Mallaig railway belonging to the British Railways Board it is expedient that the Council should be authorised to construct a level crossing over the said railway as provided in this Order and that the said level crossing should form part of the said new road:

And whereas estimates have been prepared of the cost of acquisition of servitudes for, and the execution of, the work authorised by this Order and such estimates are as follows:—

Purchase of servitudes	...	...	...	...	...	...	£
Work	...	...	...	...	...	...	14,400
							196,000

And whereas it is expedient that the further provisions contained in this Order should be enacted:

And whereas a plan and section showing the lines and levels of the work authorised by this Order, have been deposited with the Sheriff Clerk of the Sheriff Court District of Fort William at Fort William and with the Clerk of Lochaber District Council at his office and such plan and section are in this Order respectively referred to as the deposited plan and the deposited section:

1936 c. 52.

And whereas 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:—

1. This Order may be cited for all purposes as the Highland Region Short title. (Banavie Level Crossing) Order 1982.

2. In this Order, unless there be something in the subject or context Interpretation. inconsistent with or repugnant to such construction, the following words and expressions have the respective meanings hereby assigned to them, that is to say:—

- “ Council ” means the Highland Regional Council;
- “ existing ” means existing at the commencement of this Order;
- “ statutory undertakers ” has the same meaning as in the Town and Country Planning (Scotland) Act 1972; and 1972 c. 52.
- “ work ” means the work authorised by this Order.

3. Subject to the provisions of this Order, the Council may with the agreement of the British Railways Board on lands belonging to the said board make and maintain, in the lines and situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited section, the work hereinafter described, with all such approaches and plant and other works and conveniences as it may be necessary or convenient to construct and maintain in connection therewith, namely:—

A level crossing across the Fort William–Mallaig railway line at a point approximately 50 metres south-east of the southernmost point of the platform of Banavie Station commencing at a point marked “ A ” on the deposited plan and terminating at a point marked “ B ” on the deposited plan and carrying over the said railway a road to be constructed by the Council for the purpose of connecting the existing B8006 road with the existing A830 trunk road.

4. In the construction of the work, the Council may deviate laterally from the line or situation of the work shown on the deposited plan to any extent not exceeding the limits of deviation shown thereon and they may also deviate vertically in the construction of the work from the levels shown on the deposited section to any extent not exceeding 25 millimetres upwards and 25 millimetres downwards.

5.—(1) Subject to the provisions of this Order and within the limits of deviation shown on the deposited plan, the Council may, in carrying out the work—

- (a) make junctions with any road or way interfered with by or contiguous to the work;
- (b) alter the line or level of any such road or way;
- (c) alter and interfere with any steps, walls, gateways, railings, passages, pipes, power lines, cables and pavements; and
- (d) execute any works for the protection of any adjoining land or buildings.

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(2) In the exercise of the powers conferred by this section the Council shall—

- (a) cause as little detriment and inconvenience to any person as circumstances allow; and
- (b) make compensation to the owners and occupiers of any lands injuriously affected and to the owners of any apparatus who suffer loss by the exercise of such powers.

(3) Such compensation, in case of difference, shall be determined in accordance with the provisions of the Land Compensation (Scotland) Act 1963.

1963 c. 51.

(4) (a) The Council shall not in exercise of the powers of this section use any telegraphic line belonging to or used by British Telecommunications nor shall the Council alter any such line except in accordance with and subject to the provisions of paragraphs (1) to (8) of section 7 of the Telegraph Act 1878.

1878 c. 76.

(b) In this subsection the expression “alter” has the same meaning as in the Telegraph Act 1878.

(5) The provisions of section 11 (For protection of North of Scotland Hydro-Electric Board) of this Order shall apply and have effect with respect to the exercise by the Council of the powers conferred on them by this section as if the said provisions were, with any necessary modifications, incorporated in this section.

Penalty for obstructing work.

6. Any person who—

- (a) wilfully obstructs any person acting under the authority of the Council in setting out the lines of the work; or
- (b) pulls up or removes any poles or stakes driven into the ground for the purpose of setting out the lines of the work, or interferes with any plant, apparatus or appliances of the Council;

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50 and shall in addition be liable to repay to the Council any expenses incurred by them in making good any such damage.

Connection of drains, etc., with streams, etc.

7.—(1) For the purpose of draining or carrying away surface water from the work, or otherwise, the Council may, within the limits of deviation shown on the deposited plan, lay down, maintain and alter or remove any drains, sewers, conduits, pipes and other works and make any convenient connections with any available river, stream or watercourse, or with any sewer or drain.

1951 c. 66.

(2) Nothing in this section shall derogate from the provisions of section 28 of the Rivers (Prevention of Pollution) (Scotland) Act 1951, as amended by the Rivers (Prevention of Pollution) (Scotland) Act 1965.

1965 c. 13.

Vesting and disposal of materials.

8.—(1) All materials removed by the Council under the powers conferred on them by this Order and all materials (other than any apparatus belonging to a statutory undertaker) removed by the Council

from any street or other place or otherwise obtained by them in the construction and maintenance of the work shall vest in the Council.

(2) The Council may use all or any of the said materials for the purposes of the construction or maintenance of the work, or they may sell or otherwise dispose of the said materials as they think fit.

9. If the work is not completed by 31st December 1992, the powers by this Order granted for executing the work or otherwise in relation thereto shall cease except as to so much thereof as is then completed. Period for completion of work.

10.—(1) The British Railways Board may, subject to such requirements as the Secretary of State may from time to time lay down, provide, maintain and operate at or near the work such barriers, lights, traffic signs and automatic or other devices and appliances as may be approved by the Secretary of State. As to level crossing.

(2) Subject to the provisions of section 41 (Approval of Secretary of State to opening of new level crossing) of the Road and Rail Traffic Act 1933 the date upon which the work is to be opened for general public traffic as a level crossing shall be such date as may be agreed upon by the Council and the British Railways Board or, failing agreement, appointed by the Secretary of State. 1933 c. 53.

11. For the protection of the North of Scotland Hydro-Electric Board (hereinafter in this section referred to as "the undertakers") the following provisions shall unless otherwise agreed in writing between the Council and the undertakers apply and have effect:— For protection of North of Scotland Hydro-Electric Board.

(1) If the Council in exercise of the powers of section 3 (Power to execute works) of this Order require to cross over or under, remove, alter or otherwise interfere with any electric lines or works as defined in section 32 of the Electric Lighting Act 1882, or other apparatus (hereinafter in this section referred to as "apparatus") belonging to the undertakers, or, if the exercise of the said powers is likely to affect the said apparatus, the Council shall— 1882 c. 56.

(a) give to the undertakers not less than 28 days' prior notice in writing of such requirement, or of their intention to exercise such powers, as the case may be, together with a plan and section of the work proposed and such work shall be executed only in accordance with such plan and section and in accordance with such reasonable requirements as may within 21 days of the submission of such plan and section be made by the undertakers and the undertakers themselves may under such requirements alter or otherwise protect their apparatus or provide alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously (hereinafter referred to as "adequate alternative apparatus");

(b) afford to the undertakers, where possible, any necessary facilities and rights for the construction and thereafter

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for the use, maintenance, repair, renewal and inspection of such adequate alternative apparatus. Such adequate alternative apparatus shall be constructed in such manner and in such line or position as may be agreed between the Council and the undertakers and no apparatus shall be removed, altered or interfered with until the protective works have been carried out or until adequate alternative apparatus has been constructed and is operating to the reasonable satisfaction of the undertakers;

(c) pay to the undertakers the expenses reasonably incurred by them in and in connection with removing, re-laying, replacing, altering or protecting their apparatus or in providing adequate alternative apparatus less, in any case where adequate alternative apparatus is provided, the value of any apparatus removed in pursuance of the provisions of this section:

- (2) Any difference arising between the Council and the undertakers under this section shall be referred to and determined by an arbiter to be mutually agreed upon or, failing agreement, to be appointed on the application of either party (after notice in writing to the other of them) by the President of the Institution of Civil Engineers.

For protection
of British
Railways
Board.

12. For the protection of the British Railways Board (in this section referred to as "the board") the following provisions shall unless otherwise agreed in writing between the Council and the board apply and have effect:—

- (1) In this section—

"the engineer" means an engineer to be appointed by the board;

"plans" includes sections, drawings and specifications;

"railway property" means any railway of the board within the limits of deviation shown on the deposited plan and any works connected therewith for the maintenance or operation of which the board are responsible and includes any lands held or used by the board within the said limits for the purpose of such railway works;

"the work" means so much of the work authorised by this Order as may be situated upon, across, under or over or may in any way affect railway property and includes the construction, maintenance and renewal of such work:

- (2) The Council shall not under the powers of this Order enter upon, take or use, either permanently or temporarily, or acquire compulsorily any railway property but they may purchase and acquire such servitudes or rights of using railway property as may be necessary for the purpose of constructing, using and maintaining the work:
- (3) The Council shall pay to the board for any servitude or right which they may acquire under the provisions of this section, such consideration as may be agreed upon or in the event of

difference as may be determined by the Lands Tribunal for Scotland:

- (4) The Council shall before commencing the work (other than works of maintenance or repair) furnish to the board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the work until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that if within 28 days after such plans have been furnished to the board the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:

- (5) If within 28 days after such plans have been furnished to the board, the board shall give notice to the Council that the board desire themselves to construct any part of the work which in the opinion of the engineer will or may affect the stability of railway property, then if the Council desire such part of the work to be constructed the board shall construct the same with all reasonable despatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled as aforesaid:

Provided that in the event of the board not constructing or completing such part of the work with reasonable despatch to the reasonable satisfaction of the Council, the Council may, after giving 28 days' notice to the engineer, themselves construct or complete such part of the work:

- (6) Upon signifying his approval or disapproval of the said plans the engineer may specify any protective works whether temporary or permanent which in his opinion should be carried out before the commencement of the work to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the board with all reasonable despatch and the Council shall not commence the construction of the work until the engineer shall have notified the Council that the protective works have been completed:

Provided that in the event of the board not constructing or completing such protective works with reasonable despatch, the Council may, after giving 28 days' notice to the engineer, themselves construct or complete such works and on the completion thereof may commence the construction of the work:

- (7) The Council shall give to the engineer 28 days' notice of their intention to commence the construction of the work and except in emergency (when they shall give such notice as may be reasonably practicable) also of their intention to carry out any works for the repair or maintenance of the work:

- (8) The work shall, when commenced, be carried out with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and

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under the supervision (if given) and to the reasonable satisfaction of the engineer and in such manner as to cause as little damage to railway property as may be and so far as is reasonably practicable so as not to interfere with or obstruct the free uninterrupted and safe using of the railway or the traffic thereon and the use by passengers of railway property and if any damage to railway property or any such interference or obstruction shall be caused or take place the Council shall (except where any such damage, interference or obstruction is caused or takes place during or in consequence of the construction of any part of the work by the board in pursuance of paragraph (5) of this section) notwithstanding any such approval as aforesaid make good such damage and shall on demand pay to the board all expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:

- (9) The Council shall at all times afford reasonable facilities to the engineer for access to the work during its construction and shall supply him with all such information as he may reasonably require with regard to the work or the method of construction thereof:
- (10) The board shall at all times afford reasonable facilities to the Council and their agents for access to any works carried out by the board under this section during their construction and shall supply the Council with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (11) (a) Subject to paragraph (b) hereof the Council shall be responsible for the maintenance of—
 - (i) the road surface and concrete support kerbs within the limits of deviation shown on the deposited plan; and
 - (ii) the culverts to be constructed on each side of the railway line for the purpose of carrying the proposed new road over the railway embankment drainage ditches;

(b) The board shall be responsible for the maintenance of the segmental crossing surface units forming part of the work, their associated fixings and the cattle-cum-trespass guards to be provided in connection with the proposed level crossing:
- (12) If any alterations or additions either permanent or temporary to railway property shall be reasonably necessary in consequence of the construction of the work such alterations and additions may be effected by the board after notice has been given to the Council and the Council shall pay to the board the reasonable cost thereof and any additional cost of maintenance in respect of permanent alterations and additions shall be borne by the Council either by way of annual payment or by a commuted sum to cover all future payments:

(13) The Council shall repay to the board all costs, charges and expenses reasonably incurred by the board—

(a) in constructing any part of the work on behalf of the Council as provided by paragraph (5) of this section or in constructing any protective works under the provisions of paragraph (6) of this section including in respect of the cost of maintaining and renewing any permanent protective works constructed under the said paragraphs an annual payment or a commuted sum to cover all future payments;

(b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the work;

(c) in respect of any special traffic working resulting from any restrictions which are necessary as a result of the construction, maintenance, repair or failure of the work and which may in the opinion of the engineer be required to be imposed or from the substitution or diversion of services which may be necessary for the same reason;

(d) in respect of any additional temporary lighting of railway property in the vicinity of the work being lighting made reasonably necessary as a result of the work or the failure thereof;

(e) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the work:

(14) Before providing any illumination or illuminated road traffic sign on or in connection with the work or in the immediate vicinity of the railway the Council shall consult with the board and comply with any reasonable requirements of the board in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:

(15) The Council shall repay to the board the reasonable expense incurred by the board in complying with any order made by the Secretary of State to provide, at or near to the work, barriers, lights, traffic signs and automatic or other devices and appliances and any such additional expense as the board may incur by reason that the work will be operated as a public level crossing and in maintaining the permanent way at the level crossing:

(16) The Council shall be responsible for and make good to the board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the board—

(a) by reason of the work or the failure thereof;

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(b) by reason of any act or omission by the Council or of any persons in their employment or of their contractors whilst engaged upon the work;

and the Council shall effectively indemnify and hold harmless the board from and against all claims and demands arising out of or in connection with the work or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the board on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement approved by the engineer or under his supervision shall not (if it was done without negligence on the part of the board or any person in their employment or of their contractors or agents) excuse the Council from any liability under the provisions of this section:

Provided that the board shall give to the Council reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council:

- (17) Any question or difference between the Council and the board arising under this section, except under paragraph (3) hereof, shall at the instance of either party be referred to and determined by an arbiter to be appointed, failing agreement, by the President of the Institution of Civil Engineers.

Saving for
Town and
Country
Planning Acts.
1972 c. 52.

13.—(1) Section 274 of the Town and Country Planning (Scotland) Act 1972 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of Parliament held during the regnal years 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Order as if it had been passed during that session; and accordingly the Town and Country Planning (Scotland) Act 1972 and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Order.

S.I. 1981/830
(S. 86).

(2) In their application to development authorised by this Order, article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981 (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 ten years after the passing of the Act confirming this Order.

Costs of
Order.

14. All costs, charges and expenses of and incidental to the preparing and obtaining of this Order and otherwise incurred in reference thereto shall be paid by the Council.



Highland Region (Banavie Level Crossing) Order Confirmation Act 1982

CHAPTER xxv

ARRANGEMENT OF SECTIONS

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SCHEDULE

HIGHLAND REGION (BANAVIE LEVEL CROSSING)

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