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SCHEDULE

BRITISH RAILWAYS (NO. 3)

PART III

LAND

Meaning of new rights

- 12 In this Part references to the purchase by the Board of new rights are references to the purchase of rights (whether heritable or moveable) to be created in favour of the Board.

Purchase of land

- 13 (1) The Board may purchase compulsorily and use such of the land within the limits of deviation and described in the deposited book of reference as they require for the purposes of the works or their undertaking.
- (2) The Board may enter upon, use and appropriate so much of the subsoil and undersurface of, or airspace over, any public road or place within the limits of deviation and described in the deposited book of reference as shall be necessary for the purposes of subsection (1) above without being required to purchase the same or any servitude or other right therein or thereunder or to make any payment therefor.
- (3) For the purpose of section 28 of the Land Registration (Scotland) Act 1979 subsection (2) above shall be taken to create a real right over such land as is referred to in that subsection without any necessity to record a deed in the Register of Sasines or to register the right.

Purchase of new rights over land

- 14 (1) Subject to the provisions of this Order, the Board may for the purpose of constructing, maintaining, protecting, altering, renewing and using the works, or for the purpose of obtaining access to the works or for the purpose of doing any other thing necessary in connection with the works, purchase compulsorily and use so much of the subsoil and undersurface of, or may purchase compulsorily such new rights as they require in, under or over, any of the land within the limits of deviation and described in the deposited book of reference instead of purchasing that land under section 13 (Purchase of land) of this Order.
- (2) Subject to subsection (3) below, the Lands Clauses Acts, as applied by this Order, shall have effect with the modifications necessary to make them apply to the compulsory purchase of new rights under subsection (1) above and under section 15 (Purchase of specific new rights over land) of this Order as they apply to the compulsory purchase of land so that, in appropriate contexts, references in the Lands Clauses Acts to land are read as referring, or as including references, to the new rights or to land over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.
- (3) Notwithstanding anything in subsection (2) above, section 90 of the Lands Clauses Consolidation (Scotland) Act 1845 shall not apply to any compulsory purchase by

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the Board under this section or section 15 (Purchase of specific new rights over land) of this Order.

Purchase of specific new rights over land

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

Temporary use of land

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

Time for compulsory purchase of land or rights over land

- 17 Except as may be provided under section 18 (Extension of time) of this Order, the powers of the Board of compulsory purchase of land and new rights in, under or over land under this Order shall cease on 31st December 1999.

Extension of time

- 18 (1) In this section “lessee” means a lessee under a lease having a period of not less than 21 years to run at the date of his notice under subsection (3) below; and any reference to the purchase of an interest in land includes reference to the purchase of a new right in, under or over that land.
- (2) (a) Subject to the provisions of this section, the Secretary of State may, by order under this subsection, extend the period for the exercise of powers of compulsory purchase of land and new rights in, under or over land under this Order.
- (b) An order under this subsection shall be subject to special parliamentary procedure.
- (3) If any owner or lessee of any land subject to an order under subsection (2) above shall give notice in writing to the Board of his desire for the purchase as soon as may be by the Board of his interest in any part of the land specified in the notice, the Board shall within a period of three months after the receipt of such notice—
- (a) enter into a contract with him for the purchase of his interest in the land or such part thereof as may be specified in the contract; or
- (b) serve on him a notice to treat for the compulsory purchase of his interest in the land specified in his notice, or in such part thereof as may be required by the Board; or
- (c) serve on him notice in writing of the Board’s intention not to proceed with the purchase of his interest in the land specified in his notice.
- (4) Where notice is given under subsection (3) above by any owner or lessee, then—
- (a) if the Board—
- (i) fail to comply with that subsection; or

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- (ii) withdraw in pursuance of any statutory provision a notice to treat served on him in compliance with subsection (3) (b) above; or
 - (iii) serve notice on him in compliance with subsection (3)(c) above;
- the powers conferred by this Order for the compulsory purchase of his interest in the land so specified shall cease;
- (b) if his interest in part only of the land so specified is purchased in pursuance of such a notice to treat, the powers conferred by this Order for the compulsory purchase of his interest in the remainder of the land so specified shall cease.

Correction of errors in deposited plans and book of reference

- 19 (1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, the Board may apply by summary application to the sheriff for the correction thereof.
- (2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake, he shall certify accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.
- (3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, the Scottish Office, London, the office of the Secretary of State for Scotland, Edinburgh, the office of the Health and Safety Executive, Edinburgh, and with the sheriff clerk of the sheriff court district of Hamilton and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate.
- (4) Any certificate or copy deposited under this section with any person shall be kept by him with the other documents to which it relates.

Purchase of part of certain properties

- 20 (1) Where a copy of this section is endorsed on, or annexed to, a notice to treat served under the Lands Clauses Acts, as incorporated with this Order, the following provisions of this section shall apply to the land subject to the notice instead of section 90 of the Lands Clauses Consolidation (Scotland) Act 1845.
- (2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house together with any park or garden belonging thereto, then, if the person on whom the notice is served, within 21 days after the day on which the notice is served on him, serves on the Board a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (in this section referred to as “the land subject to the counter-notice”), the question whether he shall be required to sell the part shall, unless the Board agree to take the land subject to the counter-notice, be referred to the tribunal.
- (3) If the said person does not serve such a counter-notice as aforesaid within 21 days after the day on which the notice to treat is served on him, or if on such a reference to the tribunal the tribunal determines that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, in the case of part of land consisting of a house together with a park or garden belonging thereto, without such detriment and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.

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- (4) If, on such a reference to the tribunal, the tribunal determines that part only of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without such detriment and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.
- (5) If, on such a reference to the tribunal, the tribunal determines that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Board are authorised to purchase compulsorily under this Order.
- (6) If the Board agree to take the land subject to the counter-notice, or if the tribunal determines that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without such detriment and without seriously affecting the amenity and convenience of the house; and
 - (b) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Board are authorised to purchase under this Order.

- (7) In any case where, by virtue of a determination by the tribunal under subsection (4), (5) or (6) above, a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice, the Board may, within 6 weeks after the tribunal makes its determination, withdraw the notice to treat and, if they do so, shall pay to the said person compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice to be determined, in default of agreement, by the tribunal:

Provided that the determination of the tribunal shall not be deemed to be made so long as—

- (a) the time for requiring the tribunal to state a case with respect thereto has not expired and any proceedings on the points raised by a case so stated have not been concluded; or
 - (b) any proceedings on appeal from any decision on the points raised by a case so stated have not been concluded.
- (8) (a) Where a person is under this section required to sell part only of a house, building or factory, or of land consisting of a house, together with any park or garden belonging thereto, the Board shall pay to him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.
- (b) Any dispute as to a person's entitlement to compensation under this section or as to the amount of the compensation shall be determined by the tribunal.

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Disregard of recent improvements and interests

- 21 In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land under this Order, the tribunal shall not take into account—
- (a) any interest in land, or
 - (b) any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made (whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned),
- if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works, or the making of the improvement or alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Set-off for enhancement in value of retained land

- 22 (1) In this section “relevant land” means any land or new rights over land required by the Board for the purposes of, or in connection with, the works.
- (2) In assessing the compensation payable to any person on the purchase by the Board from him of any relevant land, the tribunal shall set off against the value of the relevant land any increase in value of any contiguous or adjacent lands belonging to the same person in the same capacity, or of the land over which new rights are acquired, which will accrue to him by reason of the construction of any of the works.
- (3) The Land Compensation (Scotland) Act 1963 shall have effect subject to the provisions of this section.

Power to enter, survey, etc., land

- 23 (1) The Board and their surveyors and officers may at all reasonable times in the day, upon giving on the first occasion not less than 7 days', and on subsequent occasions not less than 3 days', previous notice in writing to the occupier and to the owner if he is not the occupier, enter upon, examine and lay open any land which may be purchased compulsorily under this Order for the purpose of surveying, measuring, taking levels, examining works and valuing that land or for any other purpose ancillary to the powers conferred by this Order.
- (2) Any person entering land under subsection (1) above on behalf of the Board shall, if so required, produce written evidence of his identity and of his authority to do so.
- (3) In the exercise of the powers of subsection (1) above the Board and their surveyors and officers shall cause as little detriment or inconvenience to any person as circumstances allow, and the Board shall, subject to the provisions of this Order, make compensation to the owners and occupiers of any land injuriously affected by the exercise of those powers, to be determined in case of dispute by the tribunal.

Further powers of entry

- 24 At any time after notice to treat has been served for any land which may be purchased compulsorily under this Order the Board may, after giving to the owner and occupier

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of the land not less than 3 months' notice, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845, but subject to the payment of the like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if those sections had been complied with.

Extinction or suspension of rights of way

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

Service of notices, etc

- 26 Paragraph 19 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply and have effect with respect to any notice or other document required or authorised to be served under or by virtue of this Order as if such notice or other document were required or authorised to be served under that Schedule.