

[26 GEO. 5. & *London and North Eastern* [Ch. xliv.]
1 EDW. 8.] *Railway Order Confirmation*
Act, 1936.



CHAPTER xliv.

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Acts 1899 and 1933 relating to the London and North Eastern Railway. [14th July 1936.] A.D. 1936.

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has been made by one of His Majesty's Principal Secretaries of State under the provisions of the Private Legislation Procedure (Scotland) Acts 1899 and 1933 as read with the Secretaries of State Act 1926 and it is requisite that the said Order should be confirmed by Parliament :

62 & 63
Vict. c. 47.
23 & 24
Geo. 5. c. 37.
16 & 17
Geo. 5. c. 18.

Be it therefore enacted by the King'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 London and North Eastern Railway Order Confirmation Act 1936. Short title.

A.D. 1936.

SCHEDULE.

LONDON AND NORTH EASTERN RAILWAY.

Provisional Order to empower the London and North Eastern Railway Company to acquire additional lands in Scotland to make provision as to the tolls and charges leviable by the said Company on the Edinburgh and Glasgow Union Canal and for other purposes.

WHEREAS it is expedient that the London and North Eastern Railway Company (in this Order referred to as "the Company") should be empowered to acquire the lands in this Order described :

And whereas the Company are the owners of the Edinburgh and Glasgow Union Canal :

57 & 58 Vict.
c. ccii.

And whereas the tolls and charges leviable by the Company on and in respect of the said canal are prescribed in the schedule to the Order of the Board of Trade confirmed by the Canal Tolls and Charges No. 9 (Canals of the Caledonian and North British Railway Companies) Order Confirmation Act 1894 :

12 & 13
Geo. 5. c. 27.
15 & 16
Geo. 5. c. 2.

And whereas by directions of the Minister of Transport given in pursuance of the powers in that behalf contained in the Ministry of Transport Act 1919 the tolls and charges so prescribed were increased and the tolls and charges as so increased were continued in force under the provisions of the Canals (Continuance of Charging Powers) Acts 1922 and 1924 and those Acts have since been continued in force but will expire on the thirty-first day of December one thousand nine hundred and thirty-six and it is expedient that permanent provision should be made as in this Order provided with respect to the tolls and charges to be levied by the Company upon and in respect of the said canal :

And whereas the Company are under certain restrictions and obligations with respect to the erection of

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buildings at and in the neighbourhood of their Waverley station in the city of Edinburgh : A.D. 1936. —

And whereas it is expedient that the Company should be relieved of certain of such restrictions and obligations and that section 30 of the North British Railway Act 1895 should be amended as in this Order provided : 58 & 59 Vict. c. cli.

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

And whereas plans of the lands by this Order authorised to be acquired 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 with the sheriff clerks of the several counties within which the said lands are situate which plans and book of reference are in this Order respectively referred to as the deposited plans and 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) Acts 1899 and 1933 :

Now therefore in pursuance of the powers contained in the last-mentioned Acts as read with the Secretaries of State Act 1926 the Secretary of State orders as follows :—

1. This Order may be cited for all purposes as the Short title.
London and North Eastern Railway Order 1936.

2. 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 partially incorporated herewith have in relation to the relative subject matter the same respective meanings And— Interpretation.

“The Company” means the London and North Eastern Railway Company;

All distances and lengths stated in any description of lands shall be read and have effect as if the words “or thereby” were inserted after each such distance and length.

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Incorporation of general Acts.

3. The Lands Clauses 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 Provided that—

(i) any question of disputed compensation under this Order or any Act incorporated herewith shall be determined by a single arbiter to be agreed upon between the Company and the person claiming the compensation or in default of such agreement appointed by the Board of Trade on the application of either party and if in determining any such question of disputed compensation any question of law shall arise the said arbiter shall have power at the request of either party to state a case for the opinion of the Court of Session and the said court shall determine such question of law; and

8 & 9 Vict.
c. 19.

(ii) the bond required by section 84 of the Lands Clauses Consolidation (Scotland) Act 1845 shall be under the common seal of the Company and shall be sufficient without the addition of the securities mentioned in that section.

Power to Company to acquire lands.

4. Subject to the provisions of this Order the Company may for any purposes connected with or ancillary to their undertaking enter upon take use and appropriate all or any of the lands hereinafter described or referred to and delineated on the deposited plans and described in the deposited book of reference relating thereto (that is to say):—

In the county of East Lothian—

Lands in the parish of Innerwick on the north-east and south-west sides of and adjoining the Edinburgh and Berwick railway near Innerwick station and extending between points respectively sixty-five yards and eight hundred yards north-west of the bridge carrying the public road across the said railway at the said station;

Lands in the royal burgh of Dunbar and parish of Dunbar on the north side of and adjoining the Edinburgh and Berwick railway and extending between the bridge carrying the said railway

across the public road situated at the west end of Dunbar station and a point three hundred and ninety yards westwards thereof; A.D. 1936.
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Lands in the burgh of East Linton in the parish of Prestonkirk on the north-east side of and adjoining the Edinburgh and Berwick railway and extending between points respectively four hundred and thirty yards and five hundred and sixty-three yards north-west of the bridge carrying the said railway across the public road at East Linton station;

Lands in the parish of Prestonkirk on the north-east and south-west sides of and adjoining the Edinburgh and Berwick railway and extending between points respectively two hundred and sixty yards and eight hundred and forty yards north-west of the bridge carrying the said railway across the public road at East Linton station;

Lands in the parish of Athelstaneford on the south side of and adjoining the Edinburgh and Berwick railway and extending between points respectively eighty yards and four hundred and ninety yards south-west of the bridge carrying the public road across the branch railway to North Berwick.

In the county of Midlothian—

Lands in the parish of Kirkliston on the south side of and adjoining the Edinburgh and Glasgow railway between points respectively four hundred and eighty-five yards and seven hundred and ninety yards west of the junction (known as Bathgate Junction) of the Edinburgh and Bathgate railway with the said railway.

In the county of Westlothian—

Lands in the parish of Kirkliston on the south-west side of and adjoining the Edinburgh and Glasgow railway and extending between the bridge (near the West Lodge of Newliston) carrying the said railway over the public road and a point two hundred and eighty yards north thereof.

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In the county of Dunbarton—

Lands in the parish of Cardross—

(a) on the north-east side of the Glasgow Dumbarton and Helensburgh railway and extending between points respectively one hundred and forty yards and three hundred yards north-west of the bridge carrying the said railway across the Red Burn;

(b) on the north side of the West Highland railway and extending between points respectively three hundred and sixty-five yards and four hundred and forty yards north-west of the bridge carrying the Glasgow Dumbarton and Helensburgh railway across the Red Burn.

As to
private
rights of
way over
lands
acquired
compul-
sorily.

5. All private rights of way over any lands which shall under the powers of this Order be acquired compulsorily shall as from the date of such acquisition be extinguished. Provided that the Company shall make full compensation to all parties interested in respect of any such rights and such compensation shall be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

Period for
compulsory
purchase of
lands.

6. The powers granted by this Order for the compulsory purchase of lands shall cease on the first day of October one thousand nine hundred and thirty-nine.

Power to
certain
owners to
grant servi-
tudes &c.

7. Persons empowered by the Lands Clauses Acts to sell and convey or discharge lands may if they think fit subject to the provisions of those Acts and of this Order grant to the Company any servitude right or privilege (not being a servitude right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Order in over or affecting any such lands and the provisions of the Lands Clauses Acts with respect to lands and feu duties or ground annuals so far as the same are applicable in that behalf shall extend and apply to such grants and to such servitudes rights and privileges as aforesaid respectively.

8. The Company and their surveyors officers contractors and workmen may at all reasonable hours in the daytime upon giving in writing for the first time twenty-four hours' and afterwards twelve hours' previous notice enter upon and into the lands and premises by this Order authorised to be taken and used by them for the purpose of surveying and valuing the said lands and premises without being subject or liable to any fine or penalty on account of entering or continuing upon any part of the said lands and premises.

A.D. 1936.

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Power to
enter upon
property for
survey and
valuation.

9.—(1) The tribunal to whom any question of disputed purchase money or compensation under this Order is referred shall if so required by the Company award and declare whether a statement in writing of the amount of compensation claimed has been delivered to the Company by the claimant giving sufficient particulars and in sufficient time to enable the Company to make a proper offer and if the tribunal shall be of opinion that no such statement giving sufficient particulars and in sufficient time shall have been delivered and that the Company have been prejudiced thereby the tribunal shall have power to decide whether the claimant's costs or any part thereof shall be borne by the claimant Provided that it shall be lawful for any judge of the Court of Session to permit any claimant after seven days' notice to the Company to amend the statement in writing of the claim delivered by him to the Company in case of discovery of any error or mistake therein or for any other reasonable cause such error mistake or cause to be established to the satisfaction of the judge after hearing the Company if they object to the amendment and such amendment shall be subject to such terms enabling the Company to investigate the amended claim and to make an offer de novo and as to postponing the hearing of the claim and as to costs of the inquiry and otherwise as to such judge may seem just and proper in all the circumstances of the case Provided also that this section shall be applicable only in cases where the notice to treat under the Lands Clauses Consolidation (Scotland) Act 1845 either contained or was endorsed with a notice of the effect of this section.

Costs of
arbitration
&c. in
certain
cases.

(2) Section 32 of the Lands Clauses Consolidation (Scotland) Act 1845 for the purpose of its application

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A.D. 1936. — to this Order shall be read and have effect subject to the following proviso in all cases in which notice of the effect of such proviso accompanies any offer of purchase money and compensation made by the promoters (namely) :—

Provided that in the event of a party to whom a sum shall have been offered by the promoters at least ten days before the commencement of the hearing before the arbiters or oversman as the case may be failing within ten days of the making of the offer to notify the promoters in writing that he accepts the same all the costs and expenses of the promoters of and incidental to the arbitration incurred by them after the date of the offer shall in the event of his subsequently accepting such offer be borne by him including any fees and expenses of the arbiters or oversman and the expenses of recording the decret arbitral or award in the books of council and session.

Errors and omissions in plans and book of reference may be corrected by sheriff.

10. If there be any omission misstatement or erroneous description of any lands or of the owners lessees or occupiers of any lands shown on the deposited plans or specified in the deposited book of reference the Company after giving ten days' notice to the owners lessees and occupiers of the lands in question may apply to the sheriff of the county in which the said lands are situate for the correction thereof and if it appear to the sheriff that the omission misstatement or erroneous description arose from mistake he shall certify the same accordingly and he shall in his certificate state the particulars of the omission and in what respect any such matter is misstated or wrongly described and the decision of the sheriff in such matter shall be final The certificate of the sheriff shall be deposited in the office of the sheriff clerk of the said county and a duplicate thereof shall also be deposited with the clerk to the district council of the district of the said county in which the lands affected thereby are situate and such certificate and the duplicate respectively shall be kept by such sheriff clerk and clerk to the district council along with the other documents to which it relates and thereupon the deposited plans and book of reference shall be deemed to be

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corrected in accordance with the certificate and the Company may enter upon take and use any lands in accordance with such certificate. A.D. 1936.

11. In settling any question of disputed purchase money or compensation for lands acquired by the Company under the powers of this Order the tribunal settling the same shall not award any sum of money for or in respect of any improvement or alteration made or any building erected after the first day of November one thousand nine hundred and thirty-five if in the opinion of the tribunal the improvement alteration or building in respect of which the claim is made was made or erected with a view to obtaining or increasing compensation nor in the case of any estate or interest in the lands created after the said date which in the opinion of the tribunal was created with a view to obtaining or increasing compensation shall any sum of money be awarded so as to increase the total amount of compensation which would otherwise have been required to be paid in respect of the acquisition of such lands by the Company. Compensation in case of recently altered buildings.

12.—(1) In this section—

“the Order” means the Order of the Board of Trade under the Railway and Canal Traffic Act 1888 confirmed by the Canal Tolls and Charges No. 9 (Canals of the Caledonian and North British Railway Companies) Order Confirmation Act 1894; Canal tolls and charges. 51 & 52 Vict. c. 25.

“the canal” means the Edinburgh and Glasgow Union Canal of the Company;

“the Minister” means the Minister of Transport;

“authorised tolls” means the tolls and charges which the Company are for the time being authorised to levy in pursuance of this Order in respect of the canal.

(2) (a) On and after the first day of January one thousand nine hundred and thirty-seven and unless and until the authorised tolls are revised by the Minister under this section the tolls and charges leviable by the Company in respect of the canal shall be the maximum tolls and charges and the minimum toll per boat and toll for empty boat specified in the schedule

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A.D. 1936. — to the Order increased by an amount equal to sixty per centum of the respective amounts thereof authorised by the Order and the Order shall be read and have effect accordingly. Provided that if any increased toll or charge made in pursuance of this section includes a fraction of one penny the fraction if less than one halfpenny shall not be charged or if the fraction amounts to one halfpenny but is less than one penny it shall be charged as one penny.

9 & 10
Geo. 5. c. 50. (b) As from the thirty-first day of December one thousand nine hundred and thirty-six the directions of the Minister given in pursuance of section 3 of the Ministry of Transport Act 1919 with respect to the tolls and charges to be made on the canal shall cease to have effect.

(3) If it is represented by application in writing to the Minister—

(a) by any chamber of commerce or shipping or any representative body of traders or any person who in the opinion of the Minister is a proper person for the purpose; or

(b) by the Company;

that in the circumstances then existing the authorised tolls or any of them should be revised the Minister if he thinks fit may make an Order revising the authorised tolls referred to in the application or any of them and may fix the date as from which such Order shall take effect and thenceforth such Order shall remain in force until the same expires or is revoked or modified by a further Order of the Minister made in pursuance of this section.

(4) An application made to the Minister under this section shall be accompanied by such information and particulars as the Minister may consider relevant certified in such manner as he may require and the Minister and the body or persons holding an inquiry for the purposes of this section may call for such information documents and accounts as they may consider relevant and may hear such witnesses as they shall think fit and shall have power to take evidence on oath and for that purpose may administer oaths.

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(5) Where upon an application for revision of authorised tolls or an authorised toll an Order has been made or the Minister has decided not to make an Order no further application for a revision of the tolls or toll to which the application related shall be made within twelve months from the date of such order or decision as the case may be. A.D. 1936.
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(6) Before making an Order under this section the Minister shall cause an inquiry to be held with reference thereto in pursuance of Part I of the Board of Trade Arbitrations &c. Act 1874 which shall apply— 37 & 38 Vict.
c. 40.

(a) as if the Minister were referred to therein in lieu of the Board of Trade;

(b) as if the person or persons duly authorised to hold any inquiry thereunder were the rates advisory committee constituted under the Ministry of Transport Act 1919 or any sub-committee thereof to which the said advisory committee may under section 2 of the Harbours Docks and Piers (Temporary Increase of Charges) Act 1920 have delegated their powers or in the event of the said advisory committee ceasing to exist some persons with similar qualifications to be appointed for the purpose by an order of the Minister under section 2 of the said Act of 1874; and 10 & 11
Geo. 5. c. 21.

(c) as if in section 4 of the said Act of 1874 the words “under the seal of the Minister of Transport” were substituted for the words “by writing” “under the hand of the president or of one of the secretaries of the Board”:

Provided that in cases where no objection has been taken to the application or where any objection which has been made has either been withdrawn or appears to the Minister to be of a trivial nature the Minister may if he thinks fit dispense with such inquiry.

13. Subsection (7) of section 30 (Company may erect signal cabins at Waverley Station at points shown on signed plan) of the North British Railway Act 1895 is hereby repealed. Repeal of
section 30 (7)
of North
British
Railway Act
1895.

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Power to
hold or sell
or other-
wise
dispose of
lands.

14.—(1) The Company shall have power and shall be deemed always to have had power on such terms and conditions as they think fit to sell feu excamb or otherwise dispose of any land in Scotland vested in the Company or hereafter acquired by the Company under the powers of any Act or Order passed prior to the date of this Order which is not at the time of such sale feu excambion or other disposition being used for the purposes of the Company's undertaking whether or not such land has been previously so used or the Company may lease or may retain hold and use such land and may grant bonds and dispositions in security over such land.

(2) Nothing in this section shall entitle the Company to sell feu excamb or dispose of any such land otherwise than subject to all contractual rights and obligations contained in any deed or agreement relating thereto without the consent of the party entitled to the benefit of such contractual rights and obligations.

(3) On any sale feu excambion or other disposition by the Company under this section the other party thereto shall not be concerned or entitled to inquire whether or not the land is being used for the purposes of the Company's undertaking.

(4) Sections 120 to 124 (inclusive) of the Lands Clauses Consolidation (Scotland) Act 1845 shall not apply to any land which is now vested in the Company or is hereafter acquired by the Company under the powers of any Act or Order passed prior to the date of this Order.

(5) The net proceeds arising on the sale of any land under this section shall be applied only to purposes to which capital is properly applicable.

(6) The provisions of this section shall extend and apply to the Company and any other company in respect of land vested in them jointly and to any joint committee incorporated or constituted by Act of Parliament on which the Company may be represented in respect of land vested in such joint committee.

(7) In this section the word "land" shall include feu-duties ground annuals and all other rights and interests in land.

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(8) Section 43 (Power to Company and others to lease &c. lands) of the London and North Eastern Railway Act 1923 so far as the same relates to Scotland is hereby repealed. A.D. 1936.
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13 & 14
Geo. 5.
c. xxviii.

15. Section 8 (Powers as to building on or over lands) of the London and North Eastern Railway Order 1925 shall be read and have effect as if the words “buildings of any description” had been inserted therein in lieu of the words “houses shops chambers flats offices or any other similar buildings” and as if the words “any such Act” had been inserted therein in lieu of the words “the Housing (Scotland) Act 1925 or the Town Planning (Scotland) Act 1925 or any Act repealed by either of those Acts.” Amend-
ment of
section 8 of
London
and North
Eastern
Railway
Order 1925.

16.—(1) Any person who shall trespass upon any of the lines of railway or sidings now or hereafter belonging or leased to or worked by the Company solely or in conjunction with any other company or companies or to or by any joint committee now or hereafter incorporated or constituted by Act of Parliament on which the Company may be represented or who shall trespass upon any other railway property belonging leased or worked as aforesaid in dangerous proximity to live electrical apparatus used for or in connection with the working of the railway shall on conviction be liable to a penalty not exceeding forty shillings and the provisions of the Railways Clauses Consolidation (Scotland) Act 1845 with respect to the recovery of damages not specially provided for and to the determination of any other matter referred to the sheriff or justices shall apply to this enactment. For better
prevention
of trespass
on railway.

8 & 9 Vict.
c. 33.

(2) No person shall be subject to any penalty under this section unless it shall be proved to the satisfaction of the sheriff or justices before whom complaint is laid that public warning has been given to persons not to trespass upon the railway by notices painted on boards or printed on paper and pasted on boards or enamelled on metal or otherwise as the Company or such companies or joint committee may think fit and clearly exhibited and that one or more of such notices has been affixed at the station on that railway and at the public road level crossing (if any) nearest to the spot where such trespass

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A.D. 1936. — is alleged to have been committed and such warning shall be renewed as often as the same shall be obliterated or destroyed and no penalty shall be recoverable unless such warning is so placed and renewed. Provided that no person lawfully crossing any such railway at any level crossing thereof shall be liable to any such penalty as aforesaid.

57 & 58 Vict. c. cli.
9 Edw. 7. c. cvi. (3) Section 35 (For prevention of trespass) of the North British Railway Act 1894 and section 9 (For better prevention of trespass on railways of Company) of the Great North of Scotland Railway Order 1909 are hereby repealed.

Provisions
as to
general
railway
Acts.

17. Nothing in this Order contained shall exempt the Company or their railway from the provisions of any general Act relating to railways or the better and more impartial audit of the accounts of railway companies passed before or after the passing of the Act confirming this Order or from any future revision or alteration under the authority of Parliament of the maximum rates of fares and charges or of the rates for small parcels authorised to be taken by the Company.

Costs of
Order.

18. 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 Company.

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