

2 & 3 GEO. 6.

*London Midland and  
Scottish Railway Act, 1939.*

Ch. xxviii.



### CHAPTER xxviii.

An Act to empower the London Midland and Scottish Railway Company to acquire lands and for other purposes. [25th May 1939.]

**W**HEREAS it is expedient that the London Midland and Scottish Railway Company (in this Act referred to as "the Company") should be empowered to acquire the lands in this Act described :

And whereas by the London and North Western Railway Act 1885 the Lancaster Canal authorised by the Act 32 Geo. 3. c. 101 was vested in the London and North Western Railway Company: 48 & 49 Vict. c. lxxxviii.

And whereas the undertaking of the London and North Western Railway Company is now vested in the Company :

And whereas it is expedient to authorise the Company to stop up and discontinue a portion of the said canal and that the provisions hereinafter contained with respect to the said portion of canal should be enacted :

And whereas it is expedient that the periods now limited for the construction of certain works and for the purchase of certain lands by the Company should be extended and that the other powers in this Act mentioned should be conferred :

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And whereas plans of the lands which may be taken or used under the powers of this Act and a book of reference to those 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 clerks of the county councils of the several counties and town clerks of the several county boroughs respectively within which the said lands are situate which plans and book of reference are in this Act respectively referred to as the deposited plans and book of reference :

And whereas the objects of this Act cannot be attained without the authority of Parliament :

May it therefore please Your Majesty that it may be enacted and be it 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 :—

Short title.

1. This Act may be cited for all purposes as the London Midland and Scottish Railway Act 1939.

Interpre-  
tation.

2. In this Act 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—

“ the Company ” means the London Midland and Scottish Railway Company ;

“ the railway ” means the railway authorised by section 5 of the London Midland and Scottish Railway Act 1934 ;

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

24 & 25  
Geo. 5.  
c. xxxix.

Incorpora-  
tion of  
general  
Acts.

3. The following Acts and Part of an Act so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Act are

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incorporated with and form part of this Act (that is to say):—

The Lands Clauses Acts (except sections 127 to 131 inclusive of the Lands Clauses Consolidation Act 1845): 8 & 9 Vict.  
c. 18.

Provided that (1) notwithstanding anything contained in the Lands Clauses Consolidation Act 1845 any question of disputed compensation under this Act or any Act incorporated herewith (other than a question required to be determined by two justices) shall be determined by a single arbitrator 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 (2) the bond required by section 85 of the Lands Clauses Consolidation Act 1845 shall be under the common seal of the Company and shall be sufficient without the addition of the sureties mentioned in that section;

Part II (Relating to extension of time) of the Railways Clauses Act 1863. 26 & 27 Vict.  
c. 92.

4. Subject to the provisions of this Act 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):— Power to  
acquire  
lands.

In the county of Hertford—

Lands in the parish of Wheathampstead in the rural district of Saint Albans on the north-west side of and adjoining the London to Bedford railway of the Company extending from Ayres End Lane for a distance of five hundred and forty yards south-eastwards;

Lands in the urban district of Harpenden—

(a) On the north-west side of and adjoining the said railway between Ayres End Lane and the lane to Bamville Farm;

(b) On the north-west side of and adjoining the said railway between the said lane to Bamville Farm and the lane No. 713 on the 1/2500 Ordnance map of Hertfordshire No. XXVII.11 (edition 1924);

(c) On the north-west side of and adjoining the said railway extending from the said lane No. 713 to a point on the boundary of the Company's property two hundred and sixty yards south-east of Cravells Road.

In the city and county borough of Nottingham—

Lands on the north side of and adjoining the Company's property extending from Wilford Street to a point twenty-nine yards west of Carrington Street.

For protec-  
tion of  
Trent  
Navigation  
Company.

5. Notwithstanding anything in this Act or shown on the deposited plans the Company shall not exercise the powers of section 4 (Power to acquire lands) of this Act with respect to any lands belonging to or leased to the Trent Navigation Company (in this section referred to as "the navigation company") other than the lands in the city and county borough of Nottingham shown and coloured red on the plan signed in duplicate by William Kelly Wallace on behalf of the Company and by John Turle Evans on behalf of the navigation company one copy of which has been retained by the Company and the navigation company respectively nor shall the Company exercise the powers of the said section 4 with respect to less than the whole of the lands shown and coloured red on the said plan.

Period for  
compulsory  
purchase of  
lands.

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

Extinction  
of private  
rights of  
way.

7. All private rights of way over any lands which the Company are authorised by this Act to acquire compulsorily shall as from the date of the acquisition of such lands by the Company be extinguished. Provided that the Company shall make full compensation to all persons 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.

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

Power to certain owners to grant easements.

9. And whereas in the exercise by the Company of the powers of this Act it may happen that portions only of certain properties shown or partly shown on the deposited plans will be sufficient for the purposes of the Company and that such portions or some other portions less than the whole can be severed from the remainder of the said properties without material detriment thereto Therefore the following provisions shall have effect:—

Owners may be required to sell parts only of certain properties.

- (1) The owner of and persons interested in any of the properties whereof the whole or part is described in the schedule to this Act and whereof a portion only is required for the purposes of the Company are in this section included in the term "the owner" and the said properties are in this section referred to as "the scheduled properties":
- (2) If for twenty-one days after the service of notice to treat in respect of a specified portion of any of the scheduled properties the owner shall fail to notify in writing to the Company that he alleges that such portion cannot be severed from the remainder of the property without material detriment thereto he may be required to sell and convey to the Company such portion only without the Company being obliged or compellable to purchase the whole the Company paying for

the portion so taken and making compensation for any damage sustained by the owner by severance or otherwise :

- (3) If within twenty-one days the owner shall by notice in writing to the Company allege that such portion cannot be so severed the tribunal to whom the question is referred shall in addition to the other questions required to be determined by it determine whether the portion of the scheduled property specified in the notice to treat can be severed from the remainder without material detriment thereto and if not whether any and what other portion less than the whole (but not exceeding the portion over which the Company have compulsory powers of purchase) can be so severed :
- (4) If the tribunal determine that the portion of the scheduled property specified in the notice to treat or any such other portion as aforesaid can be severed from the remainder without material detriment thereto the owner may be required to sell and convey to the Company the portion which the tribunal shall have determined to be so severable without the Company being obliged or compellable to purchase the whole the Company paying such sum for the portion taken by them including compensation for any damage sustained by the owner by severance or otherwise as shall be awarded by the tribunal :
- (5) If the tribunal determine that the portion of the scheduled property specified in the notice to treat can notwithstanding the allegation of the owner be severed from the remainder without material detriment thereto the tribunal may in its absolute discretion determine and order that the costs charges and expenses incurred by the owner incident to the determination of any matters under this section shall be borne and paid by the owner :
- (6) If the tribunal determine that the portion of the scheduled property specified in the notice

to treat cannot be severed from the remainder without material detriment thereto (and whether or not they shall determine that any other portion can be so severed) the Company may withdraw their notice to treat and thereupon they shall pay to the owner all costs charges and expenses reasonably and properly incurred by him in consequence of such notice :

- (7) If the tribunal determine that the portion of the scheduled property specified in the notice to treat cannot be severed from the remainder without material detriment thereto but that any such other portion as aforesaid can be so severed the Company in case they shall not withdraw the notice to treat shall pay to the owner all costs charges and expenses reasonably and properly incurred by him in consequence of such notice or such portion thereof as the tribunal shall having regard to the circumstances of the case and their final determination think fit.

The provisions of this section shall be in force notwithstanding anything in the Lands Clauses Consolidation Act 1845 contained and nothing contained in or done under this section shall be held as determining or as being or implying an admission that any of the scheduled properties or any part thereof is or is not or but for this section would or would not be subject to the provisions of section 92 of the Lands Clauses Consolidation Act 1845.

The provisions of this section shall be stated in every notice given thereunder to sell and convey any of the scheduled properties.

10. The Company and their surveyors officers contractors and workmen may from time to time at all reasonable times in the day upon giving in writing for the first time twenty-four hours' and afterwards from time to time twelve hours' previous notice enter upon and into the lands houses and buildings authorised by this Act to be taken and used or any of them for the purpose of surveying and valuing the said lands houses and buildings without being deemed trespassers and

Power to enter upon property for survey and valuation.

without being subject or liable to any fine penalty or punishment on account of entering or continuing upon any part of the said lands houses and buildings.

Costs of  
arbitration  
in certain  
cases.

11.—(1) The tribunal to whom any question of disputed purchase money or compensation under this Act 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 should be borne by the claimant. Provided that it shall be lawful for the High Court 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 High Court 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 the High Court may seem just and proper under all the circumstances of the case. Provided also that this subsection shall be applicable only in cases where the notice to treat under the Lands Clauses Consolidation Act 1845 either contained or was endorsed with a notice of the effect of this subsection.

(2) If the Company shall make an offer of purchase money and compensation at least ten days before the commencement of the hearing before the tribunal and the claimant fails within ten days from the making of the offer to notify the Company in writing that he accepts the same all the costs and expenses of the Company of and incidental to the arbitration including any fees and expenses of the arbitrator incurred by them after the date of the offer



shall in the event of the claimant subsequently accepting such offer be borne by him. Provided that this subsection shall be applicable only in cases where the offer contained a notice of the effect of this subsection.

12. For the purposes of determining any question of disputed compensation payable in respect of lands taken under the powers of this Act the tribunal shall not award any sum of money for or in respect of any improvement alteration or building made or for or in respect of any interest in the land created after the first day of November one thousand nine hundred and thirty-eight if in the opinion of the tribunal the improvement alteration or building or the creation of the interest in respect of which the claim is made was not reasonably necessary and was made or created with a view to obtaining or increasing compensation under this Act.

Compensation in case of recently acquired interest.

13. If there be any omission misstatement or wrong 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 two justices having jurisdiction in the place in which the lands are situate for the correction thereof and if it appear to the justices hearing the application that the omission misstatement or wrong description arose from mistake they shall certify the same accordingly and they shall in their certificate state the particulars of the omission and in what respect any such matter is misstated or wrongly described and if the lands are situate in a county borough such certificate or a copy thereof shall be deposited with the town clerk and if the lands are situate in an administrative county such certificate or a copy thereof shall be deposited with the clerk of the county council and a duplicate thereof shall be deposited with the clerk of the county district in which the lands are situate and if the lands are situate in a rural parish having a parish council also with the clerk of that council and such certificate or copy and duplicate respectively shall be kept by such clerks respectively

Correction of errors in deposited plans and book of reference.

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with the other documents to which the same relate and thereupon the deposited plans or book of reference shall be deemed to be corrected according to such certificate and it shall be lawful for the Company to take the lands and execute the works in accordance with such certificate.

As to private street expenses in certain cases.  
38 & 39 Vict. c. 55.

14.—(1) The Company shall be deemed not to be an owner or occupier for the purposes of section 150 of the Public Health Act 1875 in respect of any land acquired or used by the Company under or in pursuance of the powers or for the purposes of this Act (a) upon which any street as defined by the Public Health Acts and not being a highway repairable by the inhabitants at large shall wholly or partially front adjoin or abut and (b) which shall at the time of the laying out of such street be used by the Company solely as a part of their lines of railway or sidings stations or works and shall have no direct communication with such street.

(2) The expenses incurred by any urban authority under the powers of the said section which but for this provision the Company would be liable to pay shall be repaid to the urban authority by the owners of the premises fronting adjoining or abutting on the said street other than the Company and in such proportions as shall be settled by the surveyor of the urban authority.

(3) In the event of the Company subsequently making a communication with such street they shall notwithstanding such repayment as last aforesaid pay to the urban authority the expenses which but for the foregoing provision the Company would in the first instance have been liable to pay.

(4) The urban authority shall divide among the owners for the time being other than the Company the amount so paid by the Company to the urban authority less the costs and expenses attendant upon such division in such proportion as shall be settled by the said surveyor whose decision shall be final and conclusive.

(5) This section shall not apply to any street existing at the passing of this Act.

Stopping up and discontinuance of

15.—(1) The Company may stop up and discontinue in the borough of Kendal in the county of Westmorland so much of the Lancaster Canal

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constructed pursuant to the Act 32 Geo. 3. c. 101 as lies between its northern termination and a point on the canal eight yards from the south side of the bridge carrying Parkside Road over the said canal. portion of Lancaster Canal.

(2) All public and private rights of way and navigation and other rights or easements (whether public or private) in over or relating to the portion of the canal by this section authorised to be stopped up shall be extinguished and the said portion shall be abandoned as a canal or navigation. Provided that the Company shall make full compensation to all parties interested in respect of any such private rights or easements 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.

(3) From and after the date when the said portion of the canal is stopped up and discontinued the lands forming the site thereof may be appropriated by the Company for the general purposes of their undertaking and the provisions of section 31 of the London Midland and Scottish Railway Act 1933 shall apply to such lands. 23 & 24 Geo. 5. c. xxxiii.

(4) 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.

16. The Company may subject to the provisions of this Act in the county borough of Warrington stop up and discontinue Arpley station approach road between Wilson Patten Street and Barbauld Street: Stopping up road at Arpley station.

Provided that—

(a) Nothing contained in this Act or done in pursuance thereof shall prejudice or affect the rights of the mayor aldermen and burgesses of the borough of Warrington (hereinafter referred to as “the corporation”)—

(i) under the agreements dated respectively the nineteenth day of May one thousand nine hundred and twenty-five and the ninth day of August one thousand nine hundred and thirty-four and made

between the Company of the one part and the corporation of the other part; or

(ii) under the consent given by the Company under the hand of Frederick George Evans on the second day of October one thousand nine hundred and twenty-eight; or

(iii) in respect of any sewer heretofore constructed by the corporation in pursuance of their powers under the Public Health Acts;

(b) The corporation shall be at liberty at all times and without payment to the Company to maintain and repair and from time to time to renew any existing gas water or electricity mains and other works belonging to them and situate in or under the existing footpath which is situate along the northerly side of the said station approach road other than the mains and works which the corporation are entitled to maintain repair or renew under paragraph (a) of this proviso.

Stopping up road at Hoyland Nether.

17. The removal of the bridge in the urban district of Hoyland Nether in the west riding of the county of York over the Chapeltown branch extension railway of the Company at a point three hundred yards north-eastwards of the bridge carrying Armroyd over the said railway is hereby confirmed and the Company may subject to the provisions of this Act stop up and discontinue so much of the road formerly carried by the said removed bridge as lies between the Company's fences.

Stopping up roads and footpaths without providing substitute.

18. Where this Act authorises the stopping up of a road or footpath or portion thereof without providing a substitute such stopping up shall not take place except where the same is situate upon the property of the Company without the consent of the owners lessees and occupiers of the houses and lands on both sides thereof and from and after such stopping up all rights of way over or along the road or footpath or portion authorised to be stopped up shall be extinguished and the Company may subject to the provisions of the

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Railways Clauses Consolidation Act 1845 with respect to mines lying under or near the railway appropriate and use for the purposes of their undertaking the site of the road or footpath or portion thereof so stopped up: 8 & 9 Vict. c. 20.

Provided that the Company shall make full compensation to all parties interested in respect of any private rights of way extinguished by virtue of this section 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.

19.—(1) The period limited by the London Midland and Scottish Railway Act 1934 for the completion of the railway is hereby extended until the first day of October one thousand nine hundred and forty-two and the said Act shall be read and construed as if the period limited by this section for the completion of the railway had been the period limited by the said Act for the completion thereof. Extension of time for completion of works and release of deposit.

(2) The sum of one thousand eight hundred and thirty pounds deposited pursuant to the Parliamentary Deposits Act 1846 and of the Act 15 & 16 Geo. 5. c. 49 and the standing orders of Parliament in respect of the railway shall be repaid as provided in the Parliamentary Deposits Act 1846 as if this Act were the Act authorising the making of the railway. 9 & 10 Vict. c. 20.

(3) Sections 9 and 10 of the said Act of 1934 are hereby repealed.

20. If the Company fail within the period limited by this Act to complete the railway and open the same for public traffic they shall be liable to a penalty of fifty pounds a day for every day after the expiration of the period so limited until the railway is completed and opened for public traffic or until the sum received in respect of such penalty amounts to five per centum on the estimated cost of the railway. Imposing penalty unless railway opened.

The said penalty may be applied for by any landowner or other person claiming to be compensated or interested in accordance with the provisions of the next following section of this Act and in the same manner as the penalty provided in the third section of the Railway and Canal Traffic Act 1854. 17 & 18 Vict. c. 31.

Every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such court or judge as is specified in that section to an account opened or to be opened in the name of the Accountant-General for and on behalf of the Supreme Court in the bank and to the credit specified in such warrant or order and shall not be paid thereout except as hereinafter provided.

But no penalty shall accrue in respect of any time during which it shall appear by a certificate to be obtained from the Minister of Transport that the Company were prevented from completing or opening the railway by unforeseen accident or circumstances beyond their control. Provided that the want of sufficient funds shall not be held to be a circumstance beyond their control.

Application  
of penalty.

21. Every sum of money so recovered by way of penalty as aforesaid shall be applicable and after due notice in the London Gazette shall be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement construction or abandonment of the railway or any portion thereof or who have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred by the London Midland and Scottish Railway Act 1934 for the purposes of such railway and for which injury or loss no compensation or inadequate compensation has been paid and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the High Court may seem fit.

If no such compensation is payable or if a portion of the sum or sums of money so recovered by way of penalty as aforesaid has been found sufficient to satisfy all just claims in respect of such compensation then the said sum or sums of money recovered by way of penalty or such portion thereof as may not be required as aforesaid shall if a receiver has been appointed or the Company is insolvent or the railway or any part thereof has been abandoned be paid or transferred to such receiver or be applied in the discretion of the court as part of the assets of the Company for the benefit of

the creditors thereof and subject to such application shall be repaid or re-transferred to the Company.

22. The periods now limited by the London Midland and Scottish Railway Act 1936 for the compulsory purchase of the lands in this section referred to are hereby extended until the first day of October one thousand nine hundred and forty-two but on that date the powers for such compulsory purchase shall cease except so far as such powers shall then have been exercised (that is to say) :—

Extension of time for compulsory purchase of lands.

26 Geo. 5. & 1 Edw. 8. c. lix.

(a) Lands in the urban districts of Alderley Edge and Wilmslow in the county of Chester (except the lands numbered on the deposited plans 5 to 9 inclusive in the urban district of Alderley Edge and the lands numbered on the deposited plans entitled "Diversion of road and footpath and additional lands at Alderley Edge and Wilmslow" 4 to 8 inclusive and 13 in the urban district of Wilmslow) authorised to be acquired by section 27 of the London Midland and Scottish Railway (No. 1) Act 1930;

20 & 21 Geo. 5. c. cxiii.

(b) Lands in the metropolitan borough of St. Pancras in the county of London (except the lands numbered on the deposited plans 6 to 12 inclusive 33 to 36 inclusive and 38 and 39 in the said metropolitan borough) authorised to be acquired by section 4 of the London Midland and Scottish Railway Act 1933;

(c) Lands in the urban district of Abergele in the county of Denbigh authorised to be acquired by section 7 of the London Midland and Scottish Railway Act 1936.

23.—(1) The provisions of section 54 (Power as to building on or over lands) of the London Midland and Scottish Railway Act 1924 shall extend and apply to any lands or premises which have from time to time been acquired or held or which under the powers of this Act may hereafter be acquired or held by the Company.

Application of certain sections of London Midland and Scottish Railway Acts 1924 and 1933.

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Geo. 5.  
c. liv.

(2) The provisions of section 31 (Power to hold sell or otherwise dispose of lands) of the London Midland and Scottish Railway Act 1933 shall extend and apply to any lands from time to time acquired or held or which under the powers of this Act may hereafter be acquired or held by the Company.

(3) The provisions of this section shall extend and apply to the Company and any other company in respect of land or premises 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 or premises vested in such joint committee.

Recovery  
of demands.

**24.** Proceedings for the recovery of any demand made under the authority of this Act or any incorporated enactment whether provision is or is not made for the recovery in any specified court or manner may be taken in any county court having otherwise jurisdiction in the matter provided that the demand does not exceed the amount recoverable in that court in an action founded on contract or tort.

Provision as  
to general  
railway  
Acts.

**25.** Nothing in this Act contained shall exempt the Company 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 this Act 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.

Extent of  
Act.

**26.** This Act shall not extend to Northern Ireland.

Costs of Act.

**27.** All costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.



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The SCHEDULE referred to in the  
foregoing Act.

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PROPERTIES OF WHICH PORTIONS ONLY MAY BE TAKEN  
COMPULSORILY.

Area.	No. on deposited plans.	Description of property in book of reference.
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ADDITIONAL LANDS BETWEEN HARPENDEN AND SAINT ALBANS.

County of Hertford— Urban district of Harpenden.	3	Field and slope and telephone posts and wires.
	6	Rough land telephone post and wires.
	7	Field and copse telephone post and wires.
	8	Field.

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Printed by EYRE AND SPOTTISWOODE LIMITED  
FOR  
SIR WILLIAM RICHARD CODLING, C.B., C.V.O., C.B.E., the King's Printer of  
Acts of Parliament

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