



CHAPTER xx

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to the British Transport Commission. [14th July 1953.]

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 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 British Transport Commission Order Confirmation Act 1953. Short title.

SCHEDULE

BRITISH TRANSPORT COMMISSION

Provisional Order to empower the British Transport Commission to construct works and to acquire lands to confer further powers on the Commission and for other purposes.

WHEREAS by the Transport Act 1947 (in this Order referred to as "the Act of 1947") the British Transport Commission (in this Order referred to as "the Commission") were established:

And whereas it is the duty of the Commission (inter alia) so to exercise their powers under the Act of 1947 as to provide or secure or promote the provision of an efficient adequate economical and properly integrated system of public inland transport within Great Britain for passengers and goods and for that purpose to take such steps as they consider necessary for extending and improving the transport facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public agriculture commerce and industry:

And whereas it is expedient that the Commission should be empowered to construct the works authorised by this Order and to acquire the lands referred to in this Order:

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

And whereas plans and sections showing the lines and levels of the works to be constructed under the powers of this Order and plans of the lands authorised to be acquired by this Order and a book of reference to such plans containing the names of the owners and lessees or reputed owners and reputed lessees and of the occupiers of the said lands were duly deposited with the Sheriff Clerk of the county within which the said works will be constructed and the said lands are situated which plans sections and book of reference are respectively referred to in this Order as the deposited plans the deposited sections and the deposited 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) Act 1936:

Now therefore in pursuance of the powers contained in the last-mentioned Act the Secretary of State orders as follows:—

Short and
collective titles.

1.—(1) This Order may be cited as the British Transport Commission Order 1953.

(2) The British Transport Commission Orders 1948 and 1951 and this Order may be cited together as the British Transport Commission Orders 1948 to 1953.

2.—(1) In this Order unless there be something in the subject or Interpretation. 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 Commission ” means the British Transport Commission and any reference to the Commission in relation to any functions of the Commission which are for the time being delegated to an executive in pursuance of section 5 of the Act of 1947 shall be construed as a reference to that executive;

“ enactment ” includes any public general local or private Act and any order or other instrument having the force of an Act;

“ the Lands Clauses Acts ” means the Lands Clauses Acts as modified by the Acquisition of Land (Assessment of Compensation) Act 1919 as such last-mentioned Act is amended by the Acquisition of Land (Assessment of Compensation) (Scotland) Act 1931 and by the Town and Country Planning (Scotland) Act 1947;

“ the limits of deviation ” means the limits of deviation shown on the deposited plans;

“ the Order of 1948 ” means the British Transport Commission Order 1948;

“ the Order of 1951 ” means the British Transport Commission Order 1951;

“ the tribunal ” means the Lands Tribunal for Scotland;

“ the works ” means the works authorised by this Order.

(2) Any reference in this Order to any enactment shall be construed as a reference to that enactment as applied extended amended or varied by or by virtue of any subsequent enactment including this Order.

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

(4) Until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland “ the tribunal ” shall be construed as meaning an official arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act 1919 and sections 3 5 and 6 of the last-mentioned Act shall apply subject to the necessary modifications in relation to the determination of any question under this Order by an arbiter so appointed.

3. The following Acts and parts of 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 and this Order shall be deemed to be the special Act for the purposes of the said incorporated enactments (that is to say):—

The Lands Clauses Acts except sections 120 to 124 (inclusive) and section 127 of the Lands Clauses Consolidation (Scotland) Act 1845;

The Railways Clauses Consolidation (Scotland) Act 1845 except sections 7 8 9 19 20 22 and 23 thereof;

Part I (relating to construction of a railway) of the Railways Clauses Act 1863:

Provided that for the purposes of this Order the expression "the railway" where used in the last-mentioned Act of 1845 and in the said Act of 1863 means Works Nos. 1 2 and 3 authorised by this Order and the expression "the Company" where used in the said Acts means the Commission:

Provided also that the provisions of sections 18 and 21 of the Railways Clauses Consolidation (Scotland) Act 1845 as incorporated with this Order shall not extend to regulate the relations between the Commission and any other person in respect of any matter or thing concerning which those relations are regulated in any respect—

(a) by the provisions of Part II of the Public Utilities Street Works Act 1950; or

(b) by the provisions of section 14 (For protection of gas water and electricity undertakers) of this Order.

Power to
make works.

4.—(1) Subject to the provisions of this Order the Commission may in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections make and maintain the works hereinafter described with all necessary works and conveniences connected therewith:—

IN THE COUNTY OF MIDLOTHIAN—

Work No. 1.—A diversion partly in the parish of Newton and partly in the parish of Inveresk of the road leading from Craigmillar to Stoneybank commencing at a point 710 yards west of the centre line of the Edinburgh to Hawick railway of the Commission and terminating at a point 578 yards east of the centre line of the said railway;

Work No. 2.—A railway (1 mile 895 yards in length) commencing in the parish of Inveresk by a junction with the Lothian Lines section of the Commission's railway 166 yards north-west of the bridge carrying the said Lothian Lines over Old Craighall Road and terminating in the parish of Newton by a junction with the Edinburgh to Hawick railway of the Commission 55 yards south of the bridge carrying Old Craighall Road over the said railway;

Work No. 3.—A reconstruction and lengthening of the bridge in the parish of Newton carrying Old Craighall Road over the Edinburgh to Hawick railway of the Commission.

(2) Subject to the provisions of this Order and within the limits of deviation the Commission may in carrying out Work No. 1 authorised by this Order make such junctions with and may alter the line or level of any street or way interfered with by or contiguous to the said Work No. 1 and may alter and interfere with any steps walls gateways railings passages pipes and pavements and they may execute any works for the protection of any adjoining land or building.

5. If Work No. 2 authorised by this Order is not completed within the period expiring on the thirty-first day of December one thousand nine hundred and fifty-nine then on the expiration of that period the powers granted by this Order to the Commission for making and completing the same or otherwise in relation thereto shall cease except as to so much thereof as has then been completed.

Period for
completion
of railway.

6. In the execution of any of the works or any part of the works the Commission may deviate from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding ten feet upwards and ten feet downwards or to such further extent as may be found necessary or convenient and as may be sanctioned by the Minister of Transport.

Power to
deviate.

7. Subject to the provisions of this Order (and in so far as the same are shown on the deposited plans in the lines or situations as shown) the Commission may make the works described in this section with all necessary works and conveniences connected therewith and may exercise the powers hereinafter mentioned:—

Further works
and powers.

IN THE COUNTY OF MIDLOTHIAN—

In the parish of Inveresk—

- (a) They may stop up and discontinue the portion of the footpath leading from Craighall to the road from Craigmillar to Stoneybank between the points marked "G" and "H" on the deposited plans and may substitute therefor a new footpath to connect Work No. 1 authorised by this Order with the existing footpath at the point marked "G" on the deposited plans;
- (b) They may stop up and discontinue so much of the road leading from Craigmillar to Stoneybank and numbered on the deposited plans 10 in the parish of Inveresk as is situated between the points marked "C" and "D" on the deposited plans;

In the parishes of Inveresk and Newton—

- (c) They may stop up and discontinue the road leading from the Craigmillar to Stoneybank road to Old Craighall Road between the points marked "E" and "F" on the deposited plans;
- (d) They may stop up and discontinue so much of the road running south-westwards from Cairnie Cottages and numbered on the deposited plans 23 in the parish of Inveresk and 9 in the parish of Newton as is situated between the points marked "J" and "K" on the deposited plans;

In the parish of Newton—

- (e) They may stop up and discontinue the footpath leading from the last-mentioned road to Old Craighall Road between the points marked "L" and "M" on the deposited plans.

Power to
acquire lands.

8.—(1) Subject to the provisions of this Order the Commission may enter upon take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of the works or for any purpose connected with or ancillary to their undertaking.

(2) Without prejudice to the generality of the powers conferred upon the Commission by subsection (1) of this section the Commission may subject to the provisions of this Order enter upon take and use for the purposes specified in the third column of the schedule to this Order all or any of the lands referred to in the first and second columns of the said schedule.

(3) Subject to the provisions of this Order the Commission may enter upon use and appropriate so much of the subsoil and under-surface of any public street road footpath or place delineated on the deposited plans and described in the deposited book of reference as may be necessary for the purposes of the works without being required to purchase the same or any servitude therein or thereunder or to make any payment therefor.

Disregard of
recent
improvements
and interests.

9. In determining any question of disputed compensation or purchase money in respect of land acquired under this Order the tribunal shall not take into account—

(a) any improvement or alteration made or building erected after the fifth day of December one thousand nine hundred and fifty-two; or

(b) any interest in the land created after the said date;

which in the opinion of the tribunal was made erected or created with a view to obtaining or increasing the compensation or purchase money.

Period for
compulsory
purchase
of lands.

10. The powers of the Commission for the compulsory purchase of the lands which they are authorised to acquire by section 8 (Power to acquire lands) of this Order shall cease on the thirty-first day of December one thousand nine hundred and fifty-six.

Incorporation
of provisions
of Orders of
1948 and 1951.

11. The following provisions of the under-mentioned Orders are incorporated with and form part of this Order:—

The Order of 1948—

Section 9 (For protection of Postmaster-General);

Section 12 (Power to certain owners to grant servitudes);

Section 13 (Power to acquire servitudes compulsorily in certain cases);

Section 19 (Stopping up roads and footpaths without providing substitute);

Section 20 (Stopping up roads and footpaths in case of diversion);

Section 21 (Provision as to repair of roads and footpaths);

Section 22 (Power to make agreements with road authorities);

Section 24 (As to minerals under and near to the lands to be acquired) :

The Order of 1951—

- Section 9 (Extinction of private rights of way);
- Section 11 (Grant of servitudes by persons under disability);
- Section 12 (Power to enter for survey and valuation);
- Section 13 (Power to expedite entry);
- Section 14 (Correction of errors in deposited plans and book of reference).

12. Notwithstanding anything in section 5 (Power to cross certain roads on the level) of the Brechin and Edzell District Railway Act 1893 the Commission shall not be required to provide or maintain a footbridge or subway at the level crossing referred to in the said section. As to level crossing at Stracathro.

13.—(1) As from the commencement of this Order all rights of way over or across the level crossing known as West Ardler Level Crossing in the parish of Kettins in the county of Angus whereby the road leading from the main Coupar Angus to Forfar road to the Coupar Angus to Ardler road is crossed on the level by the railway between Coupar Angus and Ardler Stations shall subject to the provisions of this section be extinguished and the provisions of the Highway (Railway Crossings) Act 1839 of section 9 of the Railway Regulation Act 1842 of section 40 of the Railways Clauses Consolidation (Scotland) Act 1845 and of sections 5 6 and 7 of the Railways Clauses Act 1863 and any other provisions to the same or similar effect incorporated with or contained in any enactment relating to the said level crossing shall cease to apply to that crossing. As to level crossing at West Ardler.

(2) The said level crossing shall be deemed for all purposes to be a work provided by the Commission at the date of the commencement of this Order pursuant to section 60 of the Railways Clauses Consolidation (Scotland) Act 1845 for the accommodation of the owners and occupiers of the lands adjoining the railway at the said level crossing (that is to say) for the purpose of making good any interruption caused by such railway to the use of the lands through which the same has been made as if the making of such railway had been authorised by this Order.

14. For the protection of the several undertakers referred to in this section the following provisions shall unless otherwise agreed in writing between the Commission and the undertakers concerned apply and have effect:— For protection of gas water and electricity undertakers.

(1) In this section—

“ the undertakers ” means any authority board company society or other person authorised by any enactment to carry on an undertaking for the supply of gas water or electricity within any area within which the Commission are by this Order authorised to acquire lands or execute works;

“ apparatus ” means—

(a) in the case of electricity undertakers electric lines or works (as respectively defined in the Electricity (Supply) Acts 1882 to 1936) belonging to or lawfully laid or erected by such undertakers; or

(b) in the case of gas or water undertakers any apparatus belonging to such undertakers or for the maintenance of which they are responsible;

(not being in either case apparatus in respect of which the relations between the Commission and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950) and includes any structure for the lodging therein of apparatus;

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under over or upon land:

- (2) Notwithstanding anything in this Order or shown on the deposited plans the Commission shall not acquire any apparatus under the powers of this Order otherwise than by agreement:
- (3) If the Commission in the exercise of the powers of this Order acquire any interest in any lands in which any apparatus is placed that apparatus shall not be removed under this section and any right of the undertakers to maintain repair renew or inspect that apparatus in those lands shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers:
- (4) If the Commission for the purpose of executing any works in on or under any lands acquired held appropriated or used under this Order require the removal of any apparatus placed in those lands and give to the undertakers written notice of such requirement together with a plan and section of the work proposed and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed or if in consequence of the exercise of any of the powers of this Order the undertakers reasonably require to remove any apparatus the Commission shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other lands of the Commission and thereafter for the maintenance repair renewal and inspection of such apparatus:

Provided that if the alternative apparatus or any part thereof is to be constructed elsewhere than in other lands of the Commission and the Commission are unable to afford such facilities and rights as aforesaid in the lands in which the alternative apparatus or such part thereof is to be constructed the undertakers shall on receipt of a written notice to that effect from the Commission forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned lands:

- (5) (a) Any alternative apparatus to be constructed in lands of the Commission in pursuance of this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Commission or in default of agreement settled by arbitration;
- (b) The undertakers shall after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in the immediately preceding paragraph proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Commission to be removed under the provisions of this section:
- (6) Notwithstanding anything in the immediately preceding paragraph if the Commission give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus or the removal of the apparatus required to be removed as will be situated in any lands of the Commission such work in lieu of being executed by the undertakers shall be executed by the Commission with all reasonable dispatch under the superintendence (if given) and to the reasonable satisfaction of the undertakers :

Provided that nothing in this paragraph shall authorise the Commission to execute the actual placing installation bedding packing removal connection or disconnection of any apparatus or any filling around the apparatus extending (where the apparatus is laid in a trench) to not less than twelve inches above the apparatus:

- (7) Where in accordance with the provisions of this section the Commission afford to the undertakers facilities and rights for the construction maintenance repair renewal and inspection in lands of the Commission of alternative apparatus in substitution for apparatus to be removed as aforesaid those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Commission and the undertakers or in default of agreement determined by arbitration:

Provided that in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed across or along any railway of the Commission the arbiter shall—

- (a) give effect to all reasonable requirements of the Commission for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Commission or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case give effect to the terms and conditions applicable to the apparatus (if any) constructed across or along the railway for which the alternative apparatus is to be substituted:

Provided also that if the facilities and rights to be afforded by the Commission in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbiter less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the arbiter shall make such provision for the payment of compensation by the Commission to the undertakers in respect thereof as appear to him to be reasonable having regard to all the circumstances of the particular case:

- (8) (a) Not less than twenty-eight days before commencing to execute any such works as are referred to in paragraph (4) of this section and are near to or will or may affect any apparatus the removal of which has not been required by the Commission under the said paragraph (4) the Commission shall submit to the undertakers a plan section and description of the works to be executed;
- (b) Such works shall be executed only in accordance with the plan section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of such works:

Provided that if the undertakers within fourteen days after the submission to them of any such plan section and description in consequence of the works proposed by the Commission reasonably require the removal of any apparatus and give written notice to the Commission of such requirement the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the Commission under paragraph (4) thereof:

Provided also that nothing in this sub-paragraph shall preclude the Commission from submitting at any time or from time to time but in no case less than twenty-eight days before commencing the execution of any such works a new plan section and description thereof in lieu of the plan section and description previously submitted and thereupon the provisions of this paragraph shall apply to and in respect of such new plan section and description;

- (c) The Commission shall not be required to comply with sub-paragraph (a) of this paragraph in a case of emergency but in such a case they shall give to the undertakers notice as soon as reasonably practicable and a plan section and

description of the works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) of this paragraph so far as reasonably practicable in the circumstances:

- (9) Where in consequence of this Order any part of any street road or footpath in which any apparatus is situated ceases to be part of a street road or footpath the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Order but nothing in this paragraph shall prejudice or affect any right of the Commission or of the undertakers to require removal of such apparatus under this section or the power of the Commission to execute works in accordance with paragraph (8) of this section:
- (10) The Commission shall pay to the undertakers the costs charges and expenses reasonably incurred by the undertakers in or in connection with the inspection removal alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (4) of this section less the value of any apparatus removed in pursuance of the provisions of this section (such value being calculated after removal) and shall also make compensation to the undertakers—

(a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and

(b) for any other expenses loss damages penalty or costs incurred by the undertakers;

by reason or in consequence of the execution maintenance use or failure of any such works or otherwise by reason or in consequence of the exercise by the Commission of the powers of this Order:

- (11) Where by reason or in consequence of the stopping up of any street road or footpath under the powers of this Order any apparatus belonging to the undertakers and laid or placed in such street road or footpath or elsewhere is rendered derelict or unnecessary the Commission shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Commission) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason or in consequence of such apparatus being so rendered derelict or unnecessary:

Provided that the Commission shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if to the reasonable satisfaction of the undertakers other

apparatus has at the expense of the Commission been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:

- (12) Any difference arising between the Commission and the undertakers under this section shall be settled by arbitration:
- (13) Nothing in this section shall be deemed to prejudice or affect the provisions of any enactment or agreement regulating the relations between the Commission and the undertakers in respect of any apparatus laid or erected in land belonging to the Commission at the commencement of this Order.

For protection
of Postmaster-
General.

15. Any electrical works or apparatus erected constructed laid and maintained under section 16 of the Railways Clauses Consolidation (Scotland) Act 1845 (as incorporated with this Order) shall be so erected constructed or laid and so maintained worked and used as to prevent interference with any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line.

For protection
of Midlothian
County Council.

16. For the protection of the county council of the county of Midlothian (in this section referred to as "the Council") the following provisions shall unless otherwise agreed in writing between the Commission and the Council apply and have effect:—

- (1) The Commission shall in constructing any works on lands acquired by them under the powers of this Order provide and thereafter maintain to the reasonable satisfaction of the Council culverts to take the water flowing down the burn known as "the Harelaw burn" through the said lands such culverts being of such capacity as may be necessary to take a flow of water equal to the existing capacity of the said burn:
- (2) The Commission shall not in the construction or maintenance of the railway (Work No. 2) authorised by this Order deviate south of the northern boundary of nor in any other way interfere with or encroach upon Millerhill Road (Route No. B.6415) commonly known and marked on the deposited plans as Old Craighall Road:
- (3) In carrying out the reconstruction and lengthening of the bridge carrying Old Craighall Road over the Edinburgh to Hawick railway (Work No. 3) authorised by this Order—
- (a) The Commission shall form and complete the surface of the road over the said bridge as so reconstructed and lengthened and the junctions thereof with the existing road in accordance with Ministry of Transport standards and shall before commencing to form and complete the said surface provide sections and specifications thereof for the reasonable approval of the Council's surveyor:

Provided that—

- (i) if the Council's surveyor does not within twenty-eight days after the receipt of such sections and specifications signify to the Commission his approval or disapproval thereof he shall be deemed to have approved thereof; and

(ii) if within the said period of twenty-eight days the Council's surveyor has expressed his disapproval of such sections and specifications a difference shall be deemed to have arisen between the Commission and the Council which (unless previously settled by agreement) shall be determined by arbitration;

(b) The Commission shall not within a distance of eighty feet on either side of the said existing bridge or the said bridge as reconstructed and lengthened under the powers of this Order erect any building so as to interfere with the widening thereof by the Council to an effective width between parapets of one hundred feet and shall lay out their railway lines passing under the said bridge in such a manner as will permit of the erection of the piers required for the widening of the said bridge by the Council to the width aforesaid;

(c) The Commission shall not provide more than two means of access from and to Old Craighall Road to and from the railway marshalling yard to be provided on land acquired under the powers of this Order and the same shall be situated at either end of the said bridge and shall only be capable of use by pedestrians:

- (4) The Commission shall when so required by the Council sell to the Council so much land belonging to them or grant to the Council such servitudes or rights over land belonging to them as may be necessary for the widening of the said bridge and the approaches thereto to a width of one hundred feet exclusive of any new road embankments and failing agreement between the Commission and the Council as to the price to be paid by the Council for such land or for the grant of such servitudes or rights the price shall be determined in accordance with the Lands Clauses Acts:
- (5) Any question or difference between the Commission and the Council arising under this section shall be referred to and determined by an arbiter to be appointed failing agreement by the President of the Institution of Civil Engineers:

Provided that if in determining any such question or difference any question of law arises the said arbiter shall have power at the request of either party to state a case for the opinion and judgment of the Court of Session and the said court shall determine such question of law.

17. For the protection of the National Coal Board (in this section referred to as "the Board") the following provisions shall unless otherwise agreed in writing between the Commission and the Board apply and have effect:—

For protection
of National
Coal Board.

- (1) Notwithstanding anything in this Order—

(a) the only coal to be left unworked under the two marshalling yards to be constructed on the lands to be acquired under the powers of this Order and the part of the existing Edinburgh to Hawick railway line lying between the said two marshalling yards shall be in the

upper or true coal measures for support of the hump retarders and automatically controlled points in the part of the said marshalling yards at present planned as the down yard situated on the west side of the said railway line which area of coal to be left unworked has been agreed at three hundred and seventy thousand tons;

(b) the Board shall not be liable to the Commission in respect of any damage in the future caused by subsidence to the said area to be covered by the said hump retarders and automatically controlled points in the down yard or to the said fixtures themselves:

(2) (a) Notwithstanding the provisions of the agreement dated the thirty-first day of December one thousand nine hundred and forty-nine between the Railway Executive and the Board regarding the application of the Mining Code (hereinafter referred to as "the 1949 agreement") the Commission shall on the commencement of this Order pay to the Board in one sum the value at that date of the said three hundred and seventy thousand tons of coal;

(b) In computing such payment—

(i) periods of deferment shall be allowed in respect of any seams of coal not planned to be worked until later years;

(ii) the profit rate per ton to be used shall be two shillings per ton as set out in clause 4 of the 1949 agreement:

(3) The Board shall not work more than one seam of coal at one time in the upper or true coal measures under any part of the said Edinburgh to Hawick railway line lying between the said two marshalling yards:

(4) Notwithstanding the terms of the 1949 agreement the Board shall not be liable to the Commission for any damage caused by subsidence to any special plant such as a limited form of retarder which the Commission may construct on the part of the said marshalling yards to be known as the up yard but shall be liable where any such damage is caused by subsidence for not more than their proportion of the cost under the 1949 agreement of lifting an equivalent length of plain railway track on subsidence taking place:

(5) The Commission shall in constructing any works on lands acquired by them under the powers of this Order protect or divert to the reasonable satisfaction of the Board the drainage of pit water surface conduits and sewers belonging to the Board passing through any part of the said lands and shall also ensure that the extensions proposed to the existing culvert under the said Edinburgh to Hawick railway line near the south end of the said marshalling yards shall be of no less dimensions than the existing culvert:

(6) The Commission shall pay to the Board the additional cost incurred by the Board in re-siting the new Monktonhall colliery sidings under deduction of the saving to the Board from the curtailment of colliery sidings main line connections

associated signalling and bridging which would have been necessary for the original site of the said new colliery and which will be reduced through the construction of the said marshalling yards:

- (7) (a) The Commission shall not under the powers of this Order acquire from the Board a narrow strip of land on the western boundary of the down yard of the said marshalling yards the area of which strip of land shall be agreed between the Commission and the Board or in default of agreement be settled by arbitration;
- (b) The Commission shall acquire from the Board at a price to be agreed or in default of agreement to be settled by arbitration an area of land extending to one acre or thereby forming the only portion of Shawfair Farm lying to the east of the limit of land to be acquired for the said marshalling yards:
- (8) The Commission shall pay to the Board any additional costs which they may incur in bringing in services into their new Monktonhall Colliery project by reason of the construction of the said new marshalling yards but this shall only apply to any additional costs incurred by the Board under a contract for services entered into by the Board prior to the deposit of this Order:
- (9) Any question between the Commission and the Board arising under this section shall be referred to a single arbiter as provided in section 21 (Arbitration) of this Order.

18.—(1) A notice to treat given by the Commission under section 17 of the Lands Clauses Consolidation (Scotland) Act 1845 as incorporated with this or any other enactment from time to time relating to the Commission may (without prejudice to any other mode of service) be given by post by sending it in a registered letter addressed to the person to whom it is to be given at his usual or last known address or in the case of an incorporated company or body to the secretary or clerk of the company or body at its registered or principal office. Service of notices to treat.

(2) Where any such notice is required to be given to any person as having an interest in premises and the name of that person cannot be ascertained after reasonable inquiry or where the notice is required to be given to any person as an occupier of any premises the notice may be addressed by the description of "the owner" or "the occupier" as the case may be of the premises (describing them) in respect of which the notice is given without further name or description and addressed to those premises.

19. This Order shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning (Scotland) Act 1947 for the purposes of subsection (4) of section 11 and subsection (1) of section 112 of that Act. Saving for town and country planning.

20. Except as otherwise expressly provided nothing herein contained shall be deemed or construed to exempt the railway authorised to be made by this Order from the provisions of any general Act relating to railways now in force or which may hereafter pass during this or any future session of Parliament. Railway not to be exempt from general railway Acts.

Arbitration.

21. Where under this Order any difference (other than a difference to which the provisions of the Lands Clauses Acts apply) is to be referred to or settled by arbitration then unless otherwise provided such difference shall be referred to and settled by a single arbiter to be agreed between the parties or failing agreement to be appointed on the application of either party (after notice in writing to the other) by the Sheriff of the Lothians and Peebles.

Costs of Order.

22. 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 Commission and may in whole or in part be defrayed out of revenue.

SCHEDULE**LANDS REFERRED TO IN SUBSECTION (2) OF SECTION 8 (POWER TO ACQUIRE LANDS) OF THIS ORDER**

| Area | No. on deposited plans | Purposes for which the lands may be used |
|--|--|--|
| In the county of the city of Edinburgh— City parish of Edinburgh. | 1 and 2 | To provide a railway marshalling yard. |
| In the county of Midlothian— Parish of Inveresk | 1 to 4 (inclusive) 10 12 to 24 (inclusive) | To provide a railway marshalling yard and a means of access from and to the said yard to and from Work No. 1 authorised by this Order on the east side of the Edinburgh to Hawick railway. |
| Parish of Newton... | 6 to 14 (inclusive) | To provide a railway marshalling yard and one or more means of access from and to the said yard to and from Old Craighall Road. |
| Parish of Newton... | 23 to 28 (inclusive) | To provide railway sidings. |

Table of Statutes referred to in this Act

| Short title | Session and chapter |
|---|----------------------------------|
| Highway (Railway Crossings) Act 1839 | 2 & 3 Vict. c. 45. |
| Railway Regulation Act 1842 | 5 & 6 Vict. c. 55. |
| Lands Clauses Consolidation (Scotland) Act 1845 | 8 & 9 Vict. c. 19. |
| Railways Clauses Consolidation (Scotland) Act 1845 | 8 & 9 Vict. c. 33. |
| Railways Clauses Act 1863 | 26 & 27 Vict. c. 92. |
| Telegraph Act 1878 | 41 & 42 Vict. c. 76. |
| Brechin and Edzell District Railway Act 1893 ... | 56 & 57 Vict. c. clix. |
| Acquisition of Land (Assessment of Compensation) Act 1919 | 9 & 10 Geo. 5. c. 57. |
| Acquisition of Land (Assessment of Compensation) (Scotland) Act 1931 | 21 & 22 Geo. 5. c. 11. |
| Private Legislation Procedure (Scotland) Act 1936 | 26 Geo. 5. & 1 Edw. 8. c. 52. |
| Transport Act 1947 | 10 & 11 Geo. 6. c. 49. |
| Town and Country Planning (Scotland) Act 1947 | 10 & 11 Geo. 6. c. 53. |
| Lands Tribunal Act 1949 | 12, 13 & 14 Geo. 6. c. 42. |
| Public Utilities Street Works Act 1950 | 14 Geo. 6. c. 39. |

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Ch. xx

*British Transport Commission
Order Confirmation Act, 1953*

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British Transport Commission Order Confirmation Act, 1953

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ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in schedule.
2. Short title.

SCHEDULE

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19. Saving for town and country planning.
20. Railway not to be exempt from general railway Acts.
21. Arbitration.
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SCHEDULE--Lands referred to in subsection (2) of section 8
(Power to acquire lands) of this Order.