CHAPTER xxiii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to the British Transport Commission.· [1st August 1951.]

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: 26 Geo. 5. & 1 Edw. 8. c. 52.

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 British Transport Commission Order Confirmation Act 1951. Short title.

SCHEDULE

BRITISH TRANSPORT COMMISSION

Provisional Order to empower the British Transport Commission to construct a work and to acquire additional lands to extend the time for the compulsory purchase of certain lands to confer further powers on the Commission and for other purposes.

10 & 11 Geo. 6. c. 49. 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 work authorised by this Order and to acquire the lands referred to in this Order:

And whereas it is expedient that the period now limited for the compulsory purchase of certain lands should be extended as provided by this Order:

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

And whereas a plan and section showing the line and level of the work 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 lessees and of the occupiers of the said lands were duly deposited with the sheriff clerks of the several counties within which the said work will be constructed or the said lands are situated which plans section and book of reference are respectively referred to in this Order as the deposited plans the deposited section and the deposited book of reference:

26 Geo. 5. & 1 Edw. 8. c. 52. 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 1951.

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

2.—(1) 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 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;

"The culvert" means the work authorised by section 4 (Power to make work) of this Order;

"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; 9 & 10 Geo. 5. c. 57. 21 & 22 Geo. 5. c. 11. 10 & 11 Geo. 6. c. 53.

"The tribunal" means the lands tribunal for Scotland.

(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) 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. 12 & 13 Geo. 6. c. 42.

3. The Lands Clauses Acts (except sections 120 to 124 (inclusive) and section 127 of the Lands Clauses Consolidation (Scotland) Act 1845) so far as the same are applicable for the purposes and are not inconsistent with or varied by 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. Incorporation of general Acts. 8 & 9 Vict. c. 19.

4.—(1) Subject to the provisions of this Order the Commission may in the line or situation shown on the deposited plans and according to the level shown on the deposited section make and maintain the work hereinafter described with all necessary works and conveniences connected therewith— Power to make work.

In the county of Midlothian—

A culvert or cut in the parish of Borthwick commencing at Currie Bridge and terminating at a point 327 yards or thereby east thereof.

(2) The culvert when constructed shall at all times be maintained in good order and condition by and at the expense of the Commission.

Power to stop up impound and divert stream in parish of Borthwick.

5. The Commission may stop up and fill in so much of the stream in the parish of Borthwick in the county of Midlothian known as Tyne Burn as is situated upon land now belonging to them or upon any land acquired by them under this Order and may impound the waters of the said stream and divert the same into the Middleton South Burn at or near Currie Bridge in the said parish by means of the culvert.

Power to deviate.

6. In the construction of the culvert or any part thereof the Commission may deviate from the line or situation thereof shown on the deposited plans to the extent of the limit of deviation shown on the deposited plans and may deviate vertically from the level shown on the deposited section to any extent not exceeding five feet either upwards or downwards.

Power to acquire lands.

7.—(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 culvert 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 First Schedule to this Order all or any of the lands referred to in the first and second columns of the said schedule.

Power to acquire servitudes.

8.—(1) The Commission may acquire such servitudes or rights as they may require for the purpose of constructing altering or maintaining the culvert and doing any necessary works in connection therewith in under and over the lands referred to in the Second Schedule to this Order without being obliged or compelled to acquire any greater interest in under or over the same and may give notice to treat in respect of such servitudes or rights describing the nature thereof and (subject to the foregoing provisions of this section and to the other provisions of this Order) the provisions of the Lands Clauses Acts shall extend and apply in relation to the acquisition of such servitudes or rights as if they were lands within the meaning of those Acts.

(2) Where the Commission shall have acquired a servitude or right in under or over any land under the powers of this section they shall not be required or entitled (except by agreement) to fence off that land from the adjoining land.

Extinction of private rights of way.

9.—(1) All private rights of way over any land that may be acquired compulsorily under this Order shall as from the acquisition of the land whether compulsorily or by agreement be extinguished.

(2) Any person who suffers loss by the extinguishment of any right under subsection (1) of this section shall be entitled to be paid by the Commission compensation to be determined in case of dispute under and in accordance with the Lands Clauses Acts.

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 7 (Power to acquire lands) of this Order shall cease on the thirty-first day of December one thousand nine hundred and fifty-four.

Grant of servitudes by persons under disability.

11.—(1) Any person empowered by the Lands Clauses Acts to sell and convey or discharge lands may if he thinks fit subject to the provisions of those Acts grant to the Commission any servitude right or privilege required for the purposes of this Order in under over or affecting any such lands (not being a servitude right or privilege of water in which some person other than the grantor has an interest).

(2) The provisions of the said Acts with respect to lands and feu duties or ground annuals so far as they are applicable shall extend and apply to any such grant and to any such servitude right or privilege as aforesaid.

Power to enter for survey and valuation.

12. Any person acting on behalf of the Commission and duly authorised in writing in that behalf and showing his authority if required may at all reasonable times enter upon any land authorised to be acquired compulsorily under this Order for the purpose of surveying or valuing the land:

Provided that land shall not be entered under this section unless the Commission not less than twenty-four hours before the first entry and not less than twelve hours before any subsequent entry have given notice in writing to the owner lessee and occupier of the land in manner provided by section 101 of the Town and Country Planning (Scotland) Act 1947.

Power to expedite entry.

13. At any time after serving a notice to treat in respect of any land that may be acquired compulsorily under this Order but not less than one month after giving the owner and occupier of the land notice in writing of their intention to exercise the powers of this section the Commission may enter on and take possession of the land or such part thereof as is specified in the last-mentioned notice without previous consent or compliance with sections 83 to 88 of the Lands Clauses Consolidation (Scotland) Act 1845:

Provided that the Commission shall pay the like compensation for land of which possession is taken under this section and the like interest on the compensation awarded as would have been payable if the provisions of those sections had been complied with.

Correction of errors in deposited plans and book of reference.

14.—(1) If any omission misstatement or wrong description of any land or of the owner lessee or occupier of any land is found to have been made on the deposited plans or in the deposited book of reference the Commission after giving ten days' notice to the owner lessee and occupier of the land in question may apply to the sheriff of the county in which the said land is situated for the correction thereof.

(2) If on any such application it appears to the sheriff that the omission misstatement or wrong description arose from mistake the sheriff shall certify the fact accordingly and shall in his certificate state the particulars of the omission or in what respect any matter is misstated or wrongly described.

(3) The certificate of the sheriff shall be deposited in the office of the sheriff clerk of the said county and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Commission to take the land in accordance with the certificate.

(4) Any certificate deposited under this section shall be kept by the sheriff clerk along with the other documents to which it relates.

Disregard of recent improvements and interests.

15. 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 ; 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.

Stopping up Essengal level crossing.

16. The Commission may stop up and discontinue the level crossing known as Essengal level crossing in the parish of Blair Atholl in the county of Perth whereby the footpath or road to the site of the former ford over the river Garry is crossed on the level by the railway between Blair Atholl and Killiecrankie and thereupon all rights of way in over or across the said level crossing shall be extinguished.

Abolition of rights of way over certain level crossings.
2 & 3 Vict. c. 45.
5 & 6 Vict. c. 55.
8 & 9 Vict. c. 33.
26 & 27 Vict. c. 92.

17.—(1) As from the commencement of this Order all rights of way over or across the level crossings referred to in the Third Schedule to this Order 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 any of the level crossings referred to in the said schedule shall cease to apply to those level crossings.

(2) The level crossings referred to in the said schedule shall be deemed for all purposes to be works 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 each of the said level crossings respectively (that is to say) for the purpose of making good any interruptions 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.

21 & 22 Vict. c. xv.

(3) Section XXVIII (Lodges or stations to be made at level crossings) of the Symington Biggar and Broughton Railway Act 1858 is hereby repealed in so far as it relates to the level crossing known as Broadford level crossing referred to in the said schedule.

Extension of time.

18.—(1) The period now limited by the British Transport Commission Order 1948 for the compulsory purchase of the lands referred to in this section is hereby extended until the thirty-first day of December one thousand nine hundred and fifty-four but on that date the powers for such compulsory purchase shall cease except in so far as such powers shall by then have been exercised.

(2) The lands referred to in this section are the lands described in and authorised to be acquired by section 7 (Power to Commission to acquire lands &c.) of the British Transport Commission Order 1948 in the places hereinafter mentioned:—

In the county of Fife—

(*a*) partly in the parish of Kinglassie partly in the parish of Kirkcaldy and Dysart and partly in the parish of Markinch;

(*b*) in the parish of Markinch;

(*c*) partly in the parish of Markinch and partly in the parish of Kirkcaldy and Dysart:

In the county of Clackmannan—

Partly in the parish of Alloa and partly in the burgh and parish of Alloa.

For protection of electricity boards.

45 & 46 Vict. c. 56.
62 & 63 Vict. c. 19.

19.—(1) Nothing in this Order shall extend to or authorise any interference with any electric lines or other works of any electricity board except in accordance with and subject to the provisions of section 15 of the Electric Lighting Act 1882 and section 17 of the schedule to the Electric Lighting (Clauses) Act 1899 and such provisions shall be deemed for the purposes of this subsection to extend to and include any electric line or work of an electricity board whether or not such line or work is under any street or place authorised to be broken up by the electricity board and whether such line or work is placed below upon or above the level of the ground.

(2) In this section the expressions "electric lines" and "works" have the same respective meanings as in the Electricity (Supply) Acts 1882 to 1936 and the expression "electricity board" has the meaning assigned to it by section 1 of the Electricity Act 1947.

10 & 11 Geo. 6. c. 54.

Saving for town and country planning.

20. 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.

Costs of Order.

21. 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.

SCHEDULES

FIRST SCHEDULE

LANDS REFERRED TO IN SECTION 7 (POWER TO ACQUIRE LANDS) OF THIS ORDER

Area	No. on deposited plans	Purposes for which the land may be used
In the county of the city of Edinburgh—		
City parish of Edinburgh	1	To extend the Commission's existing railway depot at Craigentinny.
In the county of Midlothian—		
Parish of Borthwick ...	1 to 5 (inclusive)	To extend the Commission's existing coup at Borthwick Bank.
Parish of Borthwick ...	6 to 10 (inclusive)	To impound and divert the stream referred to in section 5 (Power to stop up impound and divert stream in parish of Borthwick) of this Order.
In the county of Sutherland—		
Parish of Kildonan ...	1 2	To provide a railway turntable.

SECOND SCHEDULE

DESCRIBING PROPERTIES IN RESPECT OF WHICH SERVITUDES MAY BE TAKEN

Area	No. on deposited plans
In the county of Midlothian—	
Parish of Borthwick	8 9 10 11 12.

THIRD SCHEDULE

LEVEL CROSSINGS REFERRED TO IN SECTION 17 (ABOLITION OF RIGHTS OF WAY OVER CERTAIN LEVEL CROSSINGS) OF THIS ORDER

Area	Description of level crossing
In the county of Perth in the parish of Aberdalgie	The level crossing known as Forgandenny level crossing whereby the road leading from Forgandenny to the former ford over the river Earn is crossed on the level by the railway between Perth and Forgandenny.
In the county of Perth in the parish of Errol.	The level crossing known as Loanfoot level crossing whereby the road leading from the main Dundee Road to Loanfoot is crossed on the level by the railway between Glencarse and Inchconnans goods station.
In the county of Lanark in the parish of Carnwath.	The level crossing known as Muirhall level crossing whereby the road leading from the Auchengray to Carnwath Road to Dippool Water is crossed on the level by the railway between Auchengray and Carnwath.
In the county of Peebles in the parish of Broughton Glenholm and Kilbucho.	The level crossing known as Broadford level crossing whereby the road leading from the Broughton to Biggar *via* Hartree Road to the Broughton to Biggar *via* Burnetland Road is crossed on the level by the railway between Broughton and Biggar.

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ARRANGEMENT OF SECTIONS

Section

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

SCHEDULE

BRITISH TRANSPORT COMMISSION

1. Short and collective titles.
2. Interpretation.
3. Incorporation of general Acts.
4. Power to make work.
5. Power to stop up impound and divert stream in parish of Borthwick.
6. Power to deviate.
7. Power to acquire lands.
8. Power to acquire servitudes.
9. Extinction of private rights of way.
10. Period for compulsory purchase of lands.
11. Grant of servitudes by persons under disability.
12. Power to enter for survey and valuation.
13. Power to expedite entry.
14. Correction of errors in deposited plans and book of reference.
15. Disregard of recent improvements and interests.
16. Stopping up Essengal level crossing.
17. Abolition of rights of way over certain level crossings.
18. Extension of time.
19. For protection of electricity boards.
20. Saving for town and country planning.
21. Costs of Order.

SCHEDULES:

First Schedule—Lands referred to in section 7 (Power to acquire lands) of this Order.

Second Schedule—Describing properties in respect of which servitudes may be taken.

Third Schedule—Level crossings referred to in section 17 (Abolition of rights of way over certain level crossings) of this Order.