CHAPTER i

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to the British Transport Commission.

[6th July 1955.]

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 1955. Short title.

SCHEDULE

BRITISH TRANSPORT COMMISSION

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

WHEREAS by the Transport Act 1947 the British Transport Commission (hereinafter referred to as "the Commission") were established:

And whereas it is the duty of the Commission under the Transport Act 1947 as amended by the Transport Act 1953 (inter alia) to provide railway services for Great Britain with due regard to efficiency economy and safety of operation and to the needs of the public agriculture commerce and industry:

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

And whereas it is expedient that the agreement set forth in the Second Schedule to this Order should be confirmed:

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

And whereas a plan and sections showing the line and level of the railway to be constructed under the powers of this Order and a plan 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 clerk of the county within which the said railway 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 1955.

(2) The British Transport Commission Orders 1948 to 1954 and this Order may be cited together as the British Transport Commission Orders 1948 to 1955.

Interpretation.

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 partly incorporated herewith have in relation to the relative subject matter the same respective meanings and—

"the Act of 1845" means the Railways Clauses Consolidation (Scotland) Act 1845;

" the Commission " means the British Transport Commission;

" 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 Order of 1948 " means the British Transport Commission Order 1948;

" the Order of 1951 " means the British Transport Commission Order 1951;

" the Order of 1953 " means the British Transport Commission Order 1953;

" the railway " means the railway authorised by this Order;

" 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) 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.

Incorporation of general Acts.

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:—

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

The Act of 1845 except sections 7 8 9 19 20 22 and 23 thereof and Part I (relating to construction of a railway) of the Railways Clauses Act 1863:

Provided that—

(*a*) for the purposes of this Order the expression " the company " where used in the incorporated provisions of the Act of 1845 and the said Act of 1863 means the Commission;

(*b*) the provisions of sections 18 and 21 of the Act of 1845 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—

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

(ii) by the provisions of section 14 (For protection of gas water and electricity undertakers) of the Order of 1953 as incorporated with this Order.

Power to make railway.

4. 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 sections make and maintain the railway hereinafter described with all necessary works and conveniences connected therewith:—

IN THE COUNTY OF THE CITY OF EDINBURGH—

A railway (1,053 yards in length) wholly in the city parish of Edinburgh commencing by a junction with the Edinburgh and Glasgow branch of the Commission's railway 11 yards east of the 99 mile post on Slateford Station platform and terminating by a junction with the Edinburgh Suburban and South Side Line of the Commission's railway 33 yards north-west of the aqueduct carrying the Union Canal over the said railway.

Period for completion of railway.

5. If the railway is not completed within the period expiring on the thirty-first day of December one thousand nine hundred and sixty-one then on the expiration of that period the powers granted by this Order to the Commission for making and completing the railway or otherwise in relation thereto shall cease except as to so much thereof as has then been completed.

Power to acquire lands.

6.—(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 railway 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 purpose 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.

Disregard of recent improvements and interests.

7. 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-four; 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.

8. The powers of the Commission for the compulsory purchase of the lands which they are authorised to acquire by section 6 (Power to acquire lands) of this Order shall cease on the thirty-first day of December one thousand nine hundred and fifty-eight.

Incorporation of provisions of Orders of 1948 1951 and 1953.

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

The Order of 1948—

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

Section 16 (Owners may be required to sell parts only of certain properties);

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

Section 24 (As to minerals under and near to 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);

The Order of 1953—

Section 6 (Power to deviate);

Section 14 (For protection of gas water and electricity undertakers);

Section 15 (For protection of Postmaster-General).

(2) In section 16 of the Order of 1948 as incorporated with this Order the expression " the scheduled properties " means the properties numbered on the deposited plans 3 and 9 in the city parish of Edinburgh.

Confirmation of agreement with Leven Town Council and Ralph Lindsay Christie.

10.—(1) The minute of agreement between the provost magistrates and councillors of the burgh of Leven of the first part the Commission of the second part and Ralph Lindsay Christie of the third part set out in the Second Schedule to this Order is hereby confirmed and made binding upon the parties thereto and effect may and shall be given thereto accordingly subject to such modifications (if any) as may from time to time be agreed between such parties.

(2) Subsection (2) of section 26 (Closing of Leven Dock) of the North British Railway Order 1908 is hereby repealed in so far as it relates to the construction and maintenance of an open jetty at Leven.

Stopping up Smiddyboyne level-crossing.

11. The Commission may stop up and discontinue the level-crossing known as Smiddyboyne level-crossing in the parish of Fordyce in the county of Banff whereby the road leading from the main Portsoy to Banff road to the Portsoy to Huntly road is crossed on the level by the railway between Portsoy and Tillynaught and thereupon all rights of way over or across the said level-crossing shall be extinguished.

As to certain level-crossings.

12.—(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 other than a right of way for all persons to use those level-crossings on foot 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 Act of 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 (including the gates thereof) shall be deemed for all purposes to be works provided by the Commission at the commencement of this Order pursuant to section 60 of the Act of 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.

(3) The Commission shall provide and maintain on both sides of the railway at each of the level-crossings referred to in the said schedule wicket gates or stiles for the convenience of persons on foot.

Saving for town and country planning.

13. 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.

Arbitration.

14. 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.

15. 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 SUBSECTION (2) OF SECTION 6 (POWER TO ACQUIRE LANDS) OF THIS ORDER

Area (1)	No. on deposited plans (2)	Purpose for which the lands may be used (3)
In the county of the city of Edinburgh— City parish of Edinburgh	1 to 5	To provide railway sidings.

SECOND SCHEDULE

AGREEMENT BETWEEN THE BRITISH TRANSPORT COMMISSION AND LEVEN TOWN COUNCIL AND RALPH LINDSAY CHRISTIE

MINUTE OF AGREEMENT among THE PROVOST MAGISTRATES and COUNCILLORS OF THE BURGH OF LEVEN (hereinafter called " the Town Council ") of the first part the BRITISH TRANSPORT COMMISSION established and incorporated by and in virtue of the Transport Act 1947 (hereinafter called " the Commission ") of the second part and Mr. RALPH LINDSAY CHRISTIE of Durie Leven Fife Proprietor of the lands of Durie aforesaid of the third part

Whereas in terms of Section 26 of the North British Railway Confirmation Act 1908 the North British Railway Company (predecessors of the Commission) were inter alia bound to construct and maintain on the northern foreshore at the mouth of the River Leven in the County of Fife an open jetty One hundred and fifty feet in length and thirty-six feet in width and it was also therein provided that Robert Maitland Christie and his successors as owners of the lands of Durie should have the use of the said jetty free of charge for boats and yachts belonging to them whether kept for pleasure or for salmon and other fishings

And whereas the said jetty was constructed by the said Railway Company but had at the date hereof fallen into a state of disrepair

NOW THEREFORE the parties hereto have agreed and do hereby agree and bind and oblige themselves as follows videlicet:—

ONE. The Commission having paid to the Town Council the sum of Fifteen thousand pounds the receipt of which is hereby acknowledged the Town Council hereby renounce and discharge all right title and interest competent to them to require the Commission to construct and maintain a jetty at the said site in terms of the said North British Railway Confirmation Act 1908 or otherwise.

TWO. The Town Council shall at their own expense immediately undertake the demolition and removal of the existing jetty.

2ND SCH. —*cont.*

THREE. The Commission shall without any price being paid grant to the Town Council a Disposition of the site of the existing jetty being an area of the foreshore One hundred and fifty feet in length and thirty-six feet in width A plan will be provided by the Commission and the Town Council will bear the expense of stamping and recording the Disposition but otherwise each party will bear their own legal expenses.

FOUR. Mr. Ralph Lindsay Christie hereby renounces and discharges all right title and interest competent to himself and his successors as owners of the Estate of Durie to require the Commission to provide them with the use free of charge of the said jetty for boats and yachts belonging to them whether kept for pleasure or for salmon and other fishings.

FIVE. The Town Council undertake that in the event of their constructing a new jetty or pier on the same or on another site within the Burgh of Leven they will grant to Mr. Ralph Lindsay Christie of Durie and his successors as owners of the Estate of Durie the use of said new jetty or pier free of charge for boats and yachts belonging to them whether kept for pleasure or for salmon and other fishings.

SIX. This Agreement shall subject to such alterations as Parliament may think fit to make hereon be scheduled to the first Bill or Provisional Order hereafter promoted by the Commission IN WITNESS WHEREOF these presents consisting of this and the two preceding pages are executed in triplicate by the parties hereto as follows They are sealed with the Common Seal of the British Transport Commission and signed for them and on their behalf by the Right Honourable Lord Rusholme a Member and by Sidney Berald Taylor Chief Secretary all at London on the Twelfth day of January nineteen hundred and fifty-four before these witnesses Harold Leslie Brazier Senior Secretarial Assistant and Charles Edward Tolchard General Assistant both in the office of the said Chief Secretary at Two hundred and twenty-two Marylebone Road London N.W.1 they are subscribed by the said Ralph Lindsay Christie at Durie Leven on the Twenty-eighth day of the said month and year before these witnesses Andrew Duncan Estate Foreman residing at Garden Cottage Durie Leven and Miss Grace Lusk Cook residing at Twenty-seven Durward Street Leven and they are sealed with the Common Seal of the Burgh of Leven and subscribed for and on behalf of said Burgh by David Alexander Dowie Councillor James Sinclair Honorary Treasurer and John Taylor Leslie Town Clerk all at Leven on the First day of February in the year last mentioned.

(Sgd.) D. A. DOWIE.
(L.S.) „ JAMES SINCLAIR.
„ JOHN T. LESLIE
Town Clerk.

(Sgd.) H. L. BRAZIER Witness. (Sgd.) RUSHOLME
(L.S.) Member.

„ C. E. TOLCHARD Witness „ S. B. TAYLOR
Chief Secretary.

(Sgd.) ANDREW DUNCAN Witness (Sgd.) RALPH LINDSAY
„ GRACE LUSK Witness CHRISTIE.

THIRD SCHEDULE

LEVEL-CROSSINGS REFERRED TO IN SECTION 12 (AS TO CERTAIN LEVEL-CROSSINGS) OF THIS ORDER

Area	Description of level-crossing
In the county of Lanark— In the parish of Lesmahagow	The level-crossing known as Auchlochan level-crossing whereby the road leading from the Coalburn to Lesmahagow Road to the Coalburn to Netherton Road is crossed on the level by the railway between Coalburn and Lesmahagow.
In the county of Kinross— In the parish of Orwell	The level-crossing known as Burial Road level-crossing whereby the road leading from the Milnathort to Leslie (via Bargeddie) Road to the Milnathort to Leslie (via Mawcarse) Road is crossed on the level by the railway between Milnathort and Mawcarse Junction.

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.
North British Railway Order Confirmation Act 1908	8 Edw. 7. 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.
Transport Act 1953	1 & 2 Eliz. 2. c. 13.

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ARRANGEMENT OF SECTIONS

Section

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

SCHEDULE

BRITISH TRANSPORT COMMISSION

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SCHEDULES:

First Schedule—Lands referred to in subsection (2) of section 6 (Power to acquire lands) of this Order.

Second Schedule—Agreement between the British Transport Commission and Leven Town Council and Ralph Lindsay Christie.

Third Schedule—Level-crossings referred to in section 12 (As to certain level-crossings) of this Order.