CHAPTER xvii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the British Transport Commission. [19th July, 1961.]

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, 1961. 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 general 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, due regard being had to efficiency, economy and safety of operation and to the needs of the public and of 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 other powers contained in this Order should be conferred upon the Commission:

And whereas a plan and sections showing the lines and levels 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 plan, containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the said lands, were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the sheriff clerk of the county within which the said railway will be constructed and the said lands are situated which plan, sections and book of reference are respectively referred to in this Order as " the deposited plan " " 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, 1961.

(2) The British Transport Commission Orders, 1948 to 1959, and this Order may be cited together as the British Transport Commission Orders, 1948 to 1961.

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, the Lands Tribunal Act, 1949, the Town and Country Planning (Scotland) Acts, 1947 to 1959, and this Order;

" the limits of deviation " means the limits of deviation shown on the deposited plan;

" the tribunal " means the Lands Tribunal for Scotland;

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

(2) Unless the context otherwise requires any reference in this Order to an Order of any of the years from 1948 to 1959 shall be construed as a reference to the British Transport Commission Order of that year.

(3) 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.

(4) All distances and lengths stated in any description of works, powers or lands shall be construed as if the words " or thereby " were inserted after each such distance and length and distances between points on a railway shall be taken to be measured along the railway.

(5) 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:—

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

(*b*) the Act of 1845 except sections 7, 8, 9, 19, 20, 22, 23, 103, 104 and 135 thereof and Part I (relating to the construction of a railway) of the Railways Clauses Act, 1863:

Provided that—

(i) 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;

(ii) 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—

(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 the Order of 1953 as incorporated with this Order.

Power to make a railway.

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

In the county of Lanark—

A railway (six hundred and thirty-three yards in length) wholly in the burgh of Motherwell and Wishaw and parish of Dalziel commencing by a junction with the Jerviston branch railway thirty-three yards south-east of the bridge carrying the golf course service road over the said branch railway and terminating at a point six yards south-east of the bridge carrying Merry Street over the said branch railway.

(2) Subject to the provisions of this Order and within the limits of deviation, the Commission may in making the railway make junctions with, and may alter the line or level of, any street or way interfered with by, or contiguous to, the railway and may alter and interfere with any steps, walls, gateways, railings, passages, pipes and pavements and may execute any works for the protection of any adjoining land or building.

Period for completion of railway.

5. If the railway is not completed within the period expiring on the thirty-first day of December, nineteen hundred and sixty-seven, 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.

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 plan 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) 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 plan and described in the deposited book of reference as may be necessary for the purposes of the railway without being required to purchase the same or any servitude therein or thereunder or to make any payment therefor.

Acquisition of part only of certain properties.

7.—(1) Whereas, in the construction of the railway or otherwise in the exercise by the Commission of the powers of this Order, it may happen that portions only of the properties whereof the whole or part is described in the First Schedule to this Order will be sufficient for the purposes of the Commission and that such portions or some other portions less than the whole can be severed from the remainder of the said properties respectively without material detriment thereto, therefore the following provisions shall have effect:—

(*a*) The owner of and persons interested in any of the said properties, whereof a portion only is required for the purposes of the Commission, or each or any of them are or is hereafter in this section included in the term " the owner ";

(*b*) If for twenty-one days after the service of notice to treat, in respect of a specified portion of any of the said properties, the owner fails to notify the Commission in writing 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 Commission such portion only, without the Commission being obliged or compellable to purchase the whole, the Commission paying for the portion so taken and making compensation for any loss sustained by the owner by severance or otherwise;

(*c*) If within such twenty-one days the owner alleges, by notice in writing to the Commission, that such portion cannot be so severed the tribunal shall, in addition to the other questions required to be determined by it, determine whether the portion of the 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 that may be acquired compulsorily under this Order) can be so severed;

(*d*) If the tribunal determines that the portion of the 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 Commission the portion which the tribunal has determined to be so severable, without the Commission being obliged or compellable to purchase the whole, the Commission 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;

(*e*) If the tribunal determines that the portion of the 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 determine and order that the costs, charges and expenses incurred by the owner, incident to the determination of any matters under this section, or such part (if any) of the said costs, charges and expenses as it thinks fit shall be borne and paid by the owner;

(*f*) If the tribunal determines that the portion of the property specified in the notice to treat cannot be severed from the remainder without material detriment thereto (and whether or not it determines that any other portion can be so severed) the Commission 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;

(*g*) If the tribunal determines that the portion of the 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 Commission, if they do 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 thinks fit, having regard to the circumstances of the case and its final determination.

(2) The provisions of this section shall be in force, notwithstanding anything contained in the Lands Clauses Consolidation (Scotland) Act, 1845, and nothing contained in or done under this section shall be held as determining, or as being or implying an admission, that the said properties or any of them or any part thereof is or is not, or but for this section would or would not be, subject to the provisions of section 90 of the Lands Clauses Consolidation (Scotland) Act, 1845.

(3) The provisions of this section shall be stated in or endorsed on every notice to treat served under this Order in respect of any portion of the said properties.

Disregard of recent improvements and interests.

8. 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, nineteen hundred and sixty; 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.

9. 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, nineteen hundred and sixty-four.

Incorporation of provisions of Orders of 1948, 1951, 1953, 1958 and 1959.

10. 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 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 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 13 (Power to expedite entry):

The Order of 1953—

Section 6 (Power to deviate);

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

The Order of 1958—

Section 5 (Use of sewers, etc., for removing water):

The Order of 1959—

Section 7 (Power to enter for survey and valuation);

Section 10 (Correction of errors in deposited plans and book of reference).

As to certain level crossings.

11.—(1) The Commission may stop up and discontinue the level crossings referred to in Part I of the Second Schedule to this Order and thereupon all rights of way over or across the said level crossings shall be extinguished.

(2) As from the commencement of this Order all rights of way over or across the level crossing referred to in Part II of the said schedule shall 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 the said level crossing shall cease to apply to that level crossing.

(3) The level crossing referred to in Part II of the said schedule (including the gates thereof) shall be deemed for all purposes to be a work 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 the said level crossing (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.

Appropriation by Commission of sums deposited under section 36 of Glasgow and South Western Railway Act, 1874.

12.—(1) In this section—

"the Act of 1874" means the Glasgow and South Western Railway Act, 1874;

"the prescribed period" means the period of twelve months commencing on the date of first publication of a notice stating concisely the effect of this section and published in three successive weeks in one or more local newspapers circulating in the city of Glasgow.

(2) On or after the expiration of the prescribed period the Commission may appropriate and may apply to such purposes as they think fit all sums of money deposited in the London Midland and Scottish Railway Savings Bank and previously deposited in the Glasgow and South Western Savings Bank, pursuant to section 36 (Company to deposit in bank the value of the unacquired canal debts and shares) of the Act of 1874, together with the accumulated interest thereon and upon such appropriation the separate accounts required by the said section 36 to be opened in respect of the sums of money so deposited shall be closed.

(3) As from the appropriation by the Commission of the said sums of money section 39 (Sheriff may order payment out of fund) of the Act of 1874 shall have effect as if for the words "payment out of bank" there were substituted the words "payment by the British Transport Commission" and any order for payment made under that section shall with respect to the accumulated interest on the deposit to which such order relates be an order for the payment of simple interest at the rate of three per centum from the date of deposit to the date of payment.

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 county in which the works or lands to which the difference relates are situated.

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.

2ND SCH. —*cont.*

PART II

Area	Description of level crossing
In the county of Midlothian— In the parish of West Calder	The level crossing known as Torphin crossing whereby the road leading from the main Edinburgh to Carnwath road to West Torphin is crossed by the railway between Harburn and Cobbinshaw.

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.
Glasgow and South Western Railway Act, 1874	37 & 38 Vict. c. lxxxiii.
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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SCHEDULES

FIRST SCHEDULE

DESCRIBING PROPERTIES WHEREOF PORTIONS ONLY MAY BE TAKEN COMPULSORILY Section 7.

Area (1)	No. on deposited plans (2)
Parish of Dalziel	4, 5.

SECOND SCHEDULE

LEVEL CROSSINGS REFERRED TO IN section 11 (AS TO CERTAIN LEVEL CROSSINGS) OF THIS ORDER Section 11.

PART I

Area	Description of level crossing
In the county of Stirling— In the parish of Logie	The level crossing known as Craigmill crossing whereby the road leading from the main Stirling to Alloa road to Broom Farm is crossed by the railway between Causewayhead and Cambus.
In the county of Lanark— In the parish of Bothwell	The level crossing known as Holytown crossing whereby Station Road is crossed by the railway between Holytown and Carfin Halt.
In the county of Perth— In the city and royal burgh of Perth— In the parish of East Church	The level crossing known as Friarton crossing whereby Breadalbane Terrace is crossed by the railway between Perth and Hilton Junction.
In the county of Renfrew— In the burgh of Renfrew	The level crossing known as Carntyne crossing whereby the road leading from McLeus Avenue to Clark Street is crossed by the railways from Renfrew South to Renfrew Wharf and from Porterfield to Deanside.

British Transport Commission Order Confirmation Act, 1961

9 & 10 ELIZ. 2 **Ch. xvii**

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 a railway.
5. Period for completion of railway.
6. Power to acquire lands.
7. Acquisition of part only of certain properties.
8. Disregard of recent improvements and interests.
9. Period for compulsory purchase of lands.
10. Incorporation of provisions of Orders of 1948, 1951, 1953, 1958 and 1959.
11. As to certain level crossings.
12. Appropriation by Commission of sums deposited under section 36 of Glasgow and South Western Railway Act, 1874.
13. Saving for town and country planning.
14. Arbitration.
15. Costs of Order.

SCHEDULES:

First Schedule—

Describing properties whereof portions only may be taken compulsorily.

Second Schedule—

Level crossings referred to in section 11 (As to certain level crossings) of this Order—

Part I.

Part II.