CHAPTER xxiii.

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 relating to the London Midland and Scottish Railway.

[6th June 1946.]

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 London Midland and Scottish Railway Order Confirmation Act 1946. Short title.

SCHEDULE.

LONDON MIDLAND AND SCOTTISH RAILWAY.

Provisional Order to empower the London Midland and Scottish Railway Company to construct a railway and to acquire lands and for other purposes.

WHEREAS it is expedient that the London Midland and Scottish Railway Company (hereinafter referred to as "the Company") should be empowered to construct the railway in this Order mentioned and to acquire the lands in this Order described:

And whereas the Company have stopped up and diverted a portion of Shaw Place in the burgh of Greenock in the county of Renfrew following upon the collapse of part of a retaining wall on the south side of and adjoining the Company's railway from Greenock West to Greenock and it is expedient that the stopping up and diversion of the roadway should be sanctioned and confirmed:

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

And whereas plans and a section showing the lines and levels of the railway authorised by this Order and plans of the lands which may be taken under the powers of this Order and a book of reference to those plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Order were duly deposited with the sheriff clerks for the several counties within which the said railway and lands are situated which plans section and book of reference are in this Order respectively referred to as the deposited plans section and 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 title.

1. This Order may be cited for all purposes as the London Midland and Scottish Railway Order 1946.

Interpretation.

2. 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—

"the Company" means the London Midland and Scottish Railway Company;

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

all distances and lengths stated in any description of railway works or lands shall be read and have effect as if the words "or thereabouts" were inserted after each such distance and length.

Incorporation of Acts.

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

The Lands Clauses Acts (except sections 120 to 124 (inclusive) of the Lands Clauses Consolidation (Scotland) Act 1845) ; — 8 & 9 Vict. c. 19.

The Railways Clauses Consolidation (Scotland) Act 1845 ; — 8 Vict. c. 33.

Part I (relating to the construction of a railway) of the Railways Clauses Act 1863. — 26 & 27 Vict. c. 92.

Power to construct a railway and works.

4. Subject to the provisions of this Order the Company may make and maintain in the lines and according to the levels shown on the deposited plans and section the railway hereinafter described with all proper stations sidings approaches works and conveniences connected therewith and may enter upon take and use such of the lands delineated on the deposited plans and described in the deposited book of reference relating thereto as may be required for those purposes and for any other purposes connected with their undertaking.

The railway hereinbefore referred to and authorised by this Order to be made by the Company is—

In the county of Ayr—

A railway (three furlongs four chains in length) wholly in the parish of Stevenston within the area of the district council of the Ninth District commencing by a junction with the Ardrossan to Glasgow (St. Enoch) railway of the Company at a point four hundred yards east of the bridge which carries the Ardrossan to Glasgow (Central) railway of the Company over the said Ardrossan to Glasgow (St. Enoch) railway and terminating by a junction with the said Ardrossan to Glasgow (Central) railway at a point three hundred and sixty-five yards west of the said bridge.

Rates and charges.

5. The railway shall for the purposes of tolls rates and charges and for all other purposes whatsoever form part of the undertaking of the Company.

Period for completion of railway.

6. If the railway is not completed within the period expiring on the first day of October one thousand nine hundred and fifty-one then on the expiration of that period the powers granted by this Order to the Company for making and completing the railway or otherwise in relation thereto shall cease except as to so much thereof as shall then be completed.

Imposing penalty unless railway opened.

7.—(1) If the Company fail within the period limited by this Order to complete the railway the Company shall be liable to a penalty of fifty pounds a day for every day after the expiration of the period so limited until the railway is completed and opened for the public conveyance of passengers or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works.

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

(3) Every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such court or judge as is specified in the said section to an account opened or to be opened in the name and with the privity of the King's and Lord Treasurer's Remembrancer in the bank and to the credit specified in such warrant or order and shall not be paid thereout except as hereinafter provided.

(4) A penalty shall not accrue in respect of any time during which it appears by a certificate to be obtained from the Ministry of Transport that the Company were prevented from completing or opening such line by unforeseen accident or circumstances beyond their control Provided that the want of sufficient funds shall not be held to be a circumstance beyond their control.

Application of penalty.

8.—(1) If the Company do not before the expiration of the period limited by this Order for the completion of the railway complete the railway and open it for the public conveyance of passengers then and in every such case any sum of money recovered by way of penalty as aforesaid shall be applicable and after due notice in the Edinburgh Gazette shall be applied towards compensating any landowners or other persons whose property may have been interfered with or rendered less valuable by the commencement construction or abandonment of the railway or any portion thereof or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the Company by this Order and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the Court of Session acting as the Court of Exchequer in Scotland may seem fit.

(2) If such compensation is not payable or if a portion of the sum of money recovered by way of penalty as aforesaid has been found sufficient to satisfy all just claims in respect of such compensation then the sum of money recovered by way of penalty as aforesaid or such portion thereof as may not be required as aforesaid shall if a judicial factor has been appointed or the Company are insolvent or the railway in respect of which the penalty has been incurred or any part thereof has been abandoned be paid or transferred to such judicial factor or be applied in the discretion of the Court of Session acting as the Court of Exchequer in Scotland as part of the assets of the Company for the benefit of the creditors thereof and subject to such application shall be re-paid or re-transferred to the Company.

Diversion of road at Greenock.

9. The diversion of the road known as Shaw Place in the Old or West parish of Greenock in the burgh of Greenock in the county of Renfrew from the junction of Shaw Place with Mount Lane for a distance of eighty-four yards in an easterly direction along Shaw Place which has already been carried out in the manner shown upon the deposited plans is hereby sanctioned and confirmed and the Company may subject to the provisions of this Order take use and appropriate for the purposes of their undertaking the land forming the site of the portion of Shaw Place which has been rendered unnecessary by the new portion of the said road shown on the said plans.

Power to deviate in construction of railway.

10. In constructing the railway the Company may deviate from the lines of the railway shown on the deposited plans thereof to the extent of the limits of deviation marked thereon and may deviate from the levels of the railway shown on the deposited section in accordance with the provisions of the Railways Clauses Consolidation (Scotland) Act 1845.

Provision as to repair of roads and footpaths.

11. Any road or footpath or portion of road or footpath made diverted or altered under the authority of this Order (except the stone iron or other structure carrying any such road or footpath over the railway which structure shall unless otherwise agreed be maintained by and at the expense of the Company) shall when made and completed unless otherwise agreed be maintained by and at the expense of the body or persons liable to maintain roads or footpaths of the same nature and in the same parish and district or burgh as the road or footpath or portion of road or footpath in question.

Power to make agreements with road authorities.

12. The Company may enter into and carry into effect agreements with the parties having the charge management or control of the roads streets footpaths or highways or any of them portions whereof shall under the provisions of this Order be altered or stopped up or interfered with in reference to the construction or contribution towards the costs of such alteration or of any new road street footpath or highway to be substituted therefor and in reference to any other matters relating thereto and if so agreed the Company may delegate to such parties as aforesaid the power of constructing and maintaining all or any of such alterations or new roads streets footpaths or highways in which they may be interested including the structure of any bridge over or under any railway and the purposes of this section shall be deemed to be purposes for which a local road authority may incur expenditure and borrow money.

Power to acquire lands.

13. Subject to the provisions of this Order the Company may enter upon take and use for the purposes of their undertaking and for the purposes of the section of this Order of which the marginal note is "Diversion of road at Greenock" the lands hereinafter described and delineated on the deposited plans and described in the deposited book of reference :—

In the county of Lanark—

Lands partly in the parish of Cadder and partly in the parish of Old Monkland within the area of the district council of the Ninth District on the south-west side of and adjoining the Glasgow (Buchanan Street) to Motherwell railway of the Company extending from a point sixty-three yards south-east from Gartcosh Junction for a distance of one thousand seven hundred and eighty yards in a south-easterly direction along the said railway.

In the county of Renfrew—

Lands in the Old or West parish of Greenock in the burgh of Greenock on the south side of and adjoining Shaw Place prior to diversion between the junction of Mount Lane with Shaw Place and a point in Shaw Place forty-two yards from the said junction measured in an easterly direction.

Period for compulsory purchase of lands.

14. The powers for the compulsory purchase of lands under this Order shall cease on the first day of October one thousand nine hundred and forty-nine.

Errors and omissions in plans and book of reference may be corrected by sheriff.

15.—(1) If there be any omission mis-statement or erroneous description of any lands or of the owners lessees or occupiers of any lands shown on the deposited plans or specified in the deposited book of reference the Company after giving ten days' notice to the owners lessees and occupiers of the lands in question may apply to the sheriff of the county in which the said lands are situated for the correction thereof and if it appear to the sheriff that the omission mis-statement or erroneous description arose from mistake he shall certify the same accordingly and he shall in his certificate state the particulars of the omission and in what respect any such matter is mis-stated or wrongly described and the decision of the sheriff in such matter shall be final.

(2) The certificate of the sheriff shall be deposited in the office of the sheriff clerk of the said county and a duplicate thereof shall also be deposited with the clerk to the district council of the said county in which the lands affected thereby are situated and such certificate and the duplicate respectively shall be kept by such sheriff clerk and clerk to the district council along with the other documents to which it relates and thereupon the deposited plans and book of reference shall be deemed to be corrected in accordance with the certificate and the Company may enter upon take and use any lands in accordance with such certificate.

As to private rights of way over lands taken compulsorily.

16. All private rights of way over any lands which are under the powers of this Order acquired compulsorily shall as from the date of such acquisition be extinguished Provided that the Company shall make full compensation to all persons interested in respect of any such rights and such compensation shall be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

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

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

(i) The owner of and persons interested in any of the properties whereof the whole or part is described in the schedule to this Order and whereof a portion only is required for the purposes of the Company are in this section included in the term " the owner " and the said properties are in this section referred to as " the scheduled properties " ;

(ii) If after twenty-one days from the service of notice to treat in respect of a specified portion of any of the scheduled properties the owner fails to notify in writing to the Company that he alleges that such portion cannot be severed from the remainder of the property without material detriment thereto he may be required to sell and convey to the Company such portion only without the Company being obliged or

compellable to purchase the whole the Company paying for the portion so taken and making compensation for any damage sustained by the owner by severance or otherwise;

(iii) If within twenty-one days the owner by notice in writing to the Company alleges that such portion cannot be so severed the tribunal to whom the question is referred shall in addition to the other questions required to be determined by it determine whether the portion of the scheduled property specified in the notice to treat can be severed from the remainder without material detriment thereto and if not whether any and what other portion less than the whole (but not exceeding the portion over which the Company have compulsory powers of purchase) can be so severed;

(iv) If the tribunal determine that the portion of the scheduled property specified in the notice to treat or any such other portion as aforesaid can be severed from the remainder without material detriment thereto the owner may be required to sell and convey to the Company the portion which the tribunal have determined to be so severable without the Company being obliged or compellable to purchase the whole the Company paying such sum for the portion taken by them including compensation for any damage sustained by the owner by severance or otherwise as has been awarded by the tribunal;

(v) If the tribunal determine that the portion of the scheduled property specified in the notice to treat can notwithstanding the allegation of the owner be severed from the remainder without material detriment thereto the tribunal may in their absolute discretion determine and order that the costs charges and expenses incurred by the owner incident to the determination of any matters under this section shall be borne and paid by the owner;

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

(vii) If the tribunal determine that the portion of the scheduled property specified in the notice to treat cannot be severed from the remainder without material detriment thereto but that any such other portion as aforesaid can be so severed the Company 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 shall having regard to the circumstances of the case and their final determination think fit.

(2) The provisions of this section shall be in force notwithstanding anything in the Lands Clauses Consolidation (Scotland) Act 1845 contained and nothing contained in or done under this section shall

be held as determining or as being or implying an admission that any of the scheduled properties or any part thereof is or is not or but for this section would or would not be subject to the provisions of section 90 of the Lands Clauses Consolidation (Scotland) Act 1845.

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

Power to enter upon property for survey and valuation.

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

Compensation in case of recently acquired interest.

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

Single arbiter.

20.—(1) In all cases of disputed purchase money or compensation arising under this Order in respect of land to be taken compulsorily or otherwise which fall to be determined under the provisions of the Lands Clauses Acts it shall unless the Company and the other party or parties to the dispute concur in the appointment of a single arbiter in terms of such Acts be in the power of the Company or such other party or parties to apply to the Secretary of State to appoint a single arbiter to determine the purchase money or compensation to be paid and it shall not be competent thereafter to have the same determined by arbiters or oversman or sheriff or jury acting under the last-mentioned Acts.

(2) The said arbiter upon appointment shall be deemed to be a sole arbiter within the meaning of the Lands Clauses Acts and the provisions of those Acts with regard to arbitration shall apply accordingly and the arbiter shall notwithstanding anything contained in the said Acts determine the amount of expenses in the arbitration and such determination shall be final.

(3) The remuneration of the said arbiter shall failing agreement be fixed by the Secretary of State.

Costs of arbitration in certain cases.

21.—(1) The tribunal to whom any question of disputed purchase money or compensation under this Order is referred shall if so required by the Company award and declare whether a statement in writing of the amount of compensation claimed has been delivered to the Company by the claimant giving sufficient particulars and in sufficient time to enable the Company to make a proper offer and if the tribunal

is of opinion that such statement giving sufficient particulars and in sufficient time has not been delivered and that the Company has been prejudiced thereby the tribunal shall have power to decide whether the expenses of the claimant or any part thereof shall be borne by the claimant.

(2) It shall be lawful for a lord ordinary or the sheriff of the county in which the lands are situated in respect of which the claim has arisen to permit any claimant after seven days' notice to the Company to amend the statement in writing of the claim delivered by him to the Company in the case of discovery of any error or mistake therein or for any other reasonable cause such error mistake or cause to be established to the satisfaction of the lord ordinary or sheriff after hearing the Company if they object to the amendment and such amendment shall be subject to such terms enabling the Company to investigate the amended claim and to make a new offer and as to postponing the hearing of the claim and as to the expenses of the inquiry and otherwise as to such lord ordinary or sheriff may seem just and proper in all the circumstances of the case.

(3) This section shall be applicable only in cases where the notice to treat under the Lands Clauses Consolidation (Scotland) Act 1845 either contained or was endorsed with a notice giving the effect of this section.

For protection of Glasgow Corporation.

22. The provisions of sections 18 to 23 of the Railways Clauses Consolidation (Scotland) Act 1845 shall for the purposes of this Order extend and apply to the gas mains pipes and apparatus of the corporation of the city of Glasgow (hereinafter in this section referred to as "the corporation") as if the corporation were a "company or society" mentioned in those sections Provided that any penalties recovered under section 23 of the said Act shall be appropriated to the revenue account of the gas undertaking of the corporation.

Application of certain sections of London Midland and Scottish Railway Act 1924 and London Midland and Scottish Railway Order 1933. 14 & 15 Geo. 5. c. liv.

23.—(1) The provisions of section 54 (Powers as to building on or over lands) of the London Midland and Scottish Railway Act 1924 shall extend and apply to any lands in Scotland which may be acquired or held by the Company under the powers of this Order.

(2) The provisions of section 7 (Power to sell &c. or hold land) of the London Midland and Scottish Railway Order 1933 shall extend and apply to any land in Scotland which may be acquired or held by the Company under the powers of this Order.

Provision as to general railway Acts.

24. Nothing contained in this Order shall be deemed or construed to exempt the railway 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 or from any future revision and alteration under the authority of Parliament of the maximum rates of fares and charges authorised to be taken by the Company.

Costs of Order.

25. All costs charges and expenses of and incident to the preparing for obtaining and confirming this Order or otherwise in relation thereto shall be paid by the Company.

The SCHEDULE referred to in the foregoing Order.

PROPERTIES OF WHICH PORTIONS ONLY MAY BE TAKEN COMPULSORILY

Area.	No. on deposited plans.	Description of property in book of reference.
	ROAD DIVERSION AT GREENOCK.	
County of Renfrew— Old or West Parish of Greenock in the burgh of Greenock.	2	Dwelling-houses washing-house coal - sheds ashpit drying green gardens huts and shrubs.
	3	Dwelling-houses drying green wash-house coal-sheds ashpit and vacant ground.
	LAND AT GARTSHERRIE.	
County of Lanark— Parish of Old Monkland in the Ninth District.	6	Pasture land farmhouse yard byre stables barn outbuildings and garages.

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