ELIZABETH II

1986 CHAPTER vi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Lothian Region (Edinburgh Western Relief Road).

[16th April 1986]

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: 1936 c. 52.

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 Lothian Region (Edinburgh Western Relief Road) Order Confirmation Act 1986. Short title.

SCHEDULE

LOTHIAN REGION (EDINBURGH WESTERN RELIEF ROAD)

Provisional Order to authorise The Lothian Regional Council to acquire lands; to construct and maintain a new road into the City of Edinburgh from the west; to divert a portion of the Edinburgh/Glasgow and Edinburgh/Dundee railway lines; to construct a railway junction; to construct a spur road linking the proposed new road with the A8 road and to construct other relative works; to confer powers on the British Railways Board in relation to the diverted portion of the Edinburgh/Glasgow and Edinburgh/Dundee railway lines and the said railway junction; and for other purposes.

Whereas the existing roads leading into Edinburgh from the west of the city bear an excessive amount of vehicular traffic causing accidents, traffic congestion, delays to users of the said roads, danger and inconvenience to residents in the neighbourhood of those roads, impairment of public transport services and deterioration of the amenity of the said residents by noise, pollution and visual disturbance:

And whereas it is anticipated that the problems aforesaid will become progressively worse as the density of traffic on some of the said roads increases leading to further deterioration of the quality of the lives of the said residents and of the efficiency of many businesses operating in the west of Edinburgh:

And whereas the construction of a new road into Edinburgh from the west of the city and other relative works would improve access to the city and thereby relieve the said traffic congestion and other problems and be of public and local advantage:

And whereas the local roads authority propose to undertake a comprehensive range of traffic management, traffic restraint and environmental measures which would secure a significant improvement to the conditions of many people living and working in the west of Edinburgh:

1973 c. 65.

And whereas by virtue of section 133 of the Local Government (Scotland) Act 1973 The Lothian Regional Council (hereinafter referred to as "the Council") are vested with all the functions of a local roads authority for the area of Lothian Region:

1962 c. 46.

And whereas it is the duty of the British Railways Board (hereinafter referred to as "the Board") under the Transport Act 1962 (inter alia) to provide railway services in Great Britain and, in

onnection with the provision of railway services, to provide such ther services and facilities as appear to the Board to be expedient, nd to have due regard, as respects all those railway and other services nd facilities, to efficiency, economy and safety of operation:

And whereas it is expedient that the Council should be authorised o construct a new road and relative works as aforesaid and to exercise he other powers conferred on the Council by this Order:

And whereas it is expedient in order to facilitate the construction of he said new road that a portion of the Edinburgh/Glasgow and Edinburgh/Dundee railway lines belonging to the Board should be diverted as provided in this Order and that an extension of the Edinburgh Suburban and Southside Junction Railway should be constructed, as provided in this Order, so as to accommodate a junction with the said railway lines as diverted:

And whereas it is expedient that powers should be conferred upon the Board in relation to the maintenance and use of the diverted portion of the Edinburgh/Glasgow and Edinburgh/Dundee railway lines and of the said railway junction as part of their undertaking:

And whereas it is expedient that the different aspects of the scheme for the said new road, including the diversion of the Edinburgh/Glasgow and Edinburgh/Dundee railway lines, the construction of the said railway junction and the compulsory acquisition of lands and servitudes, be taken and considered together:

And whereas estimates have been prepared of the cost of acquisition of lands and servitudes for, and the execution of, the works authorised by this Order and such estimates are as follows:—

	£
Purchase of lands and servitudes	1,716,000
Works	27,900,000
	29,616,000

And whereas it is expedient that the further provisions contained in this Order should be enacted:

And whereas plans and sections showing the lines and levels of the works authorised by this Order, with 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 lands and other property required or which may be taken for the purposes or under the powers of this Order, have been deposited with the sheriff clerk of the Edinburgh sheriff court district and such plans, sections and book of reference are in this Order respectively referred to as the deposited plans, the deposited sections and the deposited book of reference:

And whereas the purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936: 1936 c. 52.

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

PART I

PRELIMINARY

Short title.

1. This Order may be cited for all purposes as the Lothian Region (Edinburgh Western Relief Road) Order 1985.

Interpretation.

2.—(1) In this Order terms, words and expressions to which meanings are assigned by any public Act wholly or partially incorporated with this Order shall, subject to the provisions of this Order, have the said respective meanings, unless there is something in the subject or context inconsistent with or repugnant to such construction.

(2) The following words and expressions in this Order have, unless there is something in the subject or context repugnant to such construction, the meanings hereby assigned to them, that is to say:—

"Act of 1972" means the Town and Country Planning (Scotland) Act 1972;

1972 c. 52.

"Act of 1973" means the Local Government (Scotland) Act 1973;

1973 c. 65.

1984 c. 12.

"Act of 1984" means the Telecommunications Act 1984;

"Board" means the British Railways Board;

"Council" means The Lothian Regional Council;

"day of transfer" means the day on which the Board discontinue all railway passenger services on so much of their existing railway as shall be rendered unnecessary by the deviated railway;

"deposited plans" and "deposited sections" mean respectively the plans and sections deposited in connection with this Order;

"deviated railway" means Works Nos. 2 and 2A authorised by this Order and all works and conveniences connected therewith;

"district council" means the City of Edinburgh District Council;

"existing" means existing at the commencement of this Order;

"operational land" has the meaning assigned to it by section 211 of the Act of 1972;

"operator", in relation to a telecommunications code system, means the person authorised by a licence under section 7 of the Act of 1984 to run such a system;

"railway property" means any railway within the limits of deviation shown on the deposited plans or the signed plan and any works connected therewith and includes any land within the said limits held or used for the purpose of any such railway or works;

"regional solicitor" means the solicitor to the Council;

PART I —*cont.*

"sheriff" means the sheriff principal of the sheriffdom of Lothian and Borders and includes any sheriff of the Edinburgh sheriff court district;

"sheriff clerk" means the sheriff clerk of the Edinburgh sheriff court district;

"signed plan" and "signed section" mean respectively the plan and section of Work No. 2A of this Order, seven copies of which shall be signed by Michael J. Martin, M.P., the Chairman of the Commissioners to whom this Order was referred, and deposited within one month of the commencement of this Order as follows, that is to say, one copy at the office of the Clerk of the Parliaments, House of Lords, one at the Private Bill Office, House of Commons, one at the office of the Secretary of State in Edinburgh, one at the office of the Department of Transport, one with the sheriff clerk of the Edinburgh sheriff court district, one with the chief executive of the City of Edinburgh District Council, and one with the Solicitor (Scotland) of the British Railways Board;

"telecommunication apparatus" has the same meaning as in paragraph 1 (1) of Schedule 2 to the Act of 1984;

"telecommunications code system" means a telecommunication system, the running of which is authorised by a licence under section 7 of the Act of 1984;

"tribunal" means the Lands Tribunal for Scotland;

"works" means the works authorised by this Order.

(3) All areas, directions, distances, lengths and widths stated in any description of works, powers or lands other than in section 22 (Power to deviate) of this Order shall be construed as if the words "or thereby" were inserted after each such area, direction, distance, length and width.

(4) Paragraph 23 of the telecommunications code in Schedule 2 to the Act of 1984 shall apply to the Council for the purposes of the works, or any works or operations authorised by section 23 (Subsidiary works) or section 25 (Power to alter roads, etc., temporarily) of this Order.

Incorporation of Acts.

3.—(1) The following Acts, and parts of Acts, so far as they are applicable for the purposes of and are not varied by or inconsistent with the provisions of this Order, are incorporated with this Order, that is to say:—

(*a*) the Lands Clauses Acts (except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845); 1845 c. 19.

(*b*) the Railways Clauses Consolidation (Scotland) Act 1845 except sections 7, 8, 9, 17, 19, 20, 22, and 23 thereof. 1845 c. 33.

(2) In construing, for the purposes of this Order, the enactments incorporated with this Order—

(*a*) this Order shall be deemed to be the special Act;

(*b*) the Council shall be deemed to be the promoters of the undertaking or the company in respect of Works Nos. 1, 3 and 4 of this Order;

PART I —*cont.*

(*c*) until the day of transfer the Council, and thereafter the Board, shall be deemed to be the promoters of the undertaking or the company in respect of Works Nos. 2 and 2A of this Order;

(*d*) the works (other than Works Nos. 2 and 2A of this Order) shall be deemed to be the works or the undertaking;

(*e*) Works Nos. 2 and 2A shall be deemed to be the railway; and

(*f*) any part of Work No. 2 or 2A shall be deemed to be the centre of the railway;

all as the case may require.

PART II

LANDS

Power to take lands.

4. Subject to the provisions of this Order, the Council may enter upon, take and use all or any of the lands shown on the deposited plans and described in the deposited book of reference which they may require for the purposes of the works, including the improvement and development of any lands fronting or abutting on or adjacent to any road or for the purposes of recoupment, reinstatement or exchange or for any other purposes of this Order.

Acquisition of part only of certain properties.

1845 c. 19.

5.—(1) For the purposes of this Order, the following provisions of this section shall have effect in substitution for section 90 of the Lands Clauses Consolidation (Scotland) Act 1845.

(2) No person shall be required to sell a part only of any house, building or factory, or of a park or garden belonging to a house or other premises, if he is willing and able to sell the whole of the house, building, factory, park or garden unless the tribunal determines—

(*a*) in the case of a house, building or factory that such part as is proposed to be taken can be taken without material detriment to the house, building or factory; or

(*b*) in the case of a park or garden that such part as aforesaid can be taken without seriously affecting the amenity or convenience of the house or other premises to which it belongs.

(3) If the tribunal determines as aforesaid, compensation shall be awarded in respect of any loss due to the severance of the part proposed to be taken in addition to the value of that part and thereupon the person interested shall be required to sell to the Council that part of the house, building, factory, park or garden.

(4) In determining whether—

(*a*) a part of a house, building or factory can be taken without material detriment or damage to the house, building or factory; or

(*b*) part of a park or garden belonging to a house or other premises can be taken without seriously affecting the amenity or convenience of the house;

PART II —*cont.*

the tribunal shall—

(i) take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land; and

(ii) have regard not only to the right or interest which is to be acquired in or over the land, but also to any adjoining land belonging to the same owner and subject to compulsory acquisition by virtue of this Order.

Power to acquire servitudes compulsorily in certain cases.

6. Notwithstanding anything in this Order or in any Act wholly or partly incorporated herewith, the Council may, instead of acquiring any land that they are authorised to acquire compulsorily under this Order, purchase and acquire compulsorily such servitudes or rights over or in any such lands as they may require for the purpose of constructing, maintaining, renewing and using or removing the works or for the purpose of obtaining access to the works without the Council being obliged or compelled to purchase any greater interest in, under or over the same, and the provisions of the Lands Clauses Acts shall extend and apply to such servitudes and rights as if the same were lands within the meaning of those Acts.

Persons under disability may grant servitudes, etc.

7.—(1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Council any servitude, right or privilege (not being a servitude, right or privilege of water in which persons other than the grantors have an interest) required for any of the purposes of this Order in, over or affecting any such lands.

(2) The provisions of the said Acts with respect to lands and feuduties or ground annuals so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

Extinction of private rights of way over lands acquired.

8.—(1) All private rights of way over any lands which may under the powers of this Order be acquired compulsorily shall as from the date of such acquisition whether compulsorily or by agreement be extinguished.

(2) The Council shall make compensation to all parties interested in respect of any such rights.

(3) Such compensation, in the case of difference, shall be determined in accordance with the provisions of the Land Compensation (Scotland) Act 1963. 1963 c. 51.

Power to enter upon lands and buildings for survey and valuation.

9. Subject to the provisions of this Order, the Council and their surveyors and officers, and any other person duly authorised in writing under the hand of the regional solicitor, may at all reasonable times in the day upon giving on the first occasion not less than seven days' and on subsequent occasions not less than three days' previous notice in writing to the occupier, enter upon and into the lands and buildings

PART II —*cont.*

by this Order authorised to be taken or used or any of them for the purpose of surveying and valuing the said lands and buildings.

Further powers as to entry on lands.

10.—(1) Subject to the provisions of this Order, the powers of entry upon lands conferred upon the Council and their surveyors, officers and others by section 9 (Power to enter upon lands and buildings for survey and valuation) of this Order shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein:

Provided that such power shall not be exercised with respect to any land unless notice of the intention of the Council to do so has been included, and the nature of the operations proposed to be carried out has been specified in the notice required to be given to the occupier of the land pursuant to the said section and in any such case the Council shall not be required to give further notice in respect of any subsequent entry on the land for the purposes of carrying out the operations specified in the notice.

(2) In the exercise of the powers conferred by this section, the Council shall cause as little detriment and inconvenience to any person as circumstances allow and shall make compensation to the owners and occupiers of any lands or the owners of any services injuriously affected by the exercise of such powers, such compensation in case of difference to be determined in accordance with the provisions of the Land Compensation (Scotland) Act 1963.

1963 c. 51.

Power of entry on lands compulsorily acquired.

11. Subject to the provisions of this Order, where the Council are by this Order authorised to purchase land compulsorily then at any time after notice to treat has been served, they may, after giving to the owner and occupier of the land not less than 14 days' notice in writing, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with the provisions of sections 83 to 88 of the Lands Clauses Consolidation (Scotland) Act 1845, but subject to payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

1845 c. 19.

Compensation in cases of recently altered buildings.

12. In settling any question of disputed purchase money or compensation under this Order the tribunal settling the same 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 interests in lands created, after 20th March 1984, if, in the opinion of such 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 purchase money or compensation under this Order.

Set-off of betterment against compensation.

13. In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

(*a*) he has an interest in any other land contiguous with or adjacent to the land so acquired; and

PART II —*cont.*

(*b*) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the execution of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money.

Agreements with owners of property.

14. Notwithstanding anything in this Order, the Council may, subject to the provisions of this Order, in connection with the powers granted to them thereby, enter into and carry into effect agreements with any owners of property or other persons interested in lands, houses or property any part of which is shown on the deposited plans, with respect to the purchase by the Council of any such lands, houses or property or any rights or servitudes in, over or affecting the same for such consideration, being a sum of money in gross or a grant of land or partly money and partly land, as may be agreed upon between the Council and such owners or other persons.

Power to reinstate owners of property.

15. The Council may enter into and carry into effect agreements with the owners of, or other persons interested in, any land which may be acquired under the provisions of this Order, or which may be in the neighbourhood of any of the works, with respect to the re-instatement of such owners or other persons and with respect to the exchange of lands for that purpose and the Council may pay or receive money for equality of exchange.

Period for compulsory purchase of lands.

16.—(1) The powers of the Council under section 4 (Power to take lands) of this Order for the compulsory purchase of lands for the purposes of this Order shall cease on 31st December 1990.

(2) The powers of the Council for the compulsory acquisition of such lands and servitudes shall, for the purposes of this section, be deemed to have been exercised if before 31st December 1990 notice to treat has been served in respect of those lands and servitudes.

Power as to acquisition and utilisation of additional lands.

17.—(1) In addition to the lands which the Council are authorised to acquire by section 4 (Power to take lands) of this Order the Council may acquire, by agreement any lands required for the following purposes:—

(*a*) providing for the relocation of population or industry from any lands within the limits of deviation;

(*b*) providing recreational land or allotments in substitution for any lands within the limits of deviation;

(*c*) forming junctions between the works or any part thereof and any roads; and

(*d*) executing, improving or maintaining the works.

(2) The Council may be authorised by the Secretary of State to purchase compulsorily any lands for the purposes mentioned in subsection (1) of this section and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to any such compulsory purchase as if this section had been contained in a public general Act in force immediately before the commencement of that Act. 1947 c. 42.

PART II —*cont.*

(3) The Council may utilise any lands acquired by them in pursuance of the provisions of subsection (1) or (2) of this section, or any other land vested in them, for such purposes and for the purposes of section 23 (Subsidiary works) of this Order.

(4) The Council shall not exercise the powers of this section in respect of any operational land of the Board.

Power to retain, sell, etc., lands. 1845 c. 19.

18.—(1) Notwithstanding anything to the contrary contained in the Lands Clauses Consolidation (Scotland) Act 1845, the Council may retain, hold and use for such time as they think fit, or may from time to time sell, feu, lease, excamb or otherwise dispose of any lands vested in or belonging to them for the purpose of the works or that may be acquired under the provisions of this Order and that on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the Council and their successors in title) as to the Council may seem fit.

(2) The proceeds of the sale of any lands by the Council shall be applied only to purposes to which capital is properly applicable including the redemption of debt.

Correction of errors in deposited plans and book of reference.

19.—(1) If the deposited plans, or the deposited book of reference, are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Council, after giving not less than 10 days' notice to the owner, lessee or occupier of the land in question, may apply to the sheriff for the correction thereof.

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

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the sheriff clerk and with the regional solicitor 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 Council to take the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of a certificate is deposited under this section shall keep it with the other documents to which it relates.

Service of notices, etc. 1947 c. 42.

20. Paragaph 19 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply and have effect with respect to any notice or other document required or authorised to be served under or by virtue of this Order as if such notice or other document were required or authorised to be served under that Schedule.

PART III

WORKS

Power to execute works.

21.—(1) Subject to the provisions of this Order, the Council may make and maintain, in the lines and situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections, (and, in the case of Work No. 2A of this Order, shown on the signed plan and according to the levels shown on the signed section), the works hereinafter described together with all necessary and proper appliances, works and conveniences incidental or subsidiary thereto. The works are—

Work No. 1 The construction of a new road in the City of Edinburgh District 5·7 kilometres in length commencing at a junction with a proposed city by-pass at a point 180 metres north-east of a point on Gogar Station Road 630 metres from its junction with Calder Road and at or in the vicinity of the terminus of a proposed extension of the M8 motorway, then proceeding eastwards on embankment across open land crossing Cultins Road then on low embankment through the open strip of land lying between the Edinburgh/Glasgow railway line and Bankhead Drive encroaching upon the sides of the railway embankment; then rising at Sighthill Park to a bridge over the South Gyle access road; then on embankment to a roundabout connecting to a roundabout on Bankhead Drive (including the realignment of Bankhead Drive southwards into Sighthill Park in order to accommodate the new road); then continuing on embankment to a bridge over Broomhouse Road; thence dropping to or just below ground level passing through open land between the said railway and Broomhouse Drive and encroaching on the embankment of the said railway; thence by bridge over Saughton Road and on embankment until dropping to enter cutting just before Saughton footbridge which crosses over the railway between Carrick Knowe Avenue and Saughton Mains Street (including the removal and replacement of the said footbridge by a footbridge crossing both the new road and the railway on approximately the same alignment); then following the line of the existing Edinburgh/Glasgow and Edinburgh/Dundee railway lines between the back gardens of the houses of Stenhouse Avenue West and Whitson Road on the south and Carrick Knowe golf course on the north and still in cutting until rising to cross Balgreen Road by bridge thence on allotment ground lying between the said railway lines and Balgreen primary school until the Water of Leith; thence on viaduct over the Water of Leith and along the boundary between railway land and the Westfield Industrial Developments and encroaching upon both, crossing while still on viaduct a railway branch line and Westfield Road and then on embankment lying upon the solum of West Approach Road (the connection between West Approach Road and Westfield Road to be extinguished by the said works) then on the existing embankment of West Approach

PART III —*cont.*

Road; thence along the solum of West Approach Road over Haymarket East Bridge and over Russell Road Bridge (including rebuilding of the said bridges) to a junction with Works Nos. 3 and 4 of this Order at a point just east of the said bridges where the solum of the former Roseburn railway branch line intersects West Approach Road;

Work No. 2 A diversion of a section of the Edinburgh/Glasgow and Edinburgh/Dundee railway lines of 1,900 metres in length by a maximum of 34 metres; the said railway diversion commencing at a western terminus approximately 150 metres to the east of the point of junction between the Edinburgh/Glasgow and Edinburgh/Dundee railway lines; then proceeding eastwards, all four lines to be diverted northwards by large radius curvature at the back of Carrick Knowe Road and then into Carrick Knowe golf course with a maximum diversion of 34 metres; thence to the south encroaching on the back lane to Baird Drive before joining on to the existing mainline tracks within the Haymarket junction; such works to include the lifting and removal of existing railway lines and apparatus and the reconstruction of the railway bridge over Balgreen Road;

Work No. 2A An extension and realignment of the existing Edinburgh Suburban and Southside Junction Railway, commencing by a junction with Work No. 2 at a point 197 metres west of the bridge carrying that work over Balgreen Road and terminating by a junction with the said existing railway at a point 116 metres north-west of the bridge carrying that railway over Westfield Road;

Work No. 3 A new spur road in the Roseburn area of the said district 600 metres in length and incorporating a cycle track on the east side starting from a junction with the existing A8 road at the junction between Roseburn Terrace and Wester Coates; thence rising to the level of the former North Leith spur branch railway line and crossing by three separate bridges the Edinburgh/Dundee and Edinburgh/Glasgow railway lines, the entry to the Russell Road Industrial Estate and a branch railway line and then following the line and level of the said former branch railway line to a junction with Work No. 1;

Work No. 4 An improvement of West Approach Road for 700 metres of its length with varying verge widths and incorporating a cycle track on the north side of the carriageway from Dalry Road westwards and connecting to the existing ramps at Dundee Street and terminating approximately 250 metres to the east of that junction by joining with West Approach Road; such work to include the replacement of the existing bridge carrying West Approach Road over Dalry Road;

and the said works shall include landscaping of contiguous areas to improve the appearance of the said works and to reduce their impact on surrounding property.

PART III —*cont.*

(2) The Council shall erect a good and sufficient fence on each side of every bridge and viaduct forming part of Works Nos. 1, 3 and 4 of this Order.

(3) Notwithstanding the provisions of subsection (3) of section 2 (Interpretation) and section 22 (Power to deviate) of this Order the Council shall reconstruct the bridge carrying Work No. 2 of this Order over Balgreen Road with a clear height of not less than 4·57 metres from the surface of the road.

Power to deviate.

22. In the construction of the works, the Council may deviate laterally from the lines or situations of the works shown on the deposited plans to any extent not exceeding the limits of deviation shown upon those plans. They may also deviate vertically from the levels shown on the deposited sections in the construction of the works west of Cultins Road to any extent not exceeding 10 metres upwards and 10 metres downwards and elsewhere not exceeding 2 metres upwards and 1 metre downwards or to such further extent in respect of any part of the works as may be found necessary or convenient and as may be sanctioned by the Secretary of State.

Subsidiary works.

23.—(1) Subject to the provisions of this Order, the Council may, within the limits of deviation shown on the deposited plans, in carrying out the works erect, construct and maintain, whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of, or in connection with, the construction of the works.

(2) In the exercise of the powers conferred by this section the Council shall—

(*a*) cause as little detriment and inconvenience to any person as circumstances allow; and

(*b*) make compensation to the owners and occupiers of any lands injuriously affected and to the owners of any apparatus who suffer loss by the exercise of such powers.

(3) Such compensation, in case of difference, shall be determined in accordance with the provisions of the Land Compensation (Scotland) Act 1963. 1963 c. 51.

(4) Any paving, metalling or materials in, on or under any roads stopped up, altered or diverted by the Council under the powers of this Order and any sewers, drains and works rendered unnecessary by the substitution therefor of other sewers, drains and works shall vest in the Council, and the substituted sewers, drains and works shall be under the same jurisdiction, care, management and direction as the existing sewers, drains and works for which they may be so substituted.

(5) (*a*) In exercising the powers conferred upon them by this section the Council shall not use any telecommunication apparatus belonging to or used by an operator of a telecommunications code system or alter any such apparatus except in accordance with and subject to the provisions of the telecommunications code.

(*b*) In this subsection the expression "alter" shall be construed in accordance with paragraph 1 of Schedule 2 to the Act of 1984.

PART III —*cont.*

(6) The provisions of section 38 (For protection of South of Scotland Electricity Board and British Gas Corporation) of this Order shall apply and have effect with respect to the exercise by the Council of the powers conferred on them by this section as if the said provisions were, with any necessary modifications, incorporated in this section.

(7) The Council shall not exercise the powers of this section upon, across, under or over, or so as to affect, railway property except with the written consent of the Board, which consent shall not be unreasonably withheld, and if any such consent is given the provisions of section 39 (For protection of British Railways Board) of this Order shall apply and have effect with respect to the exercise by the Council of the powers conferred on them by this section as if those provisions were, with any necessary modifications, incorporated in this section.

Power to stop up, etc., roads.

24.—(1) Subject to the provisions of this Order, the Council may stop up the whole or such portion or portions as they think fit of so much of the roads and other ways to which this section applies as is shown on the deposited plans as intended to be stopped up, and thereupon all rights of way over the said roads and other ways or portions thereof shall be extinguished and the site and soil thereof shall vest in the Council who may appropriate and use the same.

(2) Any person who suffers loss by—

(*a*) the appropriation of any site of which he is the owner; or

(*b*) the extinguishment of any private right;

under this section shall be entitled to be paid by the Council compensation to be determined in case of dispute under and in accordance with the Land Compensation (Scotland) Act 1963.

1963 c. 51.

(3) This section applies to—

Bankhead Drive;

Saughton Mains Street;

Stenhouse Avenue West and the northward extension thereof;

West Approach Road; and

the subway connection between the property of Granfit Holdings Limited at Westfield Road and the rugby football pitches at Murrayfield.

(4) In the exercise of the powers conferred on them by this section the Council may stop up a road or way or a portion thereof subject to the reservation of a means of passage along the road or way for pedestrians or bicyclists.

Power to alter roads, etc., temporarily.

25.—(1) The Council may, for the purposes and during the execution of the works and in maintaining the same and subject to the provisions of this Order, temporarily from time to time break up or cross over or under, alter or stop up, remove or otherwise interfere with, any highways, roads, lanes, footways, footpaths, bridges, railways, passages, sewers, drains, watercourses, water mains and pipes and electric or telecommunication apparatus in any of the lands

PART III —*cont.*

shown on the deposited plans and specified in the deposited book of reference with which they may from time to time find it expedient for any of those purposes so to interfere.

(2) The Council shall provide, when possible and where practicable, a proper temporary substitute before interrupting the traffic on any such highway, road, lane, footway, bridge, railway or passage or the flow of sewage, water, electricity or telecommunication in any such sewer, drain, watercourse, main, pipe or apparatus.

(3) The Council shall make compensation to all persons injuriously affected by the exercise of such powers.

(4) Such compensation, in case of difference, shall be determined in accordance with the provisions of the Land Compensation (Scotland) Act 1963. 1963 c. 51.

(5) (*a*) The provisions of subsection (5) of section 23 (Subsidiary works) of this Order shall extend and apply with respect to the exercise by the Council of the powers of this section as if the said provisions were, with any necessary modifications, incorporated in this section.

(*b*) The exercise by the Council of the powers conferred by this section with respect to any highway, road, lane, footway, footpath or bridge shall not prejudice or affect any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system—

(i) to install, keep installed, maintain, inspect, repair, renew or remove any telecommunication apparatus belonging to or used by such operator which may be for the time being under, in, upon, over, along or across that highway, road, lane, footway, footpath or bridge; or

(ii) for the purpose of such installation, maintenance, inspection, repair, renewal or removal to enter upon or break open that highway, road, lane, footway, footpath or bridge.

(6) The provisions of section 38 (For protection of South of Scotland Electricity Board and British Gas Corporation) of this Order shall apply and have effect with respect to the exercise by the Council of the powers conferred on them by this section as if the said provisions were, with any necessary modifications, incorporated in this section.

(7) Before the Council exercise the powers conferred on them by this section they shall give not less than 14 days' prior written notice to the following persons of their intention so to do:—

(*a*) the operator of any public service vehicles whose service will be interrupted by the exercise of such powers;

(*b*) the police authority for the area of Lothian Region; and

(*c*) the traffic commissioners for the Scottish traffic area constituted by section 3 of the Public Passenger Vehicles Act 1981. 1981 c. 14.

PART III —*cont.*

Connection of drains, etc., with streams, etc.

26.—(1) For the purpose of draining or carrying away surface water from the works, or otherwise, the Council may, within the limits of deviation shown on the deposited plans, lay down, maintain and alter or remove any drains, sewers, conduits, pipes and other works and make any convenient connections with any available river, stream or watercourse, or with any sewer or drain.

(2) The Council shall not exercise the powers of this section upon, across, under or over or so as to affect railway property except with the written consent of the Board, which consent shall not be unreasonably withheld.

(3) Nothing in this section shall derogate from the provisions of section 28 of the Rivers (Prevention of Pollution) (Scotland) Act 1951 or section 31 (Control of pollution of rivers and coastal waters, etc.) of the Control of Pollution Act 1974.

1951 c. 66.

1974 c. 40.

Vesting and disposal of materials.

27.—(1) All materials removed by the Council under the powers conferred on them by this Order and all materials (other than any apparatus belonging to a statutory undertaker or any telecommunication apparatus belonging to or used by the operator of a telecommunications code system) removed by the Council from any street or other place or otherwise obtained by them in the construction and maintenance of the works shall vest in the Council.

(2) The Council may use all or any of the said materials for the purposes of the construction or maintenance of the works, or they may sell or otherwise dispose of the said materials as they think fit.

(3) In this section the expression "statutory undertaker" has the same meaning as in the Act of 1972.

Period for completion of works.

28. If the works are not completed by 31st December 1995, the powers by this Order granted for executing the works or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Vesting and maintenance of new road.

1984 c. 54.

29. On completion of the new roads comprising Works Nos. 1 and 3 of this Order or of any portion thereof the Council shall enter the said new roads or such portion thereof in the list of public roads kept by them under section 1 of the Roads (Scotland) Act 1984.

Vesting and *maintenance of* deviated railway.

30.—(1) On the day of transfer—

(*a*) the land held or used by the Council for the purpose of or in connection with the construction of the deviated railway and all powers and duties under any enactment (including this Order) relating to the deviated railway shall be transferred to and vested in the Board;

(*b*) the Council shall deliver to the Board valid and duly recorded titles in favour of the Board (which shall have been previously approved by the solicitor to the Board) to that land and any agreements or other writings relating to the deviated railway which shall have been entered into by the Council with the approval of the Board; and

PART III —*cont.*

(*c*) subject to section 39 (For protection of British Railways Board) of this Order the Council shall cease to be liable for the maintenance and upkeep of the deviated railway.

(2) From the day of transfer the Board may maintain the deviated railway which shall for all purposes form part of the undertaking of the Board.

Landscaping and insulation.

31.—(1) Within two years after the opening to public traffic of the new road comprising Work No.1 of this Order, the Council shall implement at their own expense such landscaping and sound insulation works as may be reasonably practicable to mitigate any detrimental effect on the amenity of properties abutting West Approach Road caused by any increase in traffic on West Approach Road after the said new road has been opened to public traffic.

(2) Before carrying out the works referred to in subsection (1) of this section, the Council shall consult with the district council and have regard to their views thereon.

Control of traffic.

32.—(1) The Council shall monitor the traffic entering and leaving the roads comprising Works Nos. 1, 3 and 4 of this Order and West Approach Road at their junctions with other roads and they shall promote such traffic management and traffic restraint measures as are necessary or desirable in order to mitigate the effect on the amenity of the New Town, Central (including Lothian Road, Castle Terrace, Spittal Street, Lady Lawson Street, the Royal Mile, Cowgate and Grassmarket), Fountainbridge, Haymarket and Tollcross areas of Edinburgh of any increase in traffic in those areas caused by the opening to, and subsequent use by, public traffic of the roads comprising Works Nos. 1, 3 and 4 of this Order or any of them.

(2) Before promoting the traffic management and traffic restraint measures referred to in subsection (1) of this section, the Council shall consult with the district council and have regard to their views thereon.

Powers as to Dalry Cemetery.

33.—(1) Where, in the exercise of the powers conferred by this Order, the Council find it necessary to enter upon Dalry Cemetery (in this section referred to as "the cemetery") or any part thereof, they may—

(*a*) temporarily remove or change the position of any tombstone or monument in the cemetery; and

(*b*) erect and install such equipment, apparatus and appliances as they require for the purpose of executing the works:

Provided that upon completion of the works—

(i) all such equipment, apparatus and appliances are removed;

(ii) any such tombstone or monument is reinstated; and

(iii) any damage to the surface of the ground affected by the said works is made good.

PART III —*cont.*

(2) During the execution of the works authorised by this Order the remains of any deceased person interrred in the cemetery shall not be disturbed unless the Council find it necessary and in that case the Council shall, subject to the provisions of this section, remove and reinter or cause to be removed and reinterred the remains of any deceased person which have to be disturbed:

Provided that the Secretary of State on the application of the Council after consultation with the Commission and on being satisfied that such removal is not necessary or desirable may dispense with all or any of the after-mentioned requirements of this section on such conditions (if any) as he thinks fit.

(3) (*a*) The Council shall before removing and reinterring any human remains or disposing of any tombstones, monuments or other memorials or fixtures or furnishings in or upon the cemetery publish a notice of their intention so to do at least once during each of two successive weeks with an interval between each publication of at least six days in a newspaper circulating in the City of Edinburgh district and serve a similar notice on the Commission.

(*b*) Such notice shall so far as may be appropriate and practicable in any particular case specify—

(i) the name of the cemetery;

(ii) the office where a list of the names and dates of death (where known and recorded) of any deceased persons whose remains it is proposed to remove from the cemetery and reinter may be inspected at all reasonable hours;

(iii) the burial ground where it is proposed to reinter such remains and the manner in which it is proposed to dispose of the tombstones, monuments or other memorials or fixtures or furnishings in or upon the place;

(iv) that the personal representative or any relative of any deceased person or, in the case of a Commonwealth war burial, the Commission, may himself undertake the removal from the cemetery and reinterment of the remains of the deceased person and the disposal of any tombstone, monument or other memorial in or upon the cemetery commemorating the deceased within the time specified in paragraph (*b*) of subsection (4) hereof; and

(v) any directions given by the Secretary of State either generally or in any particular case (after consultation with the church authority in the case of a church or churchyard) with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any tombstones, monuments or other memorials or fixtures or furnishings in or upon the cemetery.

(4) (*a*) The personal representative or any relative of any deceased person or, in the case of a Commonwealth war burial, the Commission, whose remains are interred in the cemetery may on giving notice in writing to the Council within one month of the date of the last publication of the notice referred to in the last preceding subsection and on satisfying the Council (or in the event of dispute the sheriff) of his title to do so himself remove from the cemetery and

PART III —*cont.*

reinter any such remains and may dispose of any tombstone, monument or other memorial commemorating the deceased and the Council shall defray the expenses of such removal, reinterment or disposal of the remains removed from any one grave, of the disposal of any tombstone or monument and of the disposal of any other memorial up to the sum of £250 in each of the said three cases.

(*b*) If the removal, reinterment or disposal, as the case may be, referred to in the last preceding paragraph of this subsection has not been carried out by the personal representative or any relative of the deceased person or the Commission in accordance with the provisions of that paragraph within two months from the date of the notice given thereunder the Council may carry out the removal, reinterment or disposal as if such notice had not been given.

(5) (*a*) Any human remains interred in the cemetery which have not been removed and reinterred by the personal representative or by a relative of the deceased person or the Commission within the time prescribed by paragraph (*b*) of subsection (4) of this section shall on removal from the cemetery by the Council be reinterred in the burial ground specified in the notice and the Council shall in carrying out such reinterment have due regard to the setting apart of any portion of such burial ground for burial in connection with any particular religious denomination.

(*b*) Any tombstone, monument or any other memorial in the cemetery commemorating any deceased person whose remains are reinterred in accordance with the provisions of the last preceding paragraph of this subsection may where reasonably practicable be removed and re-erected by the Council over the grave in the burial ground where the remains are reinterred or on some other appropriate site.

(6) Any tombstone, monument or other memorial not disposed of by the personal representative or by a relative of a deceased person or the Commission or re-erected by the Council in accordance with the provisions of the last preceding subsection shall before being disposed of by the Council be broken and defaced.

(7) in this section—

"Commission" means the Commonwealth War Graves Commission; and "Commonwealth war burial" means a burial of any officer, rating or other rank of the naval, military or air forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or any other person accepted by the Commission as falling within the terms of its founding Royal Charters.

For protection of district council.

34. Sections 35 and 36 of this Order shall apply and have effect for the protection of the district council.

Alterations to golf course.

35.—(1) The Council shall carry out at their own expense such alterations, whether temporary or permanent, to the Carrick Knowe Golf Course as may, in the reasonable opinion of the district council, be reasonably practicable to enable play to take place there over 18

PART III —*cont.*

holes on that part of the said course not to be taken for the purposes of this Order, the said alterations to be completed within 30 months from the date when the siting of new or altered fairways, tees and greens shall have been agreed or otherwise determined under the provisions of this section.

(2) Before carrying out the said alterations, the Council shall agree with the district council the siting of any new or altered fairways, tees and greens.

(3) In carrying out the said alterations, the Council shall consult with the district council with a view to causing as little inconvenience to users of the said course as is reasonably practicable.

(4) Access to the said course for the purpose of carrying out the said alterations shall be granted to the Council upon the expiry of not less than 28 days' notice in writing of their intention to commence the said alterations given by the Council to the district council.

(5) Any dispute between the Council and the district council arising under this section may be referred by either party to, and determined by, an arbiter to be agreed between the parties or, failing such agreement, to be appointed, on the application of either party (after notice in writing to the other), by the sheriff.

Preservation of amenity.

36.—(1) The Council shall at their own expense take such steps as may, in the reasonable opinion of the district council, be reasonably practicable to mitigate any detrimental effect the works may have on the amenity of lands (other than the Carrick Knowe Golf Course) belonging to the district council which are adjacent to the works and are used by the public for recreation, such steps to include—

(*a*) landscaping of, and tree planting on, such of the said lands as are not to be taken for the purposes of this Order;

(*b*) providing, and equipping to the reasonable satisfaction of the district council, alternative land to the east of Coffin Lane for the purpose of a children's play area;

(*c*) when requested so to do by the district council relocating the football pitch adjacent to Broomhouse Drive on lands belonging to the district council not to be taken for the purposes of this Order;

(*d*) providing, in substitution for any areas of public open space to be taken for the purposes of this Order, and in the vicinity thereof, other land for public recreation so far as it may be available.

(2) Subsection (5) of section 35 of this Order shall apply to subsection (1) of this section as it applies to that section.

(3) In lieu of paying compensation to the district council in respect of lands belonging to them which are used as allotments and are to be taken for the purposes of this Order, the Council shall, if requested so to do in writing by the district council within three months after the commencement of this Order and before entering upon the said lands, provide alternative lands of equivalent extent with topsoil of adequate depth and quality as near as may be to the lands which are to be taken.

PART III —*cont.*

37. The Council shall pay the reasonable costs incurred by any of the tenants of the lands referred to in subsection (3) of section 36 of this Order in relocating their allotments on the alternative lands referred to in that subsection.

For protection of tenants of allotments.

38. For the protection of the undertakers the following provisions shall unless otherwise agreed in writing between the Council and the undertakers apply and have effect:—

For protection of South of Scotland Electricity Board and British Gas Corporation.

(1) In this section—

(*a*) "apparatus" means—

(i) in relation to the South of Scotland Electricity Board, electric lines and works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the said board; and

1882 c. 56.

(ii) in relation to the British Gas Corporation, any mains, pipes or other apparatus belonging to the said board;

and includes any building, structure or works constructed for the lodging therein of apparatus;

"in" in a context relating to apparatus includes under, over, across, along or upon;

"plans" means plans, sections, elevations, working drawings and specifications;

"position" includes depth;

"specified work" means such part of any of the works authorised by this Order as in its execution and maintenance will or may interfere with or affect the support of any apparatus;

"the undertakers" means the South of Scotland Electricity Board and the British Gas Corporation or either of them, as the case may be;

(*b*) references to the acts or defaults of the Council include the acts or defaults of their workmen or servants or of their contractors or agents or the workmen or servants of such contractors or agents:

(2) Notwithstanding anything in this Order or shown on the deposited plans the Council shall not acquire otherwise than by agreement any apparatus or land belonging to the undertakers:

(3) At least 28 days before commencing the execution of any specified work the Council shall give the undertakers notice thereof in writing accompanied by plans of such specified work showing the manner in which and the materials with which the same is to be executed and also showing the means to be employed by the Council not only for protecting the apparatus during the execution of such specified work and for securing a continuous supply of electricity or gas but also for making good any damage to or interference with the apparatus resulting from the execution of such specified

PART III —*cont.*

work and if it should appear to the undertakers that such specified work will interfere with, damage or endanger their apparatus or materially impede the supply of electricity or gas the undertakers may within 21 days of the receipt of such notice require the Council to alter the position of the apparatus or to support the same or to substitute such other apparatus as may be required by the undertakers in such manner as may be agreed or determined by arbitration in accordance with the provisions of this section:

Provided that if the undertakers do not requisition the Council as aforesaid the Council may proceed with the execution of such specified work in accordance with the notice given by them and the accompanying plans:

(4) Where a requisition has been given by the undertakers under the last foregoing subsection the protective works agreed upon or determined as aforesaid shall be executed by and at the expense of the Council but to the satisfaction of and under the superintendence of the undertakers (if after notice given to them by the Council of the time and place of such execution they choose to be represented thereat) and the whole reasonable expenses incurred by the undertakers by or through such superintendence shall be paid by the Council:

Provided that the undertakers may intimate by notice in writing to the Council within 14 days after the receipt by the undertakers of notice of the intended commencement of the specified work their intention themselves to do and execute such protective works and the Council shall on the completion thereof pay to the undertakers the reasonable expenses incurred by them in the execution of such protective works as may be agreed on or determined as aforesaid:

(5) If the position of any of the apparatus is altered by the Council or the undertakers or if other apparatus is substituted therefor as provided for in paragraphs (3) and (4) of this section the undertakers may within 21 days of the receipt by them of the notice referred to in paragraph (3) of this section require the Council to or may within the said period notify the Council of their intention themselves to substitute and may substitute apparatus of a greater size than the apparatus so altered or removed and in that event the undertakers shall pay to the Council or shall themselves bear the additional cost attributable to the substitution of such larger apparatus:

(6) The Council shall indemnify the undertakers against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the undertakers by reason or in consequence of any damage done by the Council to any apparatus or of any interruption

PART III —*cont.*

in the supply by the undertakers of electricity or gas which may without the written authority of the undertakers be in any way occasioned either by reason of the execution by the Council of the works authorised by this Order or by the acts or defaults (in or in connection with such execution) of the Council:

(7) Notwithstanding the temporary stopping up of any street under the powers of this Order the undertakers may exercise the same rights of access as they now enjoy to any apparatus:

Provided that in exercising the said rights of access the undertakers shall not interrupt the execution, maintenance or use of any works of the Council authorised by this or any other order and the undertakers shall compensate the Council for any damage to such works occasioned by the exercise of the said rights:

(8) The undertakers shall if so requested by the Council furnish to the Council all available information relative to the position and nature of any apparatus which in the opinion of the chief engineer of the undertakers might be affected by any of the works authorised by this Order:

(9) Any difference between the Council and the undertakers in connection with any of the provisions of this section or with anything contained in this Order shall failing agreement be determined by an arbiter to be mutually agreed upon between them or failing agreement to be appointed by the sheriff on the application of either party; if in determining any such dispute or difference any question of law arises the said arbiter shall at the request of either party state a case for the opinion and judgment of the Court of Session.

For protection of British Railways Board.

39. For the protection of the Board the following provisions shall unless otherwise agreed in writing between the Council and the Board apply and have effect:—

(1) In this section—

"construction" includes execution, placing and alteration and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer to be appointed by the Board;

"plans" includes sections, drawings, soil and other reports, calculations, details of method of construction and specifications;

"the specified works" means so much of the works as may be situated upon, across, under or over or may in any way affect railway property and includes the construction, maintenance and renewal of such works;

(2) The Council shall not under the powers of this Order acquire compulsorily any railway property but they may in

PART III —*cont.*

accordance with the provisions of section 6 (Power to acquire servitudes compulsorily in certain cases) of this Order acquire such servitudes or rights over or in any railway property delineated on the deposited plans as they may reasonably require for the purposes of the specified works:

(3) Notwithstanding anything in this Order or in any other enactment, the Council shall not—

(*a*) enter on, take possession of or use any railway property without first giving not less than 28 days' notice in writing to the Board of their intention so to do (except in cases of emergency when as much notice as is practicable shall be given) and without complying with any reasonable conditions for the protection of railway property and the safety of the traffic thereon;

(*b*) appropriate and use the site and soil of the subway connection between the property of Granfit Holdings Limited at Westfield Road and the rugby football pitches at Murrayfield:

(4) The Council shall fence off railway property from the specified works to the reasonable satisfaction of the engineer where so required by him:

(5) The Council shall before commencing the specified works furnish to the Board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or, in the event of dispute, settled by an arbiter:

Provided that if within 28 days after such plans have been furnished to the Board the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:

(6) If within 28 days after such plans have been furnished to the Board, the Board shall give notice to the Council that the Board desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property, then if the Council desire such part of the specified works to be constructed the Board shall construct the same with all reasonable despatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled as aforesaid:

Provided that in the event of the Board not constructing or completing such part of the specified works with reasonable despatch, to the reasonable satisfaction of the Council, the Council may, after giving 28 days' notice to the engineer, themselves construct or complete such part of the specified works:

(7) Upon signifying his approval or disapproval of the said plans the engineer may specify any protective works whether

PART III —*cont.*

temporary or permanent which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the Board with all reasonable despatch and the Council shall not commence the construction of the specified works until the engineer shall have notified the Council that the protective works have been completed:

Provided that in the event of the Board not constructing or completing such protective works with reasonable despatch, the Council, may, after giving 28 days' notice to the engineer, themselves construct or complete such works and on the completion thereof may commence the construction of the specified works:

(8) The Council shall give to the engineer 28 days' notice of their intention to commence the construction of any of the specified works and except in emergency (when they shall give such notice as may be reasonably practicable) also of their intention to carry out any works for the repair or maintenance of the specified works:

(9) The specified works shall, when commenced, be carried out with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and under the supervision (if given) and to the reasonable satisfaction of the engineer and in such manner as to cause as little damage to railway property as may be and so far as is reasonably practicable so as not to interfere with or obstruct the free uninterrupted and safe using of the railway or the traffic thereon and the use by passengers of railway property and if any damage to railway property or any such interference or obstruction shall be caused or take place the Council shall (except where any such damage, interference or obstruction is caused or takes place during or in consequence of the construction of any part of the specified works by the Board in pursuance of paragraph (3) of this section) notwithstanding any such approval as aforesaid make good such damage and shall on demand pay to the Board all expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:

(10) The Council shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:

(11) The Board shall at all times afford reasonable facilities to the Council and their agents for access to any works carried out by the Board under this section during their construction and

PART III —*cont.*

shall supply the Council with such information as they may reasonably require with regard to such works or the method of construction thereof:

(12) If any alterations or additions either permanent or temporary to railway property shall be reasonably necessary in consequence of the construction of the specified works such alterations and additions may be effected by the Board after notice has been given to the Council and the Council shall pay to the Board the reasonable cost thereof and any additional cost of maintenance in respect of permanent alterations and additions shall be borne by the Council either by way of annual payment or by a commuted sum to cover all future payments:

(13) The Council shall—

(*a*) acquire and purchase the land necessary for the deviated railway and in relation to that land shall not exercise the powers of section 6 (Power to acquire servitudes compulsorily in certain cases) of this Order;

(*b*) acquire for the benefit of the Board such means of access to that land as the Board may reasonably require for the purpose of constructing, maintaining, renewing or using the deviated railway:

(14) In so far as the railway line of the deviated railway will be constructed on land to be acquired by the Council the Council shall execute the work to formation level and the Board may, if they so desire, lay the permanent way and construct the signalling apparatus and other ancillary works necessary to complete the deviated railway and the Council shall repay the expense reasonably incurred by the Board in so doing:

(15) Before undertaking any blasting operation in connection with the specified works which might affect the stability of the railway or the safety of the traffic thereon the Council shall consult with the Board and comply with any reasonable requirements of the Board in regard thereto without expense to the Board:

(16) The Board shall determine the time or times when the deviated railway will be connected with the existing railway lines and the Board shall if they so desire carry out and construct with all reasonable despatch such part of the specified works as are necessary to effect such connection:

(17) The Council shall relieve the Board of all obligations in connection with the provision and maintenance of accommodation works on so much of the Board's existing railway as shall be rendered unnecessary by the deviated railway:

(18) Where the new road, forming part of the works, will be adjacent to the deviated railway the Council shall erect, and maintain to the satisfaction of the engineer and within the

confines of the new road, suitable and sufficient barriers or guard rails for the protection of the said railway against obstruction and damage:

(19) The Council shall repay timeously to the Board all costs, charges and expenses reasonably incurred by the Board—

(*a*) in constructing any part of the works on behalf of the Council as provided by paragraph (6) of this section or in constructing any protective works under the provisions of paragraph (7) of this section including in respect of the cost of maintaining and renewing any permanent protective works constructed under the said paragraphs an annual payment or a commuted sum to cover all future payments;

(*b*) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the works;

(*c*) in respect of any special traffic working resulting from any restrictions which are necessary as a result of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution or diversion of services which may be necessary for the same reason;

(*d*) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;

(*e*) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the specified works:

(20) If at any time after the completion of the specified works, not being works vested in the Board, the Board shall give notice to the Council informing them that the state of repair of the specified works appears to be such as to affect prejudicially railway property, the Council shall, within 28 days of the receipt of such notice, take such steps (if any) as may be reasonably necessary to put the specified works in such state of repair as not to affect prejudicially railway property and, if and whenever the Council fail to do so or in an emergency the Board may make and do in and upon the lands of the Board or of the Council all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the Board in so doing shall be repaid to them by the Council:

(21) The Council shall be responsible for and make good to the Board all costs, charges and expenses which may be occasioned to or reasonably incurred by the Board within a

PART III —*cont.*

period of 10 years from the day of transfer in making good, preventing or minimising any damage (including any alteration of gradients or levels) caused or reasonably apprehended to the deviated railway by reason of subsidence or settlement but this paragraph shall not apply to any such damage which results from any act or omission by the Board or of any person in their employment:

(22) Before providing any illumination or illuminated road traffic sign on or in connection with the specified works or in the immediate vicinity of the railway the Council shall consult with the Board and comply with any reasonable requirements of the Board in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:

(23) The Council shall be responsible for and make good to the Board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the Board—

(*a*) by reason of the specified works or the failure thereof;

(*b*) by reason of any act or omission by the Council or of any persons in their employment or of their contractors whilst engaged upon the specified works;

and the Council shall effectively indemnify and hold harmless the Board from and against all claims and demands arising out of or in connection with the specified works or of any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the Board on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement approved by the engineer or under his supervision shall not (if it was done without negligence on the part of the Board or any person in their employment or of their contractors or agents) excuse the Council from any liability under the provisions of this section:

Provided that the Board shall give to the Council reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council:

(24) Any question or difference between the Council and the Board arising under this section, except under paragraph (6) hereof, shall at the instance of either party be referred to and determined by an arbiter to be appointed, failing agreement, by the President of the Institution of Civil Engineers.

For protection of Appleyard Group plc.

40.—(1) In this section, unless the context otherwise requires—

"company" means Appleyard Group plc or, as the circumstances may require, any of its subsidiary companies following:—

PART III —*cont.*

Appleyard Properties (Scotland) Limited;
Appleyard Investments Limited;
Appleyard Motor Company Limited;

"complex" means the premises at Westfield Road occupied by the company comprising showrooms, offices, new and used car preparation departments, body workshop, parts department, filling station, other servicing and repair facilities and parts-storage and distribution facilities for sale to the motor trade together with ancillary parking ground and ground for within-site circulation;

"remaining land" means the land comprising the complex other than the specified land:

"specified land" means the land delineated on the deposited plans and described in the deposited book of reference and therein numbered 22.

(2) For the avoidance of doubt it is hereby declared that in its application to the specified land section 5 of this Order shall have effect as if the complex (of which the specified land forms part) were a house, building or factory.

(3) If the company relocate elsewhere than within the complex, temporarily or permanently, the activities carried on on the specified land, the tribunal shall, in default of agreement between the Council and the company, determine whether, having regard to the activities carried on on the remaining land (hereinafter called "the additional activities") and to the extent to which those activities or any of them are associated with the activities carried on on the specified land, it is reasonably necessary to relocate the additional activities or any of them with the activities carried on on the specified land.

(4) If it is agreed between the Council and the company, or if the tribunal determines pursuant to subsection (3) of this section, that relocation of any of the additional activities is reasonably necessary, in addition to the compensation which may be awarded under subsection (3) of section 5 of this Order, the tribunal may award compensation in respect of—

(*a*) the costs of relocating the additional activities or any of them with the activities carried on on specified land; and

(*b*) any increase in operating and overhead costs, not reasonably avoidable, caused by a relocation under subsection (3) of this section:

Provided that in calculating the sum to be awarded under paragraphs (*a*) and (*b*) of this subsection the tribunal shall take into account—

(i) the value of that part of the remaining land on which those of the additional activities which are to be relocated were carried out; and

(ii) any sum payable to the company for disturbance by any relocation aforesaid.

PART IV

MISCELLANEOUS

Extension of time may be authorised.

41.—(1) On the application of the Council the Secretary of State may, by order, extend the periods respectively referred to in section 16 (Period for compulsory purchase of lands) and section 28 (Period for completion of works) of this Order or either of such periods.

(2) Any such period which has been extended under the provisions of this section may, from time to time, be further extended by an order made by the Secretary of State on the application of the Council under this section.

(3) (*a*) An order under this section shall be subject to special parliamentary procedure and accordingly an order under this section shall be deemed to be an order in pursuance of an Act passed after the passing of the Statutory Orders (Special Procedure) Act 1945.

1945 c. 18 (9 & 10 Geo. 6).

(*b*) In the application of section 10 of the said Act to an order under this section, there shall be substituted for the requirements of the empowering enactment referred to in the said section 10 such requirements as to the service of notices and as to the time within which and the manner in which objections may be made to any application made by the Council in pursuance of subsection (1) of this section as may be specified by the Secretary of State.

Powers to owners and lessees to give notice as to purchase of lands.

42. If the Secretary of State by order made under the last foregoing section extends the period for the exercise of the powers of the Council for the compulsory purchase of land, the following provisions shall apply after the coming into operation of that order:—

(1) In this section—

"the land" means any land which is for the time being authorised to be acquired compulsorily by this Order;

"lessee" means a lessee under a lease having a period of not less than 21 years to run at the date of his notice under paragraph (2) of this section:

(2) If any person being the owner or lessee of any of the land shall give notice in writing to the Council of his desire that his interest in any part of the land specified in the notice shall be acquired as soon as may be the Council shall within a period of three months after the receipt of such notice—

(*a*) enter into a contract with such person for the acquisition of his interest in the land or such part thereof as may be specified in the contract; or

(*b*) serve a notice to treat for the compulsory acquisition of the interest of such person in the land specified in his notice or in such part thereof as may be required by the Council; or

(*c*) serve on such person notice in writing of their intention not to proceed with the purchase of the interest of such person in the land specified in his notice:

PART IV —*cont.*

(3) Where notice is given under the last foregoing paragraph by an owner or lessee of land specified in the notice then—

(*a*) if the Council—

(i) fail to comply with that paragraph; or

(ii) withdraw in pursuance of any statutory provision a notice to treat served on him in compliance with sub-paragraph (*b*) of that paragraph; or

(iii) serve notice on him in compliance with sub-paragraph (*c*) of that paragraph;

the powers conferred by this Order for the compulsory purchase of his interest in the land so specified shall cease;

(*b*) if his interest in part only of the land so specified is acquired in pursuance of a contract or notice to treat under sub-paragraphs (*a*) or (*b*) of that paragraph the powers conferred by this Order for the compulsory purchase of his interest in the remainder of the land specified shall cease.

Saving for town and country planning.

43.—(1) The Act of 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions of powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.

(2) In their application to development authorised by this Order, article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament, being an Act or Order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Order were limited to development begun within 10 years after the passing of the Act confirming this Order.

S.I. 1981/830 (S. 86).

(3) Subsection (2) of this section shall not apply to the carrying out by the Board of any development consisting of the alteration, maintenance or repair of the deviated railway or the substitution of new works therefor.

Saving for Land Compensation (Scotland) Act 1973. 1973 c. 56.

44. Nothing in this Order shall exempt the Council or any other person from the provisions of the Land Compensation (Scotland) Act 1973.

Costs of Order.

45.—(1) The costs, charges and expenses of and incidental to the preparing for, obtaining and confirming of this Order or otherwise in relation thereto shall be paid by the Council.

(2) Without prejudice to the generality of subsection (1) of this section, the costs, charges and expenses referred to in that subsection shall be deemed to include two-thirds of the expenses reasonably incurred by the Cockburn Association and those petitioners against this Order jointly represented with them in and in relation to their petitions against this Order as the said expenses shall (if required by the Council) be taxed by the auditor of the Court of Session.

PRINTED IN ENGLAND BY OYEZ PRESS LIMITED
FOR W. J. SHARP
Controller and Chief Executive of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
£4.00 net
ISBN 0 10 510686 0

Lothian Region (Edinburgh Western Relief Road) Order Confirmation Act 1986

CHAPTER vi

ARRANGEMENT OF SECTIONS

Section

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

SCHEDULE

LOTHIAN REGION
(EDINBURGH WESTERN RELIEF ROAD)

PART I

PRELIMINARY

1. Short title.
2. Interpretation.
3. Incorporation of Acts.

PART II

LANDS

4. Power to take lands.
5. Acquisition of part only of certain properties.
6. Power to acquire servitudes compulsorily in certain cases.
7. Persons under disability may grant servitudes, etc.
8. Extinction of private rights of way over lands acquired.
9. Power to enter upon lands and buildings for survey and valuation.
10. Further powers as to entry on lands.

Section
11. Power of entry on lands compulsorily acquired.
12. Compensation in cases of recently altered buildings.
13. Set-off of betterment against compensation.
14. Agreements with owners of property.
15. Power to reinstate owners of property.
16. Period for compulsory purchase of lands.
17. Power as to acquisition and utilisation of additional lands.
18. Power to retain, sell, etc., lands.
19. Correction of errors in deposited plans and book of reference.
20. Service of notices, etc.

PART III

WORKS

21. Power to execute works.
22. Power to deviate.
23. Subsidiary works.
24. Power to stop up, etc., roads.
25. Power to alter roads, etc., temporarily.
26. Connection of drains, etc., with streams, etc.
27. Vesting and disposal of materials.
28. Period for completion of works.
29. Vesting and maintenance of new road.
30. Vesting and maintenance of deviated railway.
31. Landscaping and insulation.
32. Control of traffic.
33. Powers as to Dalry Cemetery.
34. For protection of district council.
35. Alterations to golf course.
36. Preservation of amenity.
37. For protection of tenants of allotments.
38. For protection of South of Scotland Electricity Board and British Gas Corporation.
39. For protection of British Railways Board.
40. For protection of Appleyard Group plc.

PART IV

MISCELLANEOUS

41. Extension of time may be authorised.
42. Powers to owners and lessees to give notice as to purchase of lands.
43. Saving for town and country planning.
44. Saving for Land Compensation (Scotland) Act 1973.
45. Costs of Order.