1976 No. 108

ROAD AND RAIL TRANSPORT

Level Crossing (Kilmakee No. 2) Order (Northern Ireland) 1976

Made . . . . . *24th March* 1976

Coming into operation . . . *10th May* 1976

To be laid before Parliament under paragraph 3(3) *of Schedule* 1 *to the Northern Ireland Act* 1974.

The Department of the Environment for Northern Ireland (in this Order referred to as "the Department") in exercise of the powers conferred by section 66(7) of the Transport Act (Northern Ireland) 1967(a) and now vested in the Head of the Department(b) and by paragraph 2(1)(*b*) of Schedule 1 to the Northern Ireland Act 1974(c) and of every other power enabling it in that behalf hereby makes the following Order:—

Citation and commencement

1. This order may be cited as the Level Crossing (Kilmakee No. 2) Order (Northern Ireland) 1976 and shall come into operation on 10th May 1976.

2. The Department is hereby authorised to construct a road crossing the railway between Belfast and Ballymena on the level at Kilmakee as described in Schedule 1 subject to the conditions contained in an agreement made on 24th March 1976 between the Northern Ireland Transport Holding Company 1st part, the Northern Ireland Railways Company Limited, 2nd part and the Department, 3rd part, as set out in Schedule 2.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 24th March 1976.

(L.S.)

Daniel Barry
Assistant Secretary

(a) 1967 c. 37 (N.I.)
(b) Formerly the Minister of Development: *see* S.R. & O. (N.I.) 1973 No. 504 Articles 2 and 4 and Schedule 1 (II, p. 2992)
(c) 1974 c. 28

SCHEDULE 1

Level Crossing	*Situated in*		*Grid Reference*
	Townland	*County*	
Kilmakee No. 2	Kilmakee	Antrim	J217/848

SCHEDULE 2

THIS AGREEMENT is made the 24th day of March 1976 BETWEEN THE NORTHERN IRELAND TRANSPORT HOLDING COMPANY (hereinafter called "the Holding Company") of the first part, NORTHERN IRELAND RAILWAYS COMPANY LIMITED (hereinafter called "the Railway Undertaking") of the second part and the DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND (hereinafter called "the Department") of the third part.

WHEREAS:—

A. The Holding Company is the owner and the Railway Undertaking is the Lessee and occupier of certain lands in the Townland of Kilmakee in the Parish of Templepatrick Barony of Belfast Upper and County of Antrim which form part of the railway line between Belfast and Ballymena operated by the Railway Undertaking;

B. The Department proposes to construct a road the line of which would cross that portion of the said railway line coloured red on the plan in the Third Schedule hereto;

C. The Department has requested the Holding Company and the Railway Undertaking to permit such road to cross the railway line on the level which permission they are agreeable to grant subject to and upon the terms and conditions hereinafter contained;

D. Such crossing on the level could not be constructed unless the Department was authorised by an order made under Section 66(7) of the Transport Act (N.I.) 1967.

NOW IT IS HEREBY AGREED AND DECLARED as follows:—

1. In this agreement—

(1) "the level crossing" means the carriageway to be constructed on the level across that portion of the railway on the lands coloured red on the plan in the Third Schedule hereto and shall where the context so requires or admits include the barriers, lights, traffic signs and other devices specified in Part II of the First Schedule hereto;

(2) "nearside" means the left-hand side of the road or carriageway in relation to a person approaching the level crossing along the road or carriageway;

(3) "offside" means the right-hand side of the road or carriageway in relation to any such person.

2. Upon an order under Section 66(7) of the Act being made the following terms and conditions shall be binding on the parties hereto. In the event of such order not having been made within three years of the date hereof this agreement shall become null and void.

3. The Holding Company and the Railway Undertaking shall grant to the Department full right and licence to construct and use the level crossing.

4. The level crossing shall be constructed in accordance with the terms and conditions set out in Part I of the First Schedule hereto.

5. In the operation, maintenance and use of the level crossing the provisions set out in the Second Schedule hereto shall apply.

6. Should the railway where it passes through the level crossing be reduced to single track at any time after the construction of the level crossing the Department shall fully and effectually indemnify the Railway Undertaking from and against all losses, costs and expenses which the Railway Undertaking may suffer, pay or incur in the modification of the barriers, lights, traffic signs and automatic and other devices provided in accordance with this agreement.

7. All costs reasonably incurred by the Holding Company and Railway Undertaking in the preparation and completion of this agreement and of any further documents required to implement the same shall be paid by the Department.

IN WITNESS whereof the respective seals of the parties have been hereunto affixed the day and year first herein WRITTEN.

THE COMMON SEAL of the NORTHERN IRELAND TRANSPORT HOLDING COMPANY was affixed hereto in presence of:—

R. D. Rolston (L.S.)
Director

G. D. Cheatley
Secretary & General Manager

THE COMMON SEAL of NORTHERN IRELAND RAILWAYS COMPANY LIMITED was affixed hereto in presence of:—

R. E. M. Humphreys (L.S.)
Chairman

W. Gibson
Secretary

THE OFFICIAL SEAL of the DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND was affixed hereto in presence of:—

Daniel Barry (L.S.)

FIRST SCHEDULE

PART I

Terms and conditions relating to construction of the level crossing

1. The Department shall construct the carriageway with a good and even surface and the ground at each edge of the carriageway shall be made up to the level of the carriageway for a distance of approximately 1 metre beyond each edge.

2. The level crossing shall be controlled by the barriers, lights, traffic signs and other devices specified in Part II of this Schedule.

3. The Department shall provide and the Railway Undertaking shall erect the barriers, lights and other devices so specified. All other works in connection with the construction of the level crossing including the provision and erection of traffic signs shall be carried out by the Department at its own expense.

4. The Department shall submit to the Railway Undertaking's Engineer (hereinafter called " the Engineer") detailed particulars of the proposed method of constructing the carriageway and of all temporary structures, excavations, fences and other works required in connection therewith and shall not commence any work in connection therewith until the Engineer has signified his approval thereto.

5. The Department shall give to the Engineer at least fourteen days prior notice in writing before entering upon the railway lands in connection with such construction.

6. All work in connection with such construction shall be carried out under the supervision of and to the satisfaction of the Engineer and in accordance with such directions as he shall from time to time give so as to cause as little interference as is practical with the normal operation of the railway.

7. During the course of construction no temporary structure shall be made upon the said lands which shall be nearer to the rails of the permanent way than 4.27 metres in a vertical plane and 1.6 metres in a horizontal plane.

8. The Department shall erect such temporary fences as may be necessary to prevent trespass on to the railway during the course of construction.

9. If the construction of the level crossing or the works connected therewith shall cause any interference with the existing electric cables, telephone or telegraph wires, gas pipes, sewers, drains, waterpipes or signalling apparatus on, under or upon the said lands or shall necessitate the provision of new signals the Department shall pay to the Railway Undertaking the costs and expenses incurred by the Railway Undertaking as certified by the Railway Undertaking's Accountant in altering or replacing such cables, wires, pipes, sewers, drains or signalling apparatus or in providing new signals.

10. The Department shall fully and effectually indemnify the Railway Undertaking from and against all losses, costs and expenses which the Railway Undertaking may suffer, pay or incur through the slowing of trains on its railway line or through any interference with or obstruction to the traffic of the Railway Undertaking arising out of or in consequence of the said works. It is agreed that during the execution of the said works the loss to the Railway Undertaking due to the slowing of trains shall be calculated at the rate of £10 per day or 50 pence per train per day whichever shall be the greater.