



Railways Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 33 8 and 9 Vict

Crossing of roads, and construction of bridges

And with respect to the crossing of roads, or other interference therewith be it enacted as follows.

39 Crossing of roads.

If the line of the railway cross [^{F1}the carriageway of any public road], then, except where otherwise provided by the special Act, either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expence of the company: Provided always, that, with the consent of the sheriff or two or more justices, as after mentioned, it shall be lawful for the company to carry the railway across any [^{F2}road], other than [^{F3}the carriageway of any public] road, on the level.

Textual Amendments

- F1 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(6\)\(a\)](#)
F2 Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(6\)\(b\)\(i\)](#)
F3 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(6\)\(b\)\(ii\)](#)

Modifications etc. (not altering text)

- C1 S. 39 modified by [Transport Act 1968 \(c. 73\)](#), s. 117(6)

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Railways Clauses Consolidation (Scotland) Act 1845, Cross Heading: Crossing of roads, and construction of bridges. (See end of Document for details)

40 Provision in cases where roads are crossed on a level.

If the railway cross [^{F4}the carriageway of any public] road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway, where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of [^{F5}level 1 on the standard scale] for every default therein: Provided always, that it shall be lawful for the Board of Trade in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

Textual Amendments

F4 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(7\)](#)

F5 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

Modifications etc. (not altering text)

C2 S. 40 excluded (24.3.1994) by [1994 c. ii, s. 1](#), [Sch. Pt. II para. 5\(3\)\(b\)](#)

41 As to crossing of turnpike roads adjoining stations.

Where the railway crosses any [^{F6}public] road on a level adjoining to a station, . . .
^{F7} the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

Textual Amendments

F6 Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(8\)](#)

F7 Words repealed by [Road and Rail Traffic Act 1933 \(c. 53\)](#), [Sch. 3](#)

42 Construction of bridges over roads.

Every bridge to be erected for the purpose of carrying the railway over any road, except as otherwise provided by the special Act, shall be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than [^{F8}7.62 metres if the arch is over a public road and 3.66 metres] if over a private road:

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The clear height of the arch from the surface of the road shall not be less than [^{F9}4.57 metres for a space of 3.05 metres if the arch is over a public road; and] the clear height at the springing of the arch shall not be less than [^{F10}3.66 metres;

The clear height of the arch for a space of 2.74 metres shall not be less than 4.27 metres over a private] road:

The descent made in the road in order to carry the same under the bridge shall not be more than one [^{F11}metre in 20 metres if the bridge is over a public road and one metre in 16 metres if over a private road.]

Textual Amendments

- F8** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(9)(a)**
- F9** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(9)(b)**
- F10** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(9)(c)**
- F11** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(9)(d)**

43 Construction of bridges over railway.

Every bridge erected for carrying any road over the railway shall, except as otherwise provided by the special Act, be built in conformity with the following regulations; (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than [^{F12}1.22 metres], and on each side of the immediate approaches of such bridge of not less than [^{F12}0.91 metres]:

The road over the bridge shall have a clear space between the fences thereof of [^{F13}7.62 metres if the road is a public road and 3.66 metres if a private road:

The ascent shall not be more than one metre in 20 metres if the road is a public road and one metre in 16 metres if a private road.]

Textual Amendments

- F12** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(10)(a)**
- F13** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(10)(b)**

Modifications etc. (not altering text)

- C3** S. 43 modified by [Transport Act 1968 \(c. 73\)](#), **ss. 117(6), 120(2)**

44 The width of the bridges need not exceed the width of road in certain cases.

Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width herein-before prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a [^{F14}a road which includes a carriageway] road, than twenty feet: Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expence, to increase the width of the said bridge to such extent as they may be required by the [^{F15}roads authority for] such road,

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not exceeding the width of such road as so widened, or the maximum width herein or in the special Act prescribed for a bridge in the like case over or under the railway.

Textual Amendments

F14 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(11)(a)**

F15 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(11)(b)**

Modifications etc. (not altering text)

C4 S. 44 modified by [Transport Act 1968 \(c. 73\)](#), s. 117(6)

45 Existing inclinations of roads crossed or diverted need not be improved.

Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination herein-before required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road, at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Modifications etc. (not altering text)

C5 S. 45 modified by [Transport Act 1968 \(c. 73\)](#), s. 117(6)

46 Before roads interferred with, others to be substituted.

If, in the exercise of the powers by this or the special Act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, . . . ^{F16} so as to render it impassable for or dangerous to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expence maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

Textual Amendments

F16 Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), **Sch. 11**

47 Penalty for not substituting a road.

If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the [^{F17}roads authority for] such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof; and every such penalty shall be recoverable with costs, by action in any competent court.

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Textual Amendments

F17 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(12\)](#)

48 Party suffering damage from interruption of road to recover in an action on the case.

If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with expences, by action in the Court of Session, if the damage claimed exceeds twenty-five pounds, or in the sheriff court, if the damage claimed does not exceed twenty-five pounds, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

49 Period for restoration of roads interfered with.

If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the [^{F18}roads authority for the public road to be restored consent, or as the case may be the owner of the private road to be restored consents, in writing,] to an extension of the period, and in such case within such extended period; (that is to say,) if the road be a [^{F19}public] road, within six months, and if the road be [^{F20}a private] road, within twelve months.

Textual Amendments

F18 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(13\)\(a\)](#)

F19 Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(13\)\(b\)](#)

F20 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(13\)\(c\)](#)

50 Penalty for failing to restore road.

If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the [^{F21}roads authority for] the road interfered with by the company, if a public road, or if a private road to the owner thereof, twenty pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed; and it shall be lawful for the sheriff or justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

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If in the course of making the railway the company shall use or interfere with any road, they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, the same shall be determined by the sheriff or two justices; and such sheriff or justices may direct such repairs to be -made in the state of such road, in respect of the damage done by the company, and within such period, as they think reasonable, and may impose on the company for not carrying into effect such repairs, any penalty, not exceeding five pounds per day, as to such sheriff or justices shall seem just; and such penalty shall be paid to the [^{F22}roads authority for] the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof; Provided always that in determining any such question with regard to a [^{F23}public] road the said sheriff or justices shall have regard to and make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

Textual AmendmentsF22 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(15\)\(a\)](#)F23 Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(15\)\(b\)](#)**52 Company to make sufficient approaches and fences to bridleways and footways crossing on the level.**

If the railway shall cross any [^{F24}road] other than [^{F25}the carriageway of a public road] on the level, the company shall at their own expence make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails and other fences, and shall, if such [^{F26}road be a cycle track or] bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway [^{F27}or footpath], good and sufficient gates or stiles on each side of the railway, where the [^{F24}road] shall communicate therewith.

Textual AmendmentsF24 Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(16\)\(a\)](#)F25 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(16\)\(b\)](#)F26 Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(16\)\(c\)](#)F27 Words inserted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 3\(16\)\(d\)](#)**53 Proceedings on application to sheriff or justices to consent to level crossings of bridleways and footways.**

When the company shall intend to apply for the consent of the sheriff or two justices, as herein-before provided, so as to authorize them to carry the railway across any

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[^{F28}road other than the carriageway of a public] road on the level, they shall, fourteen days at least previous to the time at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or, if there be no such church, some other place to which notices are usually affixed; and if it appear to the sheriff, or to any two or more justices acting for the district in which [^{F29}the proposed crossing would be situated], after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across [^{F30}the road] on the level, it shall be lawful for such sheriff or justices to consent that the same may be so carried accordingly.

Textual Amendments

- F28** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(17)(a)**
- F29** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(17)(b)**
- F30** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(17)(c)**

54 Sheriff or justices to have power to order approaches and fences to be made to highways crossing on the level.

If when the railway shall cross any [^{F31}road] on the level the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fences, gates, and stiles as they are herein-before required to make, it shall be lawful for the sheriff or two justices, on the application of the [^{F32}roads authority], or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such sheriff or justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the sheriff or justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Textual Amendments

- F31** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(18)(a)**
- F32** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 3(18)(b)**

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