
STATUTORY INSTRUMENTS

1995 No. 2143

The Great Central (Nottingham) Railway Order 1995

Citation and commencement

1. This Order may be cited as the Great Central (Nottingham) Railway Order 1995 and shall come into force on 29th June 1995.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the 1976 Company” means Great Central Railway (1976) plc having its registered office at Loughborough Central Station, Loughborough, Leicestershire;

“the Act of 1845” means the Railways Clauses Consolidation Act 1845(1);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992(2);

“authorised works” means the railways and any other works authorised by this Order;

“the Board” means the British Railways Board;

“highway authority” has the same meaning as in the Highways Act 1980(3);

“the lease” means any lease or underlease of the railways granted by the Nottingham Company to the 1976 Company pursuant to article 9 of this Order, any extension of the same or any new lease granted under any statutory powers or provisions;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“the Nottingham Company” means Great Central Railway (Nottingham) Limited having its registered office at Nottingham Heritage Centre, Mere Way, Ruddington, Nottingham;

“Railway No.1” and “Railway No.2” mean respectively the railways so numbered and described in Schedule 1 to this Order and (in the case of Railway No.1) authorised to be maintained pursuant to article 4 of this Order and (in the case of Railway No.2) authorised to be constructed and maintained pursuant to article 5 of this Order together with all lands and works relating thereto and, where in the case of Railway No.2 any part of the said railway and works remains uncompleted, the expression includes the site of that part;

“the railways” means Railway No.1 or Railway No.2, or both of them, as the case may require;

“the relevant date” means the date of the coming into force of this Order or, if later, the date upon which Railway No.1 is transferred to and vested in the Nottingham Company by agreement;

“the sections” means the sections described in rule 7(2) of the Applications Rules prepared in connection with the application for this Order, and marked as “the sections” for the purposes of this Order;

(1) 1845 c. 20.
(2) S.I.1992/2902.
(3) 1980 c. 66.

“the works plan” means the plan described in rule 7(1)(a) of the Applications Rules prepared in connection with the application for this Order, and marked as “the works plan” for the purposes of this Order.

- (a) (2) (a) Subject to sub-paragraph (b) of this paragraph, in this Order “the undertaker” means the Nottingham Company.
- (b) During the currency of the term created by the lease, the expression “the undertaker”, in relation to the railways or such part thereof as is leased to the 1976 Company, shall mean the 1976 Company.

(3) In this Order, all distances, lengths, measurements and directions stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, length, measurement and direction, and distances between points on a railway shall be taken to be measured along the railway.

Incorporation and application of enactments

3.—(1) The following provisions of the Act of 1845 shall be incorporated in this Order:—

- section 24 (obstructing construction of railway);
- section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;
- section 68 (accommodation works by company);
- section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 75 (omission to fasten gates);
- sections 78 to 85E and Schedules 1 to 3 (minerals under railways) as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(4);
- section 87 (company empowered to contract with other companies);
- sections 103 and 104 (refusal to quit carriage at destination);
- section 105 (carriage of dangerous goods on railway);
- sections 115 to 119 (engines and carriages not to be used on the railway unless approved; unfit engines to be removed);
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

(2) Section 5 (trains not to be shunted etc. over level crossings) of the Railways Clauses Act 1863(5) shall be incorporated in this Order.

(3) In those provisions, as incorporated in this Order—

- “the company” means the undertaker;
- “goods” includes any thing conveyed on the railways;
- “lease” includes an agreement for a lease;
- “prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;
- “the railway” means Railway No.2;

(4) 1923 c. 20.

(5) 1863 c. 92.

“the special Act” means this Order,

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on the railways.

(4) In its application to the railways, section 22 of the Regulation of Railways Act 1868⁽⁶⁾ shall have effect as if the words “and travels more than twenty miles without stopping” were omitted therefrom.

Power to maintain Railway No. 1

4.—(1) The undertaker may maintain Railway No.1.

(2) Except as may be otherwise provided in this Order, as from the relevant date Railway No.1 or any part thereof shall continue to be subject to all statutory and other provisions applicable thereto at that date (insofar as the same are still subsisting and capable of taking effect) and the undertaker shall to the exclusion of the Board be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the Railway No.1 (insofar as the same are still subsisting and capable of taking effect) to the intent that the Board shall be released from all such obligations.

Power to construct and maintain Railway No.2

5.—(1) The undertaker may construct and maintain Railway No.2.

(2) Subject to article 7 below, Railway No.2 shall be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections.

(3) Railway No.2 shall be constructed and operated on a gauge of 1.435 metres (4 feet 8½ inches).

Further powers as to works

6.—(1) Subject to paragraph (3) below, the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of Railway No.2, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables,
- (b) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses,
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of Railway No.2, and
- (d) works for the benefit or protection of premises affected by Railway No.2.

(2) Subject to paragraph (3) below, the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the maintenance of Railway No.1 or the construction and maintenance of Railway No.2.

(3) Paragraphs (1) and (2) above shall not authorise the carrying out or maintenance of works outside the limits of deviation or works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

Power to deviate

7. In constructing or maintaining Railway No.2, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plan within the limits of deviation for that work shown on that plan;

(6) 1868 c. 119.

- (b) deviate vertically from the levels shown on the sections to any extent not exceeding 2 metres upwards or downwards.

Asher Lane level crossing

8.—(1) The undertaker may in the construction of Railway No.2 make a level crossing (“the level crossing”) with a double line of rails across the road known as Asher Lane in the parish of Ruddington.

(2) The undertaker shall in relation to the level crossing—

(a) provide, maintain and operate the traffic signs and other devices and appliances specified in Part I of Schedule 2 to this Order; and

(b) observe the conditions and requirements specified in Part II of Schedule 2 to this Order.

(a) (3) (a) The undertaker may provide, maintain and operate at or near the level crossing such other protective equipment as the Secretary of State may in writing approve.

(b) In this paragraph “protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the Road Traffic Regulation Act 1984(7)) manual, mechanical, automatic, electrical or telephonic equipment or other devices.

(4) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of the level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(5) Notwithstanding anything in any enactment the undertaker shall not be required to erect or maintain a station or lodge at the level crossing or to provide keepers.

Leasing of railways

9. The Nottingham Company may grant a lease to the 1976 Company on such terms and conditions as it thinks fit of the whole or any part of the railways or the right to operate the railways under this Order.

Operation of railways

10.—(1) The undertaker may operate and use the railways and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Subject as below, the motive power to be used on the railways shall be steam, diesel-electric, diesel, internal combustion, electric-battery or such other motive power as the Secretary of State may in writing approve.

(3) Nothing in this Order shall authorise the use of electrical power as motive power on the railways unless such power is obtained from storage batteries or from a source of generation entirely contained in and carried along with the engines and carriages.

(4) If electrical power is used as motive power on the railways, such electrical power shall not be used in such a manner as to cause or be likely to cause any interference with any telecommunications apparatus (as defined in Schedule 2 to the Telecommunications Act 1984(8)) or with telecommunication by means of such apparatus.

(7) 1984 c. 27.

(8) 1984 c. 12.

Maintenance of approved works, etc.

11.—(1) Where pursuant to regulations made under section 41 of the Act (approval of works, plant and equipment) approval has been obtained from the Secretary of State with respect to any works, plant or equipment (including vehicles) forming part of the railways, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Certification of plans etc.

12. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the sections and works plan to the Secretary of State for certification that they are true copies of the sections and the works plan referred to in this Order, and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

For protection of National Rivers Authority

13.—(1) For the protection of the National Rivers Authority (in this article referred to as “the Authority”) the provisions of this article shall, unless otherwise agreed in writing between the undertaker and the Authority apply and have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991⁽⁹⁾ or any byelaws made under that Act or the Land Drainage Act 1991⁽¹⁰⁾ in relation to anything done under or in pursuance of this Order.

(a) (3) (a) Before carrying out any works involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the railways the undertaker shall furnish to the Authority proper and sufficient plans thereof for the approval of the Authority and shall not carry out the said works until the said plans have been approved in writing by the Authority.

(b) Approval of plans furnished under this paragraph shall not be unreasonably withheld and, if within 2 months after such plans have been supplied to the Authority, the Authority shall not have intimated its disapproval thereof and the grounds of its disapproval it shall be deemed to have approved the plans as supplied.

(c) For the purposes of this paragraph, “plans” includes sections, drawings, specifications, calculations and descriptions.

(a) (4) (a) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the railways, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the undertaker in good repair and condition and free from obstruction.

⁽⁹⁾ 1991 c. 57.

⁽¹⁰⁾ 1991 c. 59.

(b) Nothing in this paragraph shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert or structure which the Authority or any other person is liable to maintain.

(5) If any obstruction is erected or raised or any culvert is constructed altered or replaced in contravention of this article the undertaker shall upon receiving notice from the Authority take such action as may be necessary to remedy the effect of the contravention to the Authority's satisfaction and in default the Authority may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the undertaker as a debt due from it to the Authority.

(6) Any dispute or difference which may arise between the Authority and the undertaker under this article shall be determined by arbitration.

(7) The provisions of the Act of 1845 applied by this Order shall be subject to the provisions of this article.

For the protection of sewerage and water undertakers

14.—(1) For the protection of sewerage and water undertakers (which for the purposes of this article are each a “utility”) the following provisions of this article shall, unless otherwise agreed in writing between the undertaker and the utility concerned, apply and have effect.

(2) In this article, “relevant pipe”, in relation to any of the utilities, has the meaning given in section 179(7) of the Water Industry Act 1991⁽¹¹⁾ but does not include any apparatus in respect of which the relations between a utility and the undertaker are regulated by the provisions of Part III of the New Roads and Street Works Act 1991⁽¹²⁾.

(3) Nothing in this Order or in section 18 of the Act of 1845 in its application to the railways shall authorise the undertaker to raise, sink or otherwise alter the position of, or in any way interfere with, any relevant pipe without the consent in writing of the utility concerned, such consent not to be unreasonably withheld.

(a) (4) (a) Where any relevant pipe is situated in or under any land owned or held for the purpose of the railways the undertaker shall at its own expense maintain all culverts over such relevant pipe which are in existence at the coming into force of this Order so as to leave the relevant pipe accessible for the purpose of repairs.

(b) Nothing in this paragraph shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert which a utility or any other person is liable to maintain.

(5) The undertaker shall afford reasonable facilities to a utility for the execution and doing of all such works and things as may be reasonably necessary to enable it to inspect, repair, maintain, renew, replace, remove, alter or use any relevant pipe.

(a) (6) (a) The undertaker shall compensate a utility—

(i) for any damage done or disturbance caused to any relevant pipe; and

(ii) for any other expenses, loss, damages, penalty or costs incurred by the utility, by reason or in consequence of the execution, maintenance, user or failure of any of the works authorised by this Order or otherwise by reason or in consequence of the exercise by the undertaker of the powers of this Order.

(b) Nothing in this paragraph shall entitle a utility to any payment in respect of damage attributable to the neglect or default of the utility, its servants or agents.

⁽¹¹⁾ 1991 c. 56.

⁽¹²⁾ 1991 c. 22.

(7) Nothing in this Order shall prejudice or affect the rights of a utility in respect of any relevant pipe or in the provisions of any agreement regulating the relationship between the undertaker and a utility with regard to any relevant pipe and whether made before or after this Order comes into force.

(8) The provisions of the Act of 1845 applied by this Order shall be subject to the provisions of this article.

(9) Any difference arising between the undertaker and a utility under this article shall be determined by arbitration.

Arbitration

15. Where under any provision contained or incorporated in this Order any difference is to be determined by arbitration, then such difference shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President for the time being of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

22nd June 1995

R. A. Allan
An Under Secretary,
Department of Transport