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## STATUTORY INSTRUMENTS

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# 1999 No. 2129

## The Welsh Highland Railway Order 1999

### PART IV

#### PROTECTIVE PROVISIONS

##### **Statutory undertakers etc.**

- 20.**—(1) The provisions of Schedule 3 to this Order shall have effect, except in relation to—
- (a) Dwŵr Cymru Cyf;
  - (b) any public electricity supplier;
  - (c) Railtrack PLC.
- (2) Subject to article 23 below, nothing in this Part nor in Schedule 3 to this Order shall—
- (a) derogate from any provisions of any wayleave agreement in respect of any relevant apparatus; or
  - (b) apply to any apparatus within the boundaries of the former Welsh Highland Railway as constructed.

##### **For the protection of British Telecommunications PLC**

**21.**—(1) The following provisions of this article shall apply for the purposes of the protection of BT in relation to the carrying out of the authorised works or the exercise of any other powers conferred by this Order, save in so far as otherwise agreed in writing by BT and the undertaker.

(2) Nothing in this Order or in the Act of 1845 in its application to the railway shall authorise the undertaker to interfere with BT's telecommunications apparatus.

(3) The temporary stopping up or diversion of any street under article 8 above shall not affect any right of BT under paragraph 9 of the Telecommunications Code, contained in Schedule 2 to the Telecommunications Act 1984<sup>(1)</sup>, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

(4) Where a street is altered under article 9 above and apparatus belonging to BT is under, over or in that street BT shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(5) The undertaker shall give to BT not less than 28 days notice in writing of its intention to temporarily stop up or alter any street under article 8 or article 9 of this Order if any apparatus belonging to BT is under, over or in that street.

(6) Where a notice under paragraph (5) above has been given, BT may and, if reasonably requested so to do by the undertaker in the notice, shall, as soon as reasonably practicable after service of the notice—

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(1) 1984 c. 12.

- (a) remove the apparatus and place it, or other apparatus provided in substitution for it, in such other position as BT may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position.

(7) If any apparatus belonging to BT is damaged as a consequence of the construction, use or failure of the works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT in making good such damage, and shall indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of any such damage, but

- (a) nothing in this article shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and
- (b) BT shall give to the undertaker reasonable notice of any claim or demand to which this paragraph applies and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not unreasonably to be withheld or delayed.

(8) The undertaker shall not use electrical power in connection with the works authorised by this Order in such a manner as to cause or be likely to cause any interference with telecommunications apparatus or with telecommunication by means of such apparatus, and the undertaker shall indemnify BT against any claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of such interference, but—

- (a) nothing in this article shall impose any liability on the undertaker with respect to any interference to the extent that such interference is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and
- (b) BT shall give to the undertaker reasonable notice of any claim or demand as aforesaid and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld or delayed.

(9) Nothing in this order shall affect any right of a telecommunications operator under Schedule 2 to the Telecommunications Act 1984.

(10) In this article—

“BT” means British Telecommunications PLC; and

“operator” and “telecommunications apparatus” have the same meanings as in Schedule 4 to the Telecommunications Act 1984.

### **For the protection of Dwŵr Cymru Cyf**

**22.—**(1) The following provisions of this article shall apply for the purposes of the protection of Dwŵr Cymru Cyf in relation to the carrying out of the authorised works or the exercise of any other powers conferred by this order, save in so far as otherwise agreed in writing by Dwŵr Cymru Cyf and the undertaker.

(2) Nothing in this Order or in the Act of 1845 in its application to the railway shall authorise the undertaker to raise, sink or otherwise alter the position of, or in any way to interfere with, a relevant pipe without the consent in writing of Dwŵr Cymru Cyf, such consent not to be unreasonably withheld.

(3) Before commencing the construction, alteration or reconstruction of any work which will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, a relevant pipe the undertaker shall furnish to Dwŵr Cymru Cyf such proper and sufficient plans of the work as may reasonably be required by Dwŵr Cymru Cyf and shall not

commence the work until such plans thereof have been approved in writing by Dwŵr Cymru Cyf (which approval shall not be unreasonably withheld) or settled by arbitration under article 42 below.

(4) Dwŵr Cymru Cyf may as a condition of their approval of the said plans require any such modification to be made as may be reasonably required to secure a relevant pipe against interference or risk of damage and to secure a convenient means of access to it and the work shall be executed only in accordance with the plans approved in accordance with this article.

(5) The approval of Dwŵr Cymru Cyf of any plans under this article shall not (in the absence of negligence on the part of Dwŵr Cymru Cyf) exonerate the undertaker from any liability or affect any claim for compensation under this article.

(6) Where a relevant pipe is situated in or under any land owned or held for the purposes of the railway the undertaker shall at their 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 that relevant pipe accessible for the purpose of repairs.

(7) The undertaker shall afford reasonable facilities to Dwŵr Cymru Cyf for the execution and doing of all such works and things as may be reasonably necessary to enable them to inspect, repair, maintain, renew, replace, remove, alter or use a relevant pipe and in particular to carry out any protective works or any diversions required by reason of the exercise of the powers of this Order.

(8) The undertaker shall compensate Dwŵr Cymru Cyf —

- (a) for any damage done or disturbance caused to a relevant pipe;
- (b) for any costs incurred by Dwŵr Cymru Cyf in diverting a relevant pipe or in carrying out works for the protection of a relevant pipe; and
- (c) for any other expenses, loss, damages, penalty or costs (including the liabilities resulting from the burst, leakage or other failure of a relevant pipe) incurred by Dwŵr Cymru Cyf;

by reason or in consequence of the execution, maintenance, use or failure of any of the works or otherwise by reason or in consequence of the exercise by the undertaker of the powers of this Order.

(9) Nothing in the foregoing paragraph shall entitle Dwŵr Cymru Cyf to any payment in respect of damages attributable to the neglect or default of Dwŵr Cymru Cyf, their servants or agents.

(10) Nothing in this Order shall prejudice or affect the rights of Dwŵr Cymru Cyf in respect of a relevant pipe (including the right of access to such pipe for the purpose of inspection, maintenance or renewal) or the provisions of any agreement regulating the relations between the undertaker and Dwŵr Cymru Cyf with regard to a relevant pipe and whether made before or after this Order comes into force.

(11) The provisions of the Act of 1991 shall be subject to the provisions of this article.

(12) Any difference arising between the undertaker and Dwŵr Cymru Cyf under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 42 below.

(13) In this article—

“a relevant pipe” in relation to Dwŵr Cymru Cyf has the meaning given by section 158(7) of the Water Industry Act 1991(2); and

“work” means any of the authorised works.

### **For the protection of public electricity suppliers**

**23.—**(1) The following provisions of this article shall apply for the purposes of the protection of any public electricity supplier in relation to the carrying out of the authorised works for the exercise

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(2) 1991 c. 56.

of any other powers conferred by this Order, save in so far as otherwise agreed in writing by the public electricity supplier in question and the undertaker.

(2) The provisions of article 20(2) above shall not apply in relation to any apparatus.

(3) The following provisions of this article shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the public electricity supplier concerned are regulated by the provisions of Part III of the Act of 1991.

(4) The undertaker shall not under or for the purposes of this Order acquire any apparatus or seek to terminate any wayleave or other right of a public electricity supplier otherwise than by agreement with the public electricity supplier concerned.

(5) The undertaker shall afford to any public electricity supplier affected by the authorised works new permanent easements in respect of all apparatus situated in land acquired by it for the purposes of the railway or otherwise vested in it following the completion of the authorised works, such easements to afford to the public electricity supplier concerned the right to enter for the purposes of and to use, maintain, repair, remove and replace existing and future apparatus upon reasonable terms to be agreed between the undertaker and the public electricity supplier concerned including provision—

- (a) to ensure that the public electricity supplier concerned is able to fulfill its obligations under the Electricity Act 1989(3) and any licence granted to it under that Act; and
- (b) for annual rental payments to the undertaker and an indemnity for the undertaker in respect of any damage caused by the public electricity supplier.

(6) The undertaker shall use its best endeavours to co-operate with any public electricity supplier in preparing for, and in the construction of, the authorised works—

- (a) in the interests of safety;
- (b) to minimise the need for any relocation or replacement of or alteration to apparatus or disturbance to apparatus;
- (c) to avoid the need for any relocation or replacement of apparatus on or onto, or alteration of apparatus on, land not vested in the undertaker;

and the undertaker shall use its best endeavours to assist the public electricity supplier concerned to obtain any statutory consents or other rights required for the relocation, replacement or alteration of apparatus.

(7) Without prejudice to the generality of paragraph (6) above, the undertaker shall agree with any public electricity supplier (such agreement not to be unreasonably withheld) any necessary relocation, replacement or alteration of the public electricity supplier's apparatus (and the programmes and procedures for such relocation, replacement or alteration) and shall not commence the construction of the authorised works until any such relocation, replacement or alteration has been completed by the public electricity supplier concerned and is operating to its reasonable satisfaction, provided that any such relocation, replacement or alteration is undertaken by the public electricity supplier with all reasonable expedition.

(8) Without prejudice to paragraph (7) above, not less than 56 days before commencing to construct any work authorised by this Order which is near to, or may affect, any apparatus, the undertaker shall submit to the public electricity supplier a plan and description of the work and of any protective measures which the undertaker proposes to take in respect of that apparatus, together with a specification of such measures where appropriate.

(9) Any work of a type mentioned in paragraph (8) above shall be constructed only in accordance with the plan and description submitted in accordance with that paragraph and in accordance with such reasonable requirements as may be specified by the public electricity supplier for the protection

of the apparatus or for securing access to it and the public electricity supplier shall be entitled (by its officer) to watch and inspect the construction of the work.

(10) Nothing in paragraphs (8) and (9) above shall preclude the undertaker from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of the work in question, a new plan and description in substitution for the plan and description previously submitted, and where such a new plan and description are submitted, the provisions of paragraph 9 and this paragraph shall thereafter apply to and in respect of the new plan and description.

(11) Subject to the following provisions of this article, the undertaker shall within 28 days of the submission to it of an invoice by a public electricity supplier repay to that public electricity supplier the reasonable expenses incurred by it (including the cost of obtaining any necessary rights or consents) in, or in connection with—

- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this article;
- (b) the cutting off of any apparatus from any other apparatus in consequence of the exercise by the undertaker of any power under this article; and
- (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power.

(12) Paragraph (11) above does not apply to any expenses incurred as a consequence of the construction of any part of the specified works on the same alignment and level as the former railway, other than expenses incurred in acquiring any consents or rights to install apparatus required to be relocated, replaced or altered on land not vested in the undertaker or any expenses relating to apparatus exclusively serving the railway.

(13) There shall be deducted from any sum payable under sub-paragraph (11) above the value of any apparatus removed under the provisions of this article, that value being calculated after removal.

(14) If in pursuance of the provisions of this article—

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has occurred solely due to the use of the nearest currently available type to the apparatus for which the substitution is being made; or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated;

and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth (as the case may be) is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator pursuant to article 42 below to be necessary, then, if such placing involves costs in the construction of works in excess of the costs which would have been incurred if the apparatus placed had been of the existing type, capacity or dimensions (or the nearest currently available type), or at the existing depth (as the case may be), the amount which apart from this paragraph would be payable to the public electricity supplier by virtue of paragraph (11) above shall be reduced by the amount of that excess.

(15) For the purposes of paragraph (14) above—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus, except where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(16) Subject to paragraphs (17) and (18) below, if by reason or in consequence of the construction of any of the authorised works, or any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the public electricity supplier, or there is any interruption in any service provided, or in the supply of any goods, by the public electricity supplier, the undertaker shall bear and pay the cost reasonably incurred by the public electricity supplier in making good such damage or restoring the supply and shall—

- (a) make reasonable compensation to the public electricity supplier for loss sustained by it; and
- (b) indemnify the public electricity supplier against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, it;

by reason or in consequence of any such damage or interruption.

(17) Nothing in paragraph (16) above shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to any act, neglect or default of the public electricity supplier, its officers, servants, contractors or agents.

(18) The public electricity supplier shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the undertaker, which consent shall not be unreasonably withheld.

(19) The undertaker shall, so far as it is reasonably practicable, exercise its powers under this Order so as not to obstruct or render less convenient the access to any apparatus.

(20) Notwithstanding the temporary stopping up or diversion of any highway under article 8 above, the public electricity supplier may do all such works and things in any such highway as may be reasonably necessary to enable it to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.

(21) A public electricity supplier may give notice to the undertaker that, by reason of proposed works required for the construction, maintenance or renewal of any apparatus or of any service provided by it, it is reasonably necessary, for reasons of safety, for the undertaker to cease to use the railway or to reduce the speed of the trains on the railway within such area and for such periods as may be stipulated in the notice.

(22) Where a notice has been served under paragraph (21) above the undertaker shall cease to use the railway or reduce the speed of the trains on the railway (as the case may be) within such area and for such periods as the undertaker shall agree, such agreement not to be unreasonably withheld.

(23) Where a notice has been served under paragraph (21) above, the public electricity suppliers shall carry out the proposed works mentioned in that notice—

- (a) in a manner which conforms with any requirements of the Health and Safety Executive in relation to railway safety and operational procedures; and
- (b) with all expedition;

and shall take reasonable steps to minimise interruption in the operation of the railway.

(24) The notice referred to in paragraph (21) above shall be given in writing not less than 7 days before the commencement of the first period specified in that notice unless the proposed works in question arise as a matter of urgency, in which case the public electricity supplier shall give such notice as is reasonably practicable in all the circumstances of the case (which notice need not be given in writing).

(25) Any difference arising between the undertaker and a public electricity supplier under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 42 below.

(26) In determining any such dispute the arbitrator may, if he thinks fit, require the undertaker to construct any temporary or other works so as to avoid, so far as reasonably possible, interference with the use of any apparatus.

(27) In this article—

“apparatus” means electric lines or electrical plant (as defined in section 64(1) of the Electricity Act 1989) belonging to or maintained by a public electricity supplier and includes any structure used, or to be used, to lodge apparatus or given access to apparatus;

“construction” includes execution, placing, altering, replacing, laying, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“in”, in a context referring to apparatus in land, includes under and over land;

“plans” includes sections and method statements; and

“public electricity supplier” means a licence holder within the meaning of Part I of the Electricity Act 1989 and, in relation to any apparatus, means the public electricity supplier to whom it belongs or by whom it is maintained.

### **For the protection of Railtrack PLC**

**24.—**(1) The compulsory powers of acquisition and temporary possession conferred by this Order shall not be applicable to land owned by Railtrack PLC.

(2) Subject to the following provisions of this article, the powers under article 4 above shall not be exercisable where Work No. 2 traverses the land of Railtrack PLC numbered on the deposited plan 5 in Porthmadog and there crosses its Cambrian Coast railway except with the consent of Railtrack PLC.

(3) A consent given for the purposes of paragraph (2) above may be made subject:—

- (a) to the requirement that the relevant authorised works or any part of those works affecting the property of Railtrack PLC shall be executed by Railtrack PLC; and
- (b) to such reasonable conditions as may be specified by Railtrack PLC;

but shall not be unreasonably withheld.

### **For protection of owners of land adjoining railway**

**25.—**(1) Without prejudice to section 71 of the Act of 1845, the owner of any land adjoining the railway may with the consent of the undertaker (such consent not to be unreasonably withheld or delayed) at any time after the making of this Order, at his own expense make and thereafter maintain any accommodation works for the benefit of his land.

(2) If the undertaker so desires, any accommodation works constructed under this article shall be constructed under the superintendence of its engineer and according to plans and specifications approved by the undertaker (such approval not to be unreasonably withheld or delayed).

(3) In this article “accommodation works” means any accommodation works for the benefit of the land in question and includes any of the works referred to in section 68 of the Act of 1845.

### **Saving for highway authorities**

**26.** Nothing in this Order shall affect any power of a highway authority to widen, alter, divert or improve any highway along which the railway is laid.

## **Public open space**

**27.—**(1) As from the date on which this Order comes into force, the date on which the special category land is vested in the undertaker or the date on which the exchange land is vested in the undertaker, whichever is the latest, the exchange land shall vest in the Gwynedd Council, subject to the like rights, trusts and incidents as attached to the special category land; and the special category land shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“special category land” means the lands delineated on the deposited plans and thereon numbered 11 in the County of Gwynedd, Town of Porthmadog, or so much of those lands as are required by the undertaker for the purposes of this Order; and

“exchange land” means so much of the lands delineated on the deposited plans and thereon numbered 10 in the County of Gwynedd, Town of Porthmadog as the Secretary of State certifies to be not less in area than the special category land and equally advantageous to the public.