

**2002 No. 366**

**TRANSPORT AND WORKS, ENGLAND**

**Transport, England**

**The Bitton Railway Order 2002**

*Made* - - - - - *22nd January 2002*

*Coming into force* - - - *12th February 2002*

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# SCHEDULES

SCHEDULE 1—The scheduled work

SCHEDULE 2—Protective provisions

Whereas an application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992<sup>(a)</sup> made under sections 6, 7 and 10 of the Transport and Works Act 1992<sup>(b)</sup> (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State, having considered the objections made and not withdrawn, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 18th January 2002;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1, 7, 16 and 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

## PART I PRELIMINARY

### Citation and commencement

1.—(1) This Order may be cited as the Bitton Railway Order 2002 and shall come into force on 12th February 2002.

(2) The 1991 Order and this Order may be cited together as the Bitton Railway Orders 1991 and 2002.

### Interpretation

2.—(1) In this Order—

“the 1845 Act” means the Railway Clauses Consolidation Act<sup>(c)</sup>;

“the 1991 Order” means the Bitton Light Railway Order 1991<sup>(d)</sup>;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992<sup>(e)</sup>;

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

“the Avon bridge” means the existing bridge built to carry the former railway over the river Avon;

“the deposited plan” means the plan described in rule 7(1)(a) of the Applications Rules and certified by the Secretary of State as the deposited plan for the purposes of this Order;

“the deposited section” means the section described in rule 7(2) of the Applications Rules and certified by the Secretary of State as the deposited section for the purposes of this Order;

“existing” means existing at the date of the making of this Order;

“the former railway” means so much of the railway firstly described in and authorised by section 6 of the Midland Railway (Bath and Thornbury Lines) Act 1864<sup>(f)</sup>, together with all lands and works relating thereto, as is situated within the limits of deviation;

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(a) S.I. 1992/2902.

(b) 1992 c. 42.

(c) 1845 c. 20.

(d) S.I. 1991/134.

(e) S.I. 1992/2902.

(f) 1864 c. clxiv.

“the limits of deviation” means the limits of deviation for the scheduled work shown on the deposited plan;

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

“the railway” means the railway comprised in the scheduled work and where the context so requires includes the site of that railway;

“the scheduled work” means the work specified in Schedule 1 to this Order;

“the undertaker” means the Avon Valley Railway Heritage Trust whose registered office is situated at Bitton Railway Station, Willsbridge, Bristol.

(2) All directions, distances, lengths and points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, length and point and distances between points on a railway shall be taken to be measured along the centre line of the railway.

(3) References in this Order to points identified by letters shall be construed as references to points so marked on the deposited plan.

### **Incorporation of the Railways Clauses Consolidation Act 1845**

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

section 18 (alteration of water and gas pipes etc.);

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);

section 77 (presumption that minerals excepted from acquisition of land);

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(a);

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 (carriages and engines);

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

“the company” means the undertaker;

“goods” includes any thing conveyed on the railway;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means the railway as defined in this Order;

“the special Act” means this Order; and

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

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(a) 1923 c. 20.

## PART II

### WORKS PROVISIONS

#### **Power to construct works**

- 4.—(1) The undertaker may construct and maintain the scheduled work.
- (2) Subject to article 5 below, the scheduled work shall be constructed in the line or situations shown on the deposited plan and in accordance with the levels shown on the deposited section.
- (3) The undertaker may, within the limits of deviation, 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 the scheduled work, 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; and
  - (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works.
- (4) The undertaker may, within the limits of deviation carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or in connection with or in consequence of, the construction of the scheduled work.

#### **Power to deviate**

5. In constructing or maintaining the scheduled work, the undertaker may—
- (a) deviate laterally from the line or situation shown on the deposited plan within the limits of deviation for that work shown on that plan, and
  - (b) deviate vertically from the levels shown on the deposited section to any extent not exceeding 2 metres upwards or downwards as may be necessary or convenient.

#### **Diversion of railway path**

6. The undertaker may with the consent of Bath and North East Somerset Council stop up the way known as the Bath to Bristol Railway Path between the points marked A, B, C and D on the deposited plan and substitute therefor a new way between the points marked A, E, F and D on the deposited plan.

## PART III

### MISCELLANEOUS AND GENERAL

#### **Power to operate and use railway**

7. The undertaker may operate and use the railway as a system, or part of a system, of transport for the carriage of passengers and goods.

#### **Transfer of rights and obligations**

- 8.—(1) In this article “the relevant date” means the date of the coming into force of this Order or, in relation to any part of the railway which at that date is not owned by or leased to the undertaker, the date upon which the undertaker acquires that part by agreement, or takes a lease of that part.
- (2) Except as may be otherwise provided in this Order, as from the relevant date the railway or any part thereof shall continue to be subject to all statutory and other provisions applicable to the former railway at that date (in so far as the same are still subsisting and capable of taking effect) and the undertaker shall to the exclusion of BRB (Residuary) Limited, 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 former railway (in so far as the same are still subsisting and capable of taking effect) to the intent that BRB (Residuary) Limited shall be released from all such obligations.

### **Maintenance of approved works etc.**

9.—(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994<sup>(a)</sup> approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railway, 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 railway.

(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 Health and Safety Executive or the Director of Public Prosecutions.

### **Certification of plan etc.**

10. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the deposited plan and the deposited section to the Secretary of State for certification that they are true copies of, respectively, the deposited plan and the deposited section 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.

### **Transfer of railway**

11.—(1) In this article—

“the transferee” means any person to whom the undertaking or any part of it, is leased or sold pursuant to this article;

“the transferred undertaking” means so much of the undertaking as is leased or sold pursuant to this article; and

“the undertaking” means—

(a) the railway, as defined by article 2 of the 1991 Order; and

(b) the railway, as defined by article 2(1) above.

(2) The undertaker may, with the consent in writing of the Secretary of State—

(a) lease the undertaking, or any part of it, to any person; or

(b) sell the undertaking, or any part of it, to any person;

on such terms and conditions as may be agreed between the undertaker and the transferee.

(3) Except as may be otherwise provided in this Order, the transferred undertaking shall continue to be subject to all statutory or other provisions applicable to the transferred undertaking at the date of the lease or sale (in so far as the same are still subsisting and capable of taking effect) and the transferee shall, to the exclusion of the undertaker, 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 transferred undertaking (in so far as the same are still subsisting and capable of taking effect) to the intent that the undertaker shall be released from all such obligations.

(4) Paragraph (3) above shall have effect during the term of any lease granted under paragraph (2)(a) above and from the operative date of any sale under paragraph (2)(b) above.

### **Protective provisions**

12. The provisions of Schedule 2 to this Order shall have effect.

### **Withholding of consent**

13. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to any conditions subject to which it is given shall be determined by arbitration as specified in article 14.

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(a) S.I. 1994/157.

**Arbitration**

14. Any difference under any provision of this Order 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 of the Institution of Civil Engineers.

Signed by authority of the  
Secretary of State for Transport, Local Government  
and the Regions

*Ellis Harvey*  
Head of the Transport and Works Act Processing Unit,  
Department for Transport,  
Local Government and the Regions

22nd January 2002

## THE SCHEDULED WORK

A railway (380 metres in length), being a reconstruction of the former railway, commencing in the area of the South Gloucestershire Council, parish of Bitton, at a point 30 metres north of the Avon bridge (being the point of termination of the railway authorised by the 1991 Order), passing in a south-easterly direction over the Avon bridge and terminating in the area of the Bath and North East Somerset Council, parish of Saltford, at a point 300 metres south-east of the Avon bridge.

## PROTECTIVE PROVISIONS

## PART I

*For the protection of the Environment Agency*

1. For the protection of the Environment Agency (in this part of this Schedule referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Agency, 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(a) or any byelaws made under that Act or the Land Drainage Act 1991(b) in relation to anything done under or in pursuance of this Order.

3.—(1) Before carrying out any works involving the erection 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 railway, the undertaker shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.

(2) The 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 Agency, the Agency shall not have intimated its disapproval and the grounds of its disapproval it shall be deemed to have approved the plans as supplied.

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

4.—(1) 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 railway, 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.

(2) 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 Agency or any other person is liable to maintain.

5. If any obstruction is erected or any culvert is constructed, altered or replaced in contravention of the provisions of this part of this Schedule the undertaker shall, upon receiving notice from the Agency, take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction; and in default the Agency 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 Agency.

6. Any dispute or difference which may arise between the Agency and the undertaker under this part of this Schedule shall be determined by arbitration.

7. The provisions of the 1845 Act applied by this Order shall be subject to the provisions of this part of this Schedule.

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(a) 1991 c. 57.

(b) 1991 c. 59.

## PART II

### *For the protection of public gas transporters*

**8.** Nothing in this Order shall prejudice or affect the statutory or other rights of any public gas transporters within the meaning of Part I of the Gas Act 1986(a) in or relating to any pipe, main or apparatus belonging to them or for the maintenance of which they are responsible, or any structure for the lodging therein of any pipe, main or apparatus, being any pipe, main or apparatus or structure situate under, over or upon lands in or upon or near to which the railway or any part thereof is constructed.

## PART III

### *For the protection of sewerage undertakers*

**9.—(1)** For the protection of sewerage undertakers the following provisions of this part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the sewerage undertaker concerned, apply and have effect.

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

**10.** Nothing in this Order, or in section 18 of the 1845 Act in its application to the railway, 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 sewerage undertaker concerned, such consent not to be unreasonably withheld.

**11.—(1)** Where any relevant pipe is situated in or under land owned or held for the purpose of the railway 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.

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

**12.—(1)** The undertaker shall afford reasonable facilities to a sewerage undertaker for the execution and doing of all such works and things as may be reasonably necessary to enable it to maintain, renew or use any relevant pipe.

(2) The undertaker shall compensate a sewerage undertaker—

- (a) for any damage done or disturbance caused to any relevant pipe; and
- (b) for any damage done, by reason or in consequence of the execution, maintenance, user or failure of any of the authorised works or otherwise by reason or in consequence of the exercise by the undertaker of the powers of this Order.

(3) Nothing in this part of this Schedule shall entitle a sewerage undertaker to any payment in respect of damage attributable to the neglect or default of the sewerage undertaker, its servants or agents.

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

**14.** The provisions of the 1845 Act as applied by this Order shall be subject to the provisions of this part of this Schedule.

**15.** Any difference arising between the undertaker and a sewerage undertaker under this part of this Schedule shall be determined by arbitration.

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(a) 1986 c. 44; the term “public gas transporter” is defined in section 7(1) and substituted by section 5 of the Gas Act 1995 (c. 45).

(b) 1991 c. 56.

(c) 1991 c. 22.



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

The Order authorises the Avon Valley Railway Heritage Trust to construct, maintain and operate a railway (380 metres in length) in the areas of the Councils of South Gloucestershire and of Bath and North East Somerset consisting of an extension of the railway authorised by the Bitton Light Railway Order 1991 (S.I. 1991/134). The railway will be laid entirely on part of the trackbed of the former Bath to Bristol line.

The Order contains provisions for the maintenance and operation of the railway and authorises the undertaker to transfer the railway and the existing railway (constructed under the powers conferred by the Bitton Light Railway Order 1991).

The deposited plan and section may be inspected at all reasonable hours at Bitton Railway Station, Willsbridge, Bristol.





**2002 No. 366**

**TRANSPORT AND WORKS, ENGLAND**

**Transport, England**

**The Bitton Railway Order 2002**

£2.50

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E0088 2/2002 120088 19585

ISBN 0-11-039368-6



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