
STATUTORY INSTRUMENTS

2008 No. 2512

**The Felixstowe Branch Line and
Ipswich Yard Improvement Order 2008**

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter, erect and construct such offices and other buildings, yards, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (c) junctions and communications (including the provision of steps and ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other such works as the undertaker thinks fit;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (g) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land shown on the works and land plans as being within the limits of land to be acquired or used.

Power to deviate

6. In constructing or maintaining any of the scheduled works, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the works and land plans to the extent of the limits of deviation for that work; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Streets

Power to execute street works

7.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 9 (provisions relating to statutory undertakers, etc.).

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 3 (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

- (4) The condition referred to in paragraph (3) is that—
 - (a) the undertaker is in possession of the land; or
 - (b) there is no right of access to the land from the street concerned; or
 - (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
 - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) Where a street has been stopped up under this article—
 - (a) all rights of way over or along the street so stopped up shall be extinguished; and
 - (b) the undertaker may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.
- (6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

Highways subject to redesignation

9.—(1) Subject to the provisions of this article, the following highways shall, at the relevant time, cease to be highways of the description specified on the definitive map and statement and shall be designated as highways as described and to the extent specified below by reference to the letters and numbers shown on the rights of way plans—

- (a) in the case of restricted byway Number 28 (Parish of Trimley St Mary) and restricted byway Number 3 (Parish of Trimley St Martin), to be designated as a bridleway for its entire length between points TF15 and PF12; and
 - (b) in the case of Footpath Number 29 (Trimley St Martin), to be designated as a bridleway between points PF9 and PF10.
- (2) In each case where a highway has been redesignated, the redesignation shall have effect as if that highway had been stopped up and immediately rededicated as a bridleway.
- (3) In this article—
- (a) all expressions used in this article and in the Wildlife and Countryside Act 1981(1) shall have the same meaning in this article as in that Act; and
 - (b) “the relevant time” means the time at which the new highway to be substituted for restricted byway 28 (Gun Lane) (to be provided pursuant to article 8 (stopping up of streets) and specified in column (4) of Part 1 of Schedule 3) is open for use by the public.

Temporary stopping up of streets

10.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
 - (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without prejudice to the generality of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article as a temporary working site.

(1) 1981 c. 69.

(3) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.

(5) The undertaker shall not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Traffic regulation

11.—(1) Subject to the provisions of this article, and with the consent of the traffic authority in whose area the road is situated, the undertaker may, during and for the purposes of the execution of the authorised works, temporarily restrict the direction of vehicular traffic on Old Felixstowe Road between points T1 and T2 as shown on the rights of way plans.

(2) The consent of the traffic authority under paragraph (1) shall not be unreasonably withheld.

(3) The power in paragraph (1) shall only be exercised in relation to heavy goods vehicles and public service vehicles travelling in the westbound direction.

(4) The undertaker shall consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker shall not exercise the power in paragraph (1) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention as if the proposed restriction was to be authorised pursuant to section 14(1)(a) of the 1984 Act in accordance with the Regulations.

(6) Any restriction of vehicular traffic made by the undertaker under the powers conferred by paragraph (1) shall have effect as if made by the traffic authority in whose area the road is situated as if it were an order under section 14(1)(a) of the 1984 Act and shall last for such period as the notice given under paragraph (5)(b) of this article may specify which shall in any event terminate upon the opening for traffic of the railway.

(7) Any restriction made by the undertaker under this article may also be varied or revoked from time to time by the traffic authority in whose area the road is situated by an order under the 1984 Act provided that no such order may be made to revoke any provision previously made by the undertaker under this article without the undertaker's consent, such consent not to be unreasonably withheld.

(8) In this article—

“the 1984 Act” means the Road Traffic Regulation Act 1984(2) and all expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act;

“heavy goods vehicle” has the meaning given to it in section 115 of the Highways Act 1980(3);

(2) 1984 c. 27.

(3) 1980 c. 66.

“public service vehicle” has the meaning given to it in section 1 of the Public Passenger Vehicles Act 1981(4); and

“the Regulations” means article 3 (procedure for making a temporary order) of the Road Traffic (Temporary Restrictions) Procedure Regulations 1992(5).

Access to works

12. The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 5 (access to works); and
- (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

13.—(1) Any street intended to be a public highway to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of the action arose, what warning notices had been displayed,

but for the purposes of such defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the

(4) 1981 c. 14.

(5) S.I. 1992/1215.

action relates unless it is also proved that the undertaker had given him proper instructions with regard to the maintenance of the street and that he had carried out those instructions.

Construction of bridges

14. Any bridge to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with the plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

- 15.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge carrying a street over or under a railway;
 - (c) the provision of any of the altered level crossings over the streets referred to in article 16(1) (alterations to level crossings as a result of the authorised works);
 - (d) the provision of any of the new level crossings over the footpaths referred to in article 17(1) (provision of new level crossings in substitution for existing level crossings);
 - (e) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (f) the execution in the street of any of the works referred to in article 7(1) (power to execute street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level crossings

Alterations to level crossings as a result of the authorised works

16.—(1) The undertaker may, in connection with the construction of the authorised works, carry the railway on the level across the streets specified in columns (1) and (2) of Part 1 of Schedule 7 (level crossings).

(2) The undertaker may in the exercise of the powers conferred by this article alter the level of any street which is referred to in Part 1 of Schedule 7 (level crossings).

(3) In this article “the railway” means the railway forming part of the authorised works.

Provision of new level crossings in substitution for existing level crossings

17.—(1) The undertaker may, in connection with the construction of the authorised works, carry the railway on the level across the footpaths specified in columns (1) and (2) of Part 2 of Schedule 7 (level crossings).

(2) The undertaker may, in connection with the construction of the authorised works, provide a new level crossing in substitution for an existing level crossing.

(3) The undertaker may in the exercise of the powers conferred by this article alter the level of any footpath which is referred to in Part 2 of Schedule 7 (level crossings).

(4) Subject to paragraph (5), each existing level crossing shall be stopped up and discontinued and any right of way over it shall be extinguished.

(5) Paragraph (4) shall not take effect with respect to an existing level crossing until the new level crossing has been completed and is open for public use in accordance with the reasonable requirements of the highway authority.

(6) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to the provisions of paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

(8) In this article—

“existing level crossing” means any place at which the Felixstowe Branch Line crosses on the level the footpaths specified in columns (1) and (2) of Part 2 of Schedule 7 (level crossings);

“new level crossing” means any new level crossing specified in column (3) of Part 2 of Schedule 7 (level crossings) in relation to an existing level crossing; and

“railway” means the railway forming part of the authorised works.

Stopping up of level crossings

18.—(1) Subject to paragraph (4), the level crossings specified in columns (1) and (2) of Part 3 of Schedule 7 (level crossings) shall be stopped up and discontinued.

(2) Subject to paragraph (4), upon the stopping up and discontinuance of each of the level crossings referred to in paragraph (1), any right of way over it shall be extinguished, to the extent described in column (3) of Part 3 of Schedule 7 (level crossings).

(3) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to the provisions of paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

Supplemental powers

Discharge of water

19.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(6).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(7).
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Commission for the New Towns, the Environment Agency, a harbour authority within the meaning of the Harbours Act 1964(8), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
 - (b) other expressions, except watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers to be necessary or expedient.

- (2) Protective works may be carried out—
- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
 - (b) after the completion of the construction of that part of the authorised works in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.
- (3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.
- (4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—
- (a) enter the building and any land within its curtilage; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).
- (5) Before exercising—
- (a) a right under paragraph (1) to carry out protective works to a building;
 - (b) a right under paragraph (3) to enter a building and land within its curtilage;
 - (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(7) 1991 c. 57.

(8) 1964 c. 40.

(d) a right under paragraph (4)(b) to enter land,

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 51 (no double recovery) nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

21.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

- (3) Any person entering land under this article on behalf of the undertaker—
 - (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
 - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article—
 - (a) in a carriageway or footway without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,but such consent shall not be unreasonably withheld.
- (5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽⁹⁾.

(9) 1979 c. 46.