
WELSH STATUTORY INSTRUMENTS

2010 No. 2136

The Llangollen and Corwen Railway Order 2010

PART 1

PRELIMINARY

Citation and commencement

1.—(1) The title of this Order is the Llangollen and Corwen Railway Order 2010 and it comes into force on 27 August 2010.

(2) The Llangollen and Corwen Light Railway Order 1984⁽¹⁾ and this Order may be cited together as the Llangollen and Corwen Railway Orders 1984 and 2010.

Interpretation

2.—(1) In this Order—

“the 1961 Act” (“*Deddf 1961*”) means the Land Compensation Act 1961⁽²⁾

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990⁽³⁾;

“address” (“*cyfeiriad*”) includes any number or address used for the purposes of electronic transmission;

“authorised works” (“*gweithfeydd awdurdodedig*”) means the scheduled work and any other works authorised by this Order;

“building” (“*adeilad*”) includes any structure or erection or any part of a building, structure or erection;

“electronic transmission” (“*trosglwyddiad electronig*”) means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the existing railway” (“*y rheilffordd bresennol*”) means the railway authorised by the Llangollen and Corwen Light Railway Order 1984 together with all lands and works relating to that railway;

“the extension railway” (“*y rheilffordd estyniadol*”) means the railway authorised to be constructed by this Order together with all lands and works relating to that railway and pending the completion of any part of the extension railway the expression shall include the site of that part;

“the former railway” (“*yr hen reilffordd*”) means the railway or former railway authorised by the Llangollen and Corwen Railway Act 1860⁽⁴⁾ and so much of any other railway or former

(1) S.I. 1984/558.
(2) 1961 c. 33.
(3) 1990 c. 8.
(4) 1860 c. clxxviii.

railway as is situated within the Order limits together with so much of all works relating to such railway or former railway as is so situated;

“the further limits” (“*y terfynau pellach*”) means the limits delineated by the lines shown on the works plans and marked “limits of land to be used” (“*terfynau'r tir sydd i'w ddefnyddio*”);

“highway” (“*priffordd*”) and “highway authority” (“*awdurdod priffyrdd*”) have the same meaning as in the Highways Act 1980⁽⁵⁾;

“the limits of deviation” (“*terfynau'r gwyriad*”) means the limits of deviation for the scheduled work shown on the works plans;

“maintain” (“*cynnal a chadw*”) includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” (“*gwaith cynnal a chadw*”) shall be construed accordingly;

“the Order limits” (“*terfynau'r gwyriad*”) means any limits of deviation and the further limits;

“owner” (“*perchennog*”), in relation to land, has the same meaning as in the Acquisition of Land Act 1981⁽⁶⁾;

“the PLC” (“*y CCC*”) means Llangollen Railway plc, a company registered under the Companies Act 1985 whose registered number is 2716476 having its registered office at the Railway Station, Abbey Road, Llangollen, Denbighshire LL20 8SN;

“the railways” (“*y rheilffyrdd*”) means the existing railway and the extension railway, or either of them;

“the scheduled work” (“*y gwaith rhestredig*”) means the work specified in Schedule 1 (Scheduled work) or any part of it;

“the sections” (“*y trawsluniau*”) means the sections certified by the Welsh Ministers as the sections for the purposes of this Order;

“street” (“*stryd*”) includes part of a street;

“street authority” (“*awdurdod strydoedd*”) has the same meaning as in Part 3 of the New Roads and Street Works Act 1991⁽⁷⁾

“the Trust” (“*yr Ymddiriedolaeth*”) means the Llangollen Railway Trust, a registered charity and company limited by guarantee registered under the Companies Act 1985 whose registered number is 3040336 (originally incorporated as the Llangollen Railway Society Limited under the Industrial and Provident Societies Act 1965⁽⁸⁾) having its registered office at the Railway Station, Abbey Road, Llangollen, Denbighshire; LL20 8SN;

“the undertaker” (“*yr ymgymwrwr*”) means the Trust and following any sale, lease or underlease under article 17 (transfer of railways by undertaker) this expression shall mean or include the transferee within the meaning of that article;

“watercourse” (“*cwrs dŵr*”) includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” (“*planiau'r gweithfeydd*”) means the plans certified by the Welsh Ministers as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths stated in the description of the scheduled work or in any description of powers or lands are approximate and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

(5) 1980 c. 66.

(6) 1981 c. 67.

(7) 1991 c. 22.

(8) 1965 c. 12.

Incorporation of Railways Clauses Consolidation Act 1845

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(9) shall be incorporated in this Order—

- section 68 (accommodation works by company);
- section 73 (accommodation works not to be required after prescribed period);
- section 75 (omission to fasten gates);
- sections 103 and 104 (refusal to quit carriage at destination);
- section 105 (carriage of dangerous goods on railway);
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

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

- “the company” (“*y cwmni*”) means the undertaker;
- “goods” (“*nwyddau*”) includes any thing conveyed on the railway authorised to be constructed by this Order;
- “prescribed” (“*rhagnodedig*”) in relation to any such provision means prescribed by this Order for the purposes of that provision;
- “the railway” (“*y rheilffordd*”) means the extension railway and any other authorised works;
- “the special Act” (“*y Ddeddf neilltuol*”) means this Order; and
- “toll” (“*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.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

4.—(1) The undertaker may construct and maintain the scheduled work.

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

Power to construct and maintain ancillary works

5.—(1) Subject to paragraph (4), 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 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, a watercourse;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled work;

(d) works for the benefit or protection of premises affected by the scheduled work.

(2) Subject to paragraph (4), 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 work.

(3) Subject to paragraph (4), the undertaker may in particular within the land specified in column (1) of Schedule 2 (additional works) carry out and maintain any works specified in column (2) of that Schedule with all necessary works and conveniences in connection with those works.

(4) Paragraphs (1) to (3) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out within the further limits.

Power to deviate

6. In constructing or maintaining the scheduled work, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works 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

Access to works

7.—(1) The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in column (1) of Schedule 3 (access to works) to the highway specified in column (2) of that Schedule; 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.

(2) If a highway authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted it.

Level crossing, etc.

8.—(1) The undertaker may construct the extension railway so as to carry it on the level across footpath FP 61 (“the footpath”) 435 metres south-west of Carrog Station.

(2) The undertaker may in the exercise of the powers conferred by this article alter the level of the footpath.

(3) During and for the purpose of the construction of the authorised works the undertaker following consultation with the street authority for the footpath may for any reasonable time prevent all persons from passing along so much of the footpath as is situated within the limits of deviation.

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

(5) 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 I of the 1961 Act.

Supplemental powers

Discharge of water

9.—(1) The undertaker may use any watercourse 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, or drain.

(2) The undertaker shall not discharge any water into any watercourse, 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.

(3) The undertaker shall not make any opening into any drain except—

(a) in accordance with plans approved by the person to whom the 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.

(4) 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.

(5) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse 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.

(6) 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⁽¹⁰⁾.

(7) If a person who receives an application for consent under paragraph (2) or approval under paragraph (3)(a) fails to notify the undertaker of that person's decision before the end of the period of 28 days beginning with the date on which the application was made, that person shall be deemed to have granted consent or given approval, as the case may be.

(8) In this article—

(a) “drain” (“*traen*”) means a drain which belongs to the Environment Agency, an internal drainage board, a local authority or the Welsh Ministers; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

PART 3

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹¹⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so

⁽¹⁰⁾ 1991 c. 57.

⁽¹¹⁾ 1990 c. 43.

as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 of the Control of Pollution Act 1974⁽¹²⁾ or a consent given under section 61 or 65 of that Act; or
 - (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990), and
 - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to the application to the authorised works of section 122 of the Railways Act 1993⁽¹³⁾ (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

Planning permission and supplementary matters

11.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽¹⁴⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽¹⁵⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽¹⁶⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(12) 1974 c. 40.

(13) 1993 c. 43.

(14) S.I. 1969/17.

(15) S.I. 1975/148.

(16) S.I. 1999/1892.

Power to lop trees overhanging the authorised works

12.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers of paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Power to operate and use railway

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

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993(17).

Power to charge fares

14. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the extension railway or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Application of enactments

15.—(1) In this article “the relevant date” (“y dyddiad perthnasol”) means—

- (a) in relation to so much of the former railway as is owned by or leased to the undertaker at the date of the coming into force of this Order, that date; and
- (b) in relation to any part of the former railway which at that date is not so owned or leased, the date upon which that part is sold or leased to the undertaker.

(2) Except as may be otherwise provided in this Order, as from the relevant date—

- (a) the former railway or any part of it shall continue to be subject to all statutory and other provisions applicable to the former railway at that date (in so far as they are still subsisting and capable of taking effect); and
- (b) the undertaker shall, to the exclusion of BRB (Residuary) Limited—
 - (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the former railway; and
 - (ii) subject to paragraph (3), be subject to all obligations, statutory or otherwise, relating to the former railway (in so far as they are still subsisting and capable of taking effect), to the intent that BRB (Residuary) Limited will be released from all such obligations.

(3) Any enactment by which the construction and operation of the former railway was authorised has effect subject to the provisions of this Order.

(4) In this article “BRB (Residuary) Limited” means the company of that name whose registered number is 4146505 having its registered office at 14 Pentonville Road, London, N1 9HF.

Application of byelaws to extension railway

16.—(1) The byelaws made by the Llangollen Railway Society Limited in relation to the existing railway and confirmed by the Secretary of State on 4th July 1986 shall apply to the extension railway as they apply to the existing railway.

(2) Paragraph (1) shall have effect in relation to the extension railway or any part of it on and from the date on which that railway or part is completed and open to traffic.

Transfer of railways by undertaker

17.—(1) In this article—

“lease” (“*prydles*”) includes an underlease and “lease” (“*prydlesu*”) where used as a verb shall be construed accordingly;

“the transferee” (“*y trosglwyddai*”) means any person to whom the railways, or any part of them, are or is leased or sold in accordance with this article; and

“the transferred undertaking” (“*yr ymgymeraeth a drosglwyddir*”) means so much of the railways as is leased or sold in accordance with this article.

(2) Subject to paragraph (3) the undertaker may—

- (a) lease the railways, or any part of them, to any person; or
- (b) sell the railways, or any part of them, to any person;

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

(3) The undertaker shall not lease or sell the railways, or any part of them, under this article to any person except with the consent of the Welsh Ministers.

(4) Except as may be otherwise provided in this Order,

- (a) 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 those provisions are still subsisting and capable of taking effect); and
- (b) the transferee shall, to the exclusion of the undertaker, (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges, and (ii) be subject to all obligations, statutory or otherwise relating to the transferred undertaking (in so far as those provisions are still subsisting and capable of taking effect) to the intent that the undertaker shall be released from all such obligations.

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

Application of landlord and tenant law

18.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the railways or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Obstruction of construction of authorised works

19. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in setting out the lines of the scheduled work or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Trespass

20.—(1) Any person who—

- (a) trespasses on any part of the railways; or
- (b) trespasses on any land of the undertaker in dangerous proximity to the railways or to any apparatus used for or in connection with the operation of the railways,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the railways was clearly exhibited and maintained at the station on the railways nearest the place where the offence is alleged to have been committed.

For protection of the Environment Agency

21. Schedule 4 shall have effect.

For protection of Dŵr Cymru Cyfyngedig

22. Schedule 5 shall have effect.

Certification of plans, etc.

23. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the sections and the works plans to the Welsh Ministers for certification that they are, respectively, true copies of the sections and works plans 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.

Service of notices

24.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(**18**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

25. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

26. Any difference under any provision of this Order, unless otherwise provided for, 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

25 August 2010

Jane Davidson
Minister for Environment, Sustainability and
Housing, one of the Welsh Ministers.