
WELSH STATUTORY INSTRUMENTS

2010 No. 2136

The Llangollen and Corwen Railway Order 2010

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⁽¹⁾ (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 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⁽²⁾ 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⁽³⁾ (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⁽⁴⁾ (including that paragraph as applied by regulation 3(ii) of the Town

(1) 1990 c. 43.
(2) 1974 c. 40.
(3) 1993 c. 43.
(4) S.I. 1969/17.

and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽⁵⁾, 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⁽⁶⁾ 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).

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⁽⁷⁾.

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

(5) S.I. 1975/148.

(6) S.I. 1999/1892.

(7) 1993 c. 43 As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

- (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(8) 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.