
STATUTORY INSTRUMENTS

2008 No. 2512

The Felixstowe Branch Line and
Ipswich Yard Improvement Order 2008

PART 2

WORKS PROVISIONS

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—

(1) 1981 c. 69.

- (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.
- (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);

“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;

(2) 1984 c. 27.

(3) 1980 c. 66.

(4) 1981 c. 14.

(5) S.I. 1992/1215.

(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 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.