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STATUTORY INSTRUMENTS

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**1999 No. 2129**

**The Welsh Highland Railway Order 1999**

**PART V**

**OPERATION OF RAILWAYS**

**Power to operate and use railways**

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

(2) The railway shall be constructed to a nominal gauge of 600 millimetres.

(3) Work No. 3 shall be so constructed and maintained as to ensure that the uppermost surface of the rails is level with the surrounding surfaces of any street in which they are laid.

(4) Subject to paragraph (6) below and to article 35 below, the undertaker shall, for the purpose of operating Work No. 3, have the exclusive rights—

- (a) to use the rails, foundations and other apparatus used for the operation of the railway; and
- (b) to occupy any part of a street in which that apparatus is situated.

(5) Any person who, without the consent of the undertaker or other reasonable excuse uses the apparatus mentioned in paragraph (4) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Nothing in this article shall restrict the exercise of any public right of way over any part of a street in which apparatus is situated in pursuance of paragraph (4) above, except to the extent that the exercise of the right is constrained by the presence of the apparatus.

**Maintenance of approved works etc.**

**29.**—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992<sup>(1)</sup> (approval of works, plant and equipment) approval has been obtained in relation 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.

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(1) 1992 c. 42.

### **Power to charge fares**

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

### **Removal of obstructions**

**31.—(1)** If any obstruction is caused to trains using the railway by a vehicle waiting, loading, unloading or breaking down on any part of the railway, the person in charge of the vehicle shall forthwith remove it; and if he fails to do so the undertaker may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to trains; or
- (b) any person who was the owner of the vehicle at the time unless he shows that he was not, at that time, concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to trains using the railway by a load falling onto the railway from a vehicle, the person in charge of the vehicle shall forthwith remove the load from the railway; and if he fails to do so, the undertaker may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time when the load fell from it; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(3) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of a vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994(2).

### **Traffic control**

**32.—(1)** The undertaker may, for the purposes of, or in connection with the operation of, Work No. 3, place or maintain traffic signs of a type prescribed by regulations made under section 64(1) (a) of the Act of 1984 or of a character authorised by the Secretary of State on or near any street along which the railway is laid.

(2) The undertaker—

- (a) shall consult the traffic authority as to the placing of signs; and
- (b) unless the traffic authority are unwilling to do so and subject to any directions given under section 65 of the Act of 1984 shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the Act of 1984 to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) above shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the Act of 1984 to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which Work No. 3 is laid shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of that railway.

(5) Trains using Work No. 3 shall be taken to be public service vehicles for the purposes of section 122(2)(c) of the Act of 1984.

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(2) 1994 c. 22.

(6) Expressions used in this article and in the Act of 1984 shall have the same meaning in this article as in that Act.

### **Power to lop trees overhanging railways**

**33.**—(1) The undertaker may fell or lop any tree or shrub near any part of the railway, 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 railway or any apparatus used for the purposes of the railway; or
- (b) from constituting a danger to passengers or other persons using the railway.

(2) Except in a case of emergency, the undertaker shall not exercise the powers in paragraph (1) above without having given not less than 28 days notice in writing to the owner and occupier of the land on which the tree or shrub is growing, unless he cannot be identified or cannot be found.

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

(4) Any dispute as to a person's entitlement to compensation under paragraph (3) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

### **Trespass on railway**

**34.**—(1) Any person who—

- (a) trespasses on the railway, except where the railway is in a highway; or
- (b) trespasses on any land of the undertaker in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway;

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 upon the railway was clearly exhibited and maintained at the station or other stopping place on the railway nearest the place where the offence is alleged to have been committed.

### **Agreement with other railway operators**

**35.**—(1) The undertaker may enter into an agreement with another railway operator, providing for the transfer of the undertaking and the vesting of it in the other operator or providing for the transfer of the other operator's railway and the vesting of it in the undertaker.

(2) Any transfer made pursuant to a provision of the types mentioned in paragraph (1) above shall only be valid if the written consent of the Secretary of State is obtained prior to the making of the transfer.

(3) Where a valid transfer of the types mentioned in paragraph (1) above is made, as from the date on which that transfer takes effect, the transferee shall, to the exclusion of the transferor, be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations whether statutory or otherwise for the time being in force in respect of the railway or such part of it as is transferred.

(4) In giving his consent pursuant to paragraph (2) above, the Secretary of State may impose such terms, conditions or restrictions on or in relation to the transfer as he shall think fit.

(5) In this article, "the undertaking" means the railway and the Caernarfon railway.

### **Level crossings**

**36.**—(1) The undertaker and the highway authority for the highway at a level crossing may enter into an agreement with respect to the construction and maintenance of that level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(2) The undertaker may provide, maintain and operate at or near a level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(3) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the Act of 1984 as having been placed as provided by that Act.

(4) The undertaker may construct the railway so as to carry it on the level across the highways specified in Schedule 2 to this Order.

(5) Without prejudice to the generality of article 9 above, the undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 2 to this Order.

(6) In this article—

“barrier” includes gate;

“level crossing” means a level crossing listed in Schedule 2 to this Order at the point where the railway will cross the highway;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the Act of 1984), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

### **Accommodation and occupation crossings**

**37.**—(1) The undertaker may provide, maintain and operate at or near an accommodation crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(2) The undertaker may construct the railway so as to carry it on the level across the accommodation crossings shown on the deposited plans.

(3) In this article—

“accommodation crossing” means a level crossing shown on the deposited plans as either an accommodation crossing or an occupation crossing where the authorised works will cross such crossings;

“barrier” includes gate;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the Act of 1984), manual, mechanical, automatic, electrical or telephonic equipment or other devices.