
STATUTORY INSTRUMENTS

2002 No. 366

The Bitton Railway Order 2002

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Bitton Railway Order 2002 and shall come into force on 12th February 2002.

(2) The 1991 Order and this Order may be cited together as the Bitton Railway Orders 1991 and 2002.

Interpretation

2.—(1) In this Order—

“the 1845 Act” means the Railway Clauses Consolidation Act(1);

“the 1991 Order” means the Bitton Light Railway Order 1991(2);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992(3);

“authorised works” means the scheduled work and any other works authorised by this Order;

“the Avon bridge” means the existing bridge built to carry the former railway over the river Avon;

“the deposited plan” means the plan described in rule 7(1)(a) of the Applications Rules and certified by the Secretary of State as the deposited plan for the purposes of this Order;

“the deposited section” means the section described in rule 7(2) of the Applications Rules and certified by the Secretary of State as the deposited section for the purposes of this Order;

“existing” means existing at the date of the making of this Order;

“the former railway” means so much of the railway firstly described in and authorised by section 6 of the Midland Railway (Bath and Thornbury Lines) Act 1864(4), together with all lands and works relating thereto, as is situated within the limits of deviation;

“the limits of deviation” means the limits of deviation for the scheduled work shown on the deposited plan;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

(1) 1845 c. 20.
(2) S.I. 1991/134.
(3) S.I. 1992/2902.
(4) 1864 c. clxiv.

“the railway” means the railway comprised in the scheduled work and where the context so requires includes the site of that railway;

“the scheduled work” means the work specified in Schedule 1 to this Order;

“the undertaker” means the Avon Valley Railway Heritage Trust whose registered office is situated at Bitton Railway Station, Willsbridge, Bristol.

(2) All directions, distances, lengths and points stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, length and point and distances between points on a railway shall be taken to be measured along the centre line of the railway.

(3) References in this Order to points identified by letters shall be construed as references to points so marked on the deposited plan.

Incorporation of the Railways Clauses Consolidation Act 1845

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

section 18 (alteration of water and gas pipes etc.);

section 24 (obstructing construction of railway);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(5);

section 87 (company empowered to contract with other companies);

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

sections 115 to 119 (carriages and engines);

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

“the company” means the undertaker;

“goods” includes any thing conveyed on the railway;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means the railway as defined in this Order;

“the special Act” means this Order; and

“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 II

WORKS PROVISIONS

Power to construct works

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

(2) Subject to article 5 below, the scheduled work shall be constructed in the line or situations shown on the deposited plan and in accordance with the levels shown on the deposited section.

(3) The undertaker may, within the limits of deviation, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, 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, non-navigable rivers, streams or watercourses; and
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works.

(4) The undertaker may, within the limits of deviation carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or in connection with or in consequence of, the construction of the scheduled work.

Power to deviate

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

- (a) deviate laterally from the line or situation shown on the deposited plan within the limits of deviation for that work shown on that plan, and
- (b) deviate vertically from the levels shown on the deposited section to any extent not exceeding 2 metres upwards or downwards as may be necessary or convenient.

Diversion of railway path

6. The undertaker may with the consent of Bath and North East Somerset Council stop up the way known as the Bath to Bristol Railway Path between the points marked A, B, C and D on the deposited plan and substitute therefor a new way between the points marked A, E, F and D on the deposited plan.

PART III

MISCELLANEOUS AND GENERAL

Power to operate and use railway

7. The undertaker may operate and use the railway as a system, or part of a system, of transport for the carriage of passengers and goods.

Transfer of rights and obligations

8.—(1) In this article “the relevant date” means the date of the coming into force of this Order or, in relation to any part of the railway which at that date is not owned by or leased to the undertaker, the date upon which the undertaker acquires that part by agreement, or takes a lease of that part.

(2) Except as may be otherwise provided in this Order, as from the relevant date the railway or any part thereof shall continue to be subject to all statutory and other provisions applicable to the former railway at that date (in so far as the same are still subsisting and capable of taking effect) and the undertaker shall to the exclusion of BRB (Residuary) Limited, be entitled to the benefit of and to exercise all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the former railway (in so far as the same are still subsisting and capable of taking effect) to the intent that BRB (Residuary) Limited shall be released from all such obligations.

Maintenance of approved works etc.

9.—(1) Where pursuant to the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(6) approval has been obtained from the Health and Safety Executive with respect 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.

Certification of plan etc.

10. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the deposited plan and the deposited section to the Secretary of State for certification that they are true copies of, respectively, the deposited plan and the deposited section 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.

Transfer of railway

11.—(1) In this article—

“the transferee” means any person to whom the undertaking or any part of it, is leased or sold pursuant to this article;

“the transferred undertaking” means so much of the undertaking as is leased or sold pursuant to this article; and

“the undertaking” means—

- (a) the railway, as defined by article 2 of the 1991 Order; and
- (b) the railway, as defined by article 2(1) above.

(2) The undertaker may, with the consent in writing of the Secretary of State—

- (a) lease the undertaking, or any part of it, to any person; or

(b) sell the undertaking, or any part of it, to any person;
on such terms and conditions as may be agreed between the undertaker and the transferee.

(3) Except as may be otherwise provided in this Order, 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 same are still subsisting and capable of taking effect) and the transferee shall, to the exclusion of the undertaker, be entitled to the benefit of, and to exercise, all rights, powers and privileges, and be subject to all obligations, statutory or otherwise relating to the transferred undertaking (in so far as the same are still subsisting and capable of taking effect) to the intent that the undertaker shall be released from all such obligations.

(4) Paragraph (3) above shall have effect during the term of any lease granted under paragraph (2) (a) above and from the operative date of any sale under paragraph (2)(b) above.

Protective provisions

12. The provisions of Schedule 2 to this Order shall have effect.

Withholding of consent

13. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to any conditions subject to which it is given shall be determined by arbitration as specified in article 14.

Arbitration

14. Any difference under any provision of this Order 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions

Ellis Harvey
Head of the Transport and Works Act Processing
Unit,
Department for Transport, Local Government
and the Regions

22nd January 2002