
STATUTORY INSTRUMENTS

2023 No. 815

The Rother Valley Railway (Bodiam
to Robertsbridge Junction) Order 2023

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023 and comes into force on 2nd August 2023.

Interpretation

2.—(1) In this Order—

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

“the 1961 Act” means the Land Compensation Act 1961(2);

“the 1965 Act” means the Compulsory Purchase Act 1965(3);

“the 1980 Act” means the Highways Act 1980(4);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(5);

“the 1984 Act” means the Road Traffic Regulation Act 1984(6);

“the 1990 Act” means the Town and Country Planning Act 1990(7);

“the 1991 Act” means the New Roads and Street Works Act 1991(8);

“the 2003 Act” means the Communications Act 2003(9);

“address” includes any number or address used for the purposes of electronic transmission;

“authorised works” means the new railway and any other works authorised by this Order, or any part of them;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

(1) 1845 c. 20.
(2) 1961 c. 33.
(3) 1965 c. 56.
(4) 1980 c. 66.
(5) 1981 c. 66.
(6) 1984 c. 27.
(7) 1990 c. 8.
(8) 1991 c. 22.
(9) 2003 c. 21.

“building” includes any structure or erection or any part of a building, structure or erection;
“carriageway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

“the Company” means Rother Valley Railway Limited (Company number 02613553) whose registered office is at Robertsbridge Junction Station, Station Road, Robertsbridge, East Sussex, TN32 5DG;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1)(10) (meaning of electronic communications networks and services) of the 2003 Act;

“the existing railways” means the railways specified in Part 2 of Schedule 1 (the railway) together with all lands and works relating to the existing railways vested in the Company at the date this Order is made and held or used by the Company for the purposes of its railway undertaking;

“footpath” and “footway” have the same meanings as in section 329(1) (further provision as to interpretation) of the 1980 Act;

“highway” and “highway authority” have the same meanings as in section 328 (meaning of “highway”) and section 1 (highways authorities: general provision) of the 1980 Act;

“KESR” means the Kent and East Sussex Railway Company Limited, a charitable company limited by guarantee (Registered charity no. 262481 and private company limited by guarantee without share capital (Company number 01007871) whose registered office is at Tenterden Town Station, Station Road, Tenterden, Kent, TN30 6HE;

“limits of deviation” means the limits of deviation for the Railway shown on the Order plans;

“limits of land to be acquired or used” means the limits of land to be acquired or used shown on the Order plans;

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

“the new railway” means the railway specified in Part 1 of Schedule 1 together with all lands and works relating to that railway;

“Order land” means the land shown on the Order plans which is within the Order limits and described in the book of reference;

“Order limits” means the limits of deviation and the limits of land to be acquired or used as shown on the Order plans;

“Order plans” means the plans certified by the Secretary of State as the Order plans for the purposes of this Order;

“Order sections” means the sections certified by the Secretary of State as the Order sections for the purposes of this Order;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(11);

“the railway” means the new railway and the existing railways;

(10) Section 32(1) was amended by S.I. 2011/1210.

(11) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“road hump” has the same meaning as in section 329(1)(12) (further provision as to interpretation) the 1980 Act;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1) of the 2003 Act;

“street” includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

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

(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 airspace above its surface.

(3) References in this Order to numbered plots are references to plot numbers on the Order plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on an authorised work are taken to be measured along that work.

(5) References in this Order to points identified by letters, with or without numbers, are construed as references to points so lettered on the Order plans.

Incorporation of Railway Clauses Acts

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

section 58(13) (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

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 83 and 85 to 85E(14) and Schedules 1 to 3 (minerals under railways);

section 103(15) (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and

section 145(16) (recovery of penalties).

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

(12) The definition of “road hump” was inserted by section 32 of, and paragraph 1 of Schedule 6 to, the Transport Act 1981 (c. 56).

(13) There is one amendment to section 58 that is not relevant to this Order.

(14) Sections 78 to 83 and 85 to 85E were substituted by section 15 of the Mines (Working Facilities and Support) Act 1923 (c. 20).

(15) Section 103 was amended by the Statute Law Revision Act 1892 (c. 19), Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1892 (c. 48).

(16) Section 145 was amended by the Statute Law Revision Act 1892 and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

“the company” means the Company;

“goods” includes anything conveyed on the railway;

“lease” includes an agreement for a lease;

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

“the railway” means the new railway authorised to be constructed by this Order, the existing railways and any other authorised work;

“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.

Application of the 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

- (a) they are of a description mentioned in any of the paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(17) of the Highways Act 1980 (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the Company under the powers conferred by article 12 (temporary stopping up of streets) and the carrying out of works under article 10 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act(18) referred to in paragraph (2) are—

- section 54(19) (advance notice of certain works), subject to paragraph (4);
- section 55(20) (notice of starting date of works), subject to paragraph (4);
- section 59(21) (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route);

(17) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of the 1991 Act.

(18) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(19) Section 54 was also amended by section 49(1) of the Traffic Management Act 2004.

(20) Section 55 was also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(21) Section 59 was amended by section 42 of the Traffic Management Act 2004.

and all such provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Disapplication of legislative provisions

5.—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016⁽²²⁾ in relation to the carrying out of a relevant flood risk activity;
- (b) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991⁽²³⁾; and
- (c) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of the Land Drainage Act 1991, which require consent or approval for the carrying out of the works.

(2) (In this article, “flood risk activity” means an activity described in paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct new railway

6.—(1) The Company may construct and maintain the new railway.

(2) Subject to article 8 (power to deviate) the new railway may only be constructed in the lines or situations shown on the Order plans and in accordance with the levels shown on the Order sections.

(3) Subject to paragraph (5), the Company 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 new railway, namely—

- (a) electrical equipment and signalling works;
- (b) ramps, means of access, a passing loop, and a halt at Salehurst;
- (c) embankments, viaducts, aprons, abutments, retaining walls, wing walls, bridges, drainage and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) temporary works in the river Rother in connection with the construction of the new railway;
- (f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

⁽²²⁾ S.I. 2016/1154.

⁽²³⁾ 1991 c. 59.

(g) extension and strengthening of the wall to the north of the river Rother at Robertsbridge between points X and Y on the Order plans.

(4) Subject to paragraph (5), the Company may carry out and maintain 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 new railway, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purpose specified in column (3) of that Schedule; or
- (b) land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

(6) The Company may, within the Order limits—

- (a) carry out and maintain landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to maintain existing railways

7. With effect from the date of this Order, the Company may maintain the existing railways in the lines and situations, and within the limits of deviation, shown on the Order plans, and in accordance with the levels shown on the Order sections.

Power to deviate

8. In constructing or maintaining the railway, the Company may—

- (a) deviate laterally from the lines or situations shown on the Order plans to the extent of the limits of deviation for that part of the railway; and
- (b) deviate vertically from the levels shown on the Order sections—
 - (i) to any extent upwards not exceeding 1.5 metres; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Streets

Power to alter layout etc. of streets

9.—(1) Subject to paragraph (2), the Company may, for the purposes of constructing and maintaining any authorised work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the Company may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) temporarily remove any road hump within the street.

(2) The Company must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(4) If within 28 days of receiving an application for consent under paragraph (3) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(5) When making an application for consent under paragraph (3), the Company must notify the street authority of the effect of paragraph (4).

Power to execute street works

10.—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (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 6 (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 street

11.—(1) Subject to the provisions of this article, the Company may, in connection with the carrying out of the authorised works, stop up Footpath S&R 31 between points P1 and P2 on sheet 3 of the Order plans.

(2) The street referred to in paragraph (1) is not to be wholly or partly stopped up under this article unless—

- (a) a new street has been constructed and substituted for it between points P1, P4 and P2 on sheet 3 of the Order plans to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such persons as could have used the street to be stopped up is first provided and subsequently maintained by the Company, to the reasonable satisfaction of the street authority, between points P1, P3, P2 and P5 on sheet 3 of the Order plans until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where Footpath S&R 31 has been stopped up under this article—

- (a) all rights of way over or along it are extinguished; and
- (b) the Company 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 Company.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(5) This article is subject to paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) to this Order.

Temporary stopping up of streets

12.—(1) The Company, 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—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) The Company must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without limitation on the scope of paragraph (1), the Company may temporarily stop up, alter or divert 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 Order plans, in column (3) of that Schedule.

(4) The Company must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (3) 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 must not be unreasonably withheld.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) If within 28 days of receiving an application for consent under paragraph (4)(b) a street authority fails to notify the Company of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(7) When making an application under paragraph (4)(b), the Company must notify the street authority of the effect of paragraph (6).

Access to works

13.—(1) The Company may, for the purposes of, or in consequence of, the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations marked A1 and A2 on sheet 3 of the Order plans; and
- (b) with the approval of the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify the Company of its decision within 28 days of receiving an application for approval under paragraph (1)(b), that highway authority will be deemed to have granted approval.

(3) When making an application for approval under paragraph (1)(b), the Company must notify the highway authority of the effect of paragraph (2).

Agreements with street authorities

14.—(1) A street authority and the Company may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (c) the execution in the street of any of the works referred to in article 10 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope 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.

Level crossings

15.—(1) The Company may construct the new railway so as to carry it on the level across the highways specified in Part 1 of Schedule 5 (level crossings).

(2) The Company may provide, maintain and operate at or near the level crossings referred to in paragraph (1) above such barriers or other protective equipment as the Secretary of State may approve in writing or as may be required through an Order under the Level Crossings Act 1983⁽²⁴⁾.

(3) The Company may in the exercise of the powers conferred by this article alter the level of any highway specified in Schedule 5.

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

(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access will be treated for the purposes of section 64(4)⁽²⁵⁾ (general provisions as to traffic signs) of the 1984 Act as having been placed as provided by that Act.

(6) The following enactments will not apply to any level crossing authorised by this Order—

- (a) the Highway (Railway Crossings) Act 1839⁽²⁶⁾; and
- (b) section 9 (gates at level crossings to be kept closed across the road) of the Railway Regulation Act 1842⁽²⁷⁾.

(7) In this article—

“barrier” includes gate;

“level crossing” means the place at which the railway crosses a highway on the level under the powers conferred by this article; and

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

⁽²⁴⁾ 1983 c.16.

⁽²⁵⁾ Section 64(4) was amended by paragraph 47 of Schedule 8 to the 1991 Act. There is another amendment that is not relevant to this Order.

⁽²⁶⁾ 1839 c. 45.

⁽²⁷⁾ 1842 c. 55.

Supplemental powers

Discharge of water

16.—(1) The Company may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the Company under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991**(28)**.

(3) The Company must not discharge any water into any watercourse, public sewer 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 must not be unreasonably withheld.

(4) The Company must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The Company must 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.

(6) The Company must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer 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.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016**(29)**.

(8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) Where an application for consent or approval is made under paragraph (3) or paragraph (4)(a), the Company must notify that person of the effect of paragraph (8).

(10) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991**(30)** have the same meaning as in that Act.

Power to survey and investigate land

17.—(1) The Company may for the purpose of this Order—

(a) survey or investigate any land shown within the Order limits;

(28) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(29) S.I. 2016/1154.

(30) 1991 c. 57.

- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the Company thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Notice given in accordance with paragraph (2) must include—
- (a) a statement of the recipient's rights under paragraph (13); and
 - (b) a copy of any warrant issued under paragraph (7).
- (4) If the Company proposes to do any of the following, the notice must include details of what is proposed—
- (a) searching, boring or excavating;
 - (b) leaving apparatus on the land;
 - (c) taking samples;
 - (d) an aerial survey;
 - (e) carrying out any other activities that may be required to facilitate compliance with the Conservation of Habitats and Species Regulations 2017(31).
- (5) If the Company obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.
- (6) Any person entering land under this article on behalf of the Company—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (7);
 - (b) may not use force unless a justice of the peace has issued a warrant under paragraph (7) authorising the person to do so;
 - (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;
 - (d) may only enter and survey at a reasonable time; and
 - (e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.
- (7) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—
- (a) that another person has prevented or is likely to prevent the exercise of that power, and
 - (b) that it is reasonable to use force in the exercise of that power.
- (8) The force that may be authorised by a warrant is limited to that which is reasonably necessary.
- (9) A warrant authorising the person to use force must specify the number of occasions on which the Company can rely on the warrant when entering and surveying or valuing land.

(10) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(11) Any evidence in proceedings for a warrant under this article must be given on oath.

(12) No trial holes are to be made under this article—

(a) in a carriageway or footway without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(13) The Company must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(14) If either a highway authority or a street authority which receives an application for consent fails to notify the Company of its decision within 28 days of receiving the application for consent—

(a) under paragraph (12)(a) in the case of a highway authority; or

(b) under paragraph (12)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(15) Where an application for consent is made under paragraph (12)(a) or paragraph (12)(b), the Company must notify that authority of the effect of paragraph (14).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

18.—(1) The Company may acquire compulsorily—

(a) so much of the land shown on the Order plans as lying within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works; and

(b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) (being land shown on the Order plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking as existing from time to time.

(2) This article is subject to paragraph (8) of article 22 (temporary use of land for construction of works) and article 42 (Crown rights).

Application of Part 1 of the 1965 Act

19.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(32) applies; and
 - (b) as if this Order were a compulsory purchase order under that Act.
- (2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) Omit section 4 (which provides a time limit for compulsory purchase of land).
- (4) In section 4A(1)(33) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023.”
- (5) In section 11(1B)(34) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.
- (6) In section 11A(35) (powers of entry: further notices of entry)—
- (a) in subsection (1)(a), after “land” insert “under that provision”;
 - (b) in subsection (2), after “land” insert “under that provision”.
- (7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023”.
- (8) In Schedule 2A(36) (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
 - “(2) But see article 21 (power to acquire airspace only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023, which excludes the acquisition of airspace only from this Schedule”; and
 - (b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (temporary use of land for construction of works) and 23 (temporary use of land for maintenance of works) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023.”.

Application of the 1981 Act

- 20.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(32) 1981 c. 67.

(33) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(34) Section 11(1B) was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

(35) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(36) Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.

(4) Omit sections 5A(37) (time limit for general vesting declaration).

(5) In section 5B(38) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023”.

(6) In section 6(39) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

(7) In section 7(40) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(41) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 21 (power to acquire airspace only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023, which excludes the acquisition of airspace only from this Schedule.”.

(9) References to the 1965 Act in the 1981 Act are construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land) by article 19 (application of Part 1 of the 1965 Act).

Power to acquire airspace only

21.—(1) The Company may acquire compulsorily so much of, or such rights in, the airspace over the land referred to in paragraph (1)(a) or (b) of article 18 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the Company acquires any part of, or rights in, the airspace over land under paragraph (1), the Company is not required to acquire an interest in any other part of the land.

Temporary possession of land

Temporary use of land for construction of works

22.—(1) The Company may, in connection with the carrying out of the authorised works—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and

(ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(42) (powers of entry) of the 1965 Act (other than

(37) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(38) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(39) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(40) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(41) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

(42) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1)

in connection with the acquisition of rights only) and no declaration has been made under section 4(43) (execution of declaration) of the 1981 Act;

- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 or any mitigation works on that land.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Company may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless the Company has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company is not required to—

- (a) restore the existing pond within plot 76;
- (b) replace a building removed under this article; or
- (c) restore the land on which any works have been constructed under paragraph (1)(d).

(5) The Company must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(7) Without affecting article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(44) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i).

(9) Where the Company takes possession of land under this article, the Company is not required to acquire the land or any interest in it.

of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(43) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

(44) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(10) Section 13(45) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise the Company to take temporary possession of any land which it is not authorised to acquire under article 18 (power to acquire land).

Temporary use of land for maintenance of works

23.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the new railway, the Company may—

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the railway or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the Company to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.

(4) The Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Company must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(8) Without affecting article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the Company takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) In this article “the maintenance period” in relation to the new railway means the period of 5 years beginning with the date on which it is opened for use.

(45) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Compensation

Disregard of certain interests and improvements

24.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land;
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Extinction or suspension of private rights of way

25.—(1) Subject to paragraph (5), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1)(46) of the 1965 Act, whichever is the sooner.

(2) Subject to paragraph (5), all private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the Order plans, are required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Subject to paragraph (5), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272(47) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) applies.

(6) Paragraphs (1), (2), (3) and (4) have effect subject to—

- (a) any notice given by the Company before—
 - (i) completion of the acquisition of;

(46) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14, of and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(47) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the 2003 Act.

- (ii) the Company's appropriation of;
- (iii) the Company's entry onto; or
- (iv) the Company's taking temporary possession of,

the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

- (b) any agreement made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) which makes reference to this article between the Company and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

26.—(1) After the end of the period of 5 years beginning on the day on which the Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 19 (application of part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 20 (application of the 1981 Act).

(2) The powers conferred by article 22 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

27.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽⁴⁸⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽⁴⁹⁾ (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to 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 Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction

⁽⁴⁸⁾ 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

⁽⁴⁹⁾ Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, section 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

sites), or a consent given under section 61(50) (prior consent for work on construction sites) of the Control of Pollution Act 1974(51); or

- (b) that the nuisance is a consequence of the operation of the railway and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Power to lop trees overhanging the authorised works

28.—(1) The Company 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 conferred by paragraph (1), the Company must not cause 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, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

Power to operate and use railway

29.—(1) The Company 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) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(52).

Power to transfer undertaking

30.—(1) The Company may—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the railway, including the authorised works (or any part of them), and such related statutory rights as may be agreed between the Company and the transferee; or
(b) grant to another person (“the lessee”) for a period agreed between the Company and the lessee the right to construct, maintain, use or operate the railway, including the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1) references in this Order to the Company include references to KESR or to the transferee or the lessee, as the case may be.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Company.

(50) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(51) 1974 c. 40.

(52) 1993 c. 43.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1), except where the transferee or lessee is KESR and on any transfer or grant to KESR, any bye-laws of KESR are to apply to the railway as they apply to the existing railway undertaking of KESR.

Power to charge fares

31. The Company may demand, take and 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.

Application of landlord and tenant law

32.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the railway or the right to operate the same; and
- (b) any agreement entered into by the Company with any person for the construction, maintenance, use or operation of the railway, or any part of it,

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 is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law is to apply in relation to the rights and obligations of the parties to any lease granted by or under any 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.

Removal of obstructions

33.—(1) If any obstruction is caused to trains using the railway by a vehicle waiting, unloading, or breaking down on any part of the railway, the person in charge of the vehicle must immediately remove it and if that person fails to do so, the Company 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 that time unless that person shows that, at that time, the person was not 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 must immediately remove the load from the railway, and if that person fails to do so, the Company 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 the load fell from it; or

- (b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person 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 is 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 will be presumed, unless the contrary appears, that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994⁽⁵³⁾.

Saving for highway authorities

34. Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the railway is laid.

Statutory undertakers etc.

35. The provisions of Schedule 6 (provisions relating to statutory undertakers etc.) have effect.

Certification of plans etc.

36. The Company must, as soon as practicable after the making of this Order, submit copies of the book of reference, the Order sections and the Order plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, Order sections and Order plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

37.—(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 (references to service by post) of the Interpretation Act 1978⁽⁵⁴⁾ 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

⁽⁵³⁾ 1994 c. 22.

⁽⁵⁴⁾ 1978 c. 30.

(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 is 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 part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication 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 must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Protection of interests

38. Schedule 8 (protective provisions) has effect.

No double recovery

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

Arbitration

40. Any difference under any provision of this Order, unless otherwise provided for, must 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.

Agreement between BRB (Residuary) Limited and Rother Valley Railway Limited

41.—(1) Upon the coming into force of this Order—

(a) the Company is, to the exclusion of the owner, subject to all obligations statutory or otherwise relating to the railway line and the bridges and the airspace beneath them comprised in Railway No. 2 and referred to as plots 1 to 5 on the Order plans or any one of them (insofar as those obligations are still subsisting and capable of taking effect) to the intent that the owner shall be released from all such obligations; and

(b) the agreement made between BRB (Residuary) Limited and Rother Valley Railway Limited and dated 12 September 2007 is to terminate with immediate effect such that its terms may not be enforced.

(2) In this article, “the owner” means the Secretary of State for Transport or the National Highways Historical Railways Estate⁽⁵⁵⁾.

Crown rights

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Company or any other person to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of the land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined) for the time being held otherwise than by or on behalf of the Crown.

(3) Consent under paragraph (1) may be given unconditionally or subject to such terms and conditions as may be considered necessary or appropriate.

Signed by authority of the Secretary of State

Martin Gilmour
Deputy Director, Planning, Transport and
Housing Division
Department for Transport

12th July 2023

⁽⁵⁵⁾ The term “Historical Railways Estate” includes over 3,100 structure and assets that were formally part of the railway network. The management of the Estate passed to National Highways in 2013 on the abolition of the British Rail Board (Residuary) Limited by the Public Bodies (Abolition of BRB (Residuary) Limited) Order 2013 (S.I. 2013/2314).