
STATUTORY INSTRUMENTS

2023 No. 815

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

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;
- (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(1).

(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)(2) (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(3); and

(b) section 9 (gates at level crossings to be kept closed across the road) of the Railway Regulation Act 1842(4).

(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.

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(5).

(1) 1983 c.16.

(2) 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.

(3) 1839 c. 45.

(4) 1842 c. 55.

(5) 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).

(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⁽⁶⁾.

(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⁽⁷⁾ 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;

(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

⁽⁶⁾ S.I. 2016/1154.

⁽⁷⁾ 1991 c. 57.

- (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⁽⁸⁾.
- (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

⁽⁸⁾ S.I. 2017/1012.

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(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).