
STATUTORY INSTRUMENTS

2023 No. 815

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

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⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽²⁾ (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 sites), or a consent given under section 61⁽³⁾ (prior consent for work on construction sites) of the Control of Pollution Act 1974⁽⁴⁾; 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

(1) 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).

(2) 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).

(3) 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).

(4) 1974 c. 40.

(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(5).

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.

(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.

(5) 1993 c. 43.

(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(6).

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

(6) 1994 c. 22.

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(7) 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
- (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⁽⁸⁾.

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.

⁽⁸⁾ 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).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
