
STATUTORY INSTRUMENTS

1996 No. 937

The Elsecar Steam Railway Order 1996

Citation and commencement

1. —This Order shall come into force on 4th April 1996 and may be cited as the Elsecar Steam Railway Order 1996.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

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

“the Council” means Barnsley Metropolitan Borough Council;

“the deposited plans” means the plans described in rule 7(1)(a) and 7(3) of the Applications Rules deposited in respect of the application for this Order with the Secretary of State for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR and at the offices of the Council at the Town Hall, Barnsley, South Yorkshire, S70 2TA, and marked as those plans by the Department of Transport and references to land shown on those plans are references to land so shown in pursuance of those Rules;

“the deposited sections” means the sections described in rule 7(2) of the Applications Rules deposited in respect of the application for this Order with the deposited plans, and marked as those sections by the Department of Transport;

“highway” and “highway authority” have the same meaning as in the Highways Act 1980(1);

“the limits of deviation” means the lines marked “Limits of deviation” shown on the deposited plans;

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

“the railway” means the railway authorised to be constructed and maintained by the Council by article 5 (Power to construct and maintain works) below;

“the Regulations” means the Traffic Signs Regulations and General Directions 1994(2);

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part III of the New Roads and Street Works Act 1991(3).

(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 air-space over its surface.

(3) In this Order, all distances, lengths, measurements, directions and durations stated in any description of works, equipment, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, length, measurement, direction and duration and the distances between points on the railway shall be taken to be measured along the railway.

(1) 1980 c. 66.
(2) S.I.1994/1519.
(3) 1991 c. 22.

Incorporation of Railways Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽⁴⁾ shall be incorporated in this Order:—

- section 46 (crossing of roads—level crossings);
- section 58 (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 105 (carriage of dangerous goods on railway);
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

(2) Section 5 of the Railways Clauses Act 1863⁽⁵⁾ shall be incorporated in this Order.

(3) In the above provisions, as incorporated in this Order—

- “the company” means the Council;
- “goods” includes any thing conveyed on the railway authorised to be constructed by this Order;
- “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 any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works;
- “the special Act” means this Order;
- “toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on the railway.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

Transfer of statutory obligations from Board to Council

4. On the coming into force of this Order all such statutory obligations as are borne by the British Railways Board (hereinafter referred to as “the Board”) immediately before that day with respect to the railway shall be transferred to and vest in the Council and thereafter the Council shall to the exclusion of the Board be subject to all such statutory obligations then in force to the intent that the Board shall be released from them.

Power to construct and maintain works

5.—(1) Subject to the provisions of this Order, the Council may construct and maintain the railway in the line and according to the levels and within the limits of deviation shown on the deposited plans and the deposited sections and with all proper rails, plates, sidings, junctions, bridges, culverts, drains, approaches, roads, yards, buildings and other works and conveniences connected therewith including station premises, workshops and facilities.

(4) 1845 c. 20.

(5) 1863 c. 92.

(2) The railway is a passenger and goods carrying railway in the Metropolitan Borough of Barnsley 2.8 kilometres in length commencing at a point 172 metres south of the Rockingham Station level crossing at Distillery Side and terminating at a point 605 metres east of the Smithy Bridge Lane level crossing forming part of the railway authorised by the South Yorkshire, Doncaster and Goole Railway Act, 1847(6).

(3) Subject to paragraph (5) below, the Council may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the railway, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables,
- (b) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the railway, and
- (c) works for the benefit or protection of premises affected by the railway.

(4) Subject to paragraph (5) below, the Council may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the railway.

(5) Paragraphs (3) and (4) above shall not authorise the carrying out or maintenance of works to alter the course of or otherwise interfere with, navigable rivers or watercourses.

Power to deviate

6. In constructing or maintaining the railway or any part thereof, the Council may—
- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation shown on those plans, and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 5 metres upwards, or
 - (ii) to any extent downwards that may be found necessary or convenient.

Power to execute street works

7.—(1) The Council may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 1 to this Order as is within the limits of deviation for the railway shown on the deposited plans and may—

- (a) place apparatus in the street,
- (b) maintain apparatus in the street or change its position, and
- (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b) above (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

(2) In this article “apparatus” has the same meaning as in Part III of the New Roads and Street Works Act 1991.

Temporary stopping up of streets

8.—(1) The Council, 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 (2) below, prevent all persons from passing along the street.

(2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The Council shall not exercise the powers of this article—

- (a) in relation to any street specified in columns (1) and (2) of Schedule 1 to this Order without first consulting the street authority, and
- (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(4) The provisions of the New Roads and Street Works Act 1991 mentioned in paragraph (5) below and any regulations made, or code of practice issued or approved, under those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(5) The provisions of the New Roads and Street Works Act 1991 referred to in paragraph (4) above are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- 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); and
- all such other provisions as apply for the purposes of the provisions mentioned above.

Access to works

9. The Council may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in the location or locations within the limits of deviation for those works that are shown on the deposited plans.

Construction of bridges and tunnels

10. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under the railway shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Level crossings

11. The Council may in the construction of the railway and within the limits of deviation shown on the deposited plans carry the railway with a single line across and on the level of the roads and the foot crossing described in Schedule 2 to this Order.

As to Distillery Side Crossing

12.—(1) The Council shall provide at Distillery Side Crossing, and shall operate and maintain, the protective equipment which is specified in Part I of Schedule 3 to this Order.

(2) The Council shall cause to be observed the conditions and requirements with regard to the crossing mentioned in paragraph (1) of this article which are specified in Part II of Schedule 3 to this Order.

As to Distillery Side Cottages foot crossing

13. With regard to the foot crossing from Distillery Side Cottages to the area adjacent to the canal basin of the Sheffield and South Yorkshire Navigation, the Council shall provide and maintain at that crossing—

- (a) signs bearing the words “STOP, LOOK AND LISTEN” on each side of the railway facing persons approaching the crossing;
- (b) self-closing gates on each side of the railway at the said crossing and those gates shall open outwards away from the railway and shall not be latched or bolted shut.

As to Tingle Bridge Lane and Smithy Bridge Lane Crossings

14. The Council shall, subject to such requirements as the Secretary of State may from time to time lay down, provide, maintain and operate at or near the level crossings of the roads Tingle Bridge Lane and Smithy Bridge Lane described in Schedule 2 to this Order such barriers, lights, traffic signs and automatic or other devices and appliances as may be required in writing by the Secretary of State.

Power to operate and use railway

15. The Council 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.

Maintenance of approved works, etc.

16.—(1) Where pursuant to the Railways and other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994(7) approval has been obtained from the Secretary of State with respect to any works, plant or equipment (including vehicles) forming part of the railway authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railway so authorised.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the Council shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Certification of plans, etc.

17. The Council shall, as soon as practicable after the making of this Order, submit copies of the deposited plans and the deposited sections to the Secretary of State for certification that they are true copies of, respectively, the deposited plans and the deposited sections, and a document so certified shall be admissible in any proceedings as evidence of its contents.

Power to transfer or lease railway

18.—(1) The Council may, with the consent in writing of the Secretary of State—

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

- (a) transfer to another person (“the transferee”) the right to operate the railway (or any part of it) and such related rights as may be agreed between the Council and the transferee, or
- (b) grant to another person (“the lessee”) for a period agreed between the Council and the lessee the right to operate the railway (or any part of it) and such related statutory rights as may be so agreed.

(2) The terms of any agreement made by virtue of paragraph (1) above shall be subject to the approval of the Secretary of State.

(3) Where an agreement is made by virtue of paragraph (1) above references in this Order to the Council shall, if and to the extent that the agreement so provides, have effect as references to the transferee or the lessee, as the case may be.

Arbitration

19. Any difference under any provision of this Order shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President for the time being of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

28th March 1996

R. A. Allan
An Under Secretary,
Department of Transport