
STATUTORY INSTRUMENTS

2002 No. 366

The Bitton Railway Order 2002

PART III

MISCELLANEOUS AND GENERAL

Power to operate and use railway

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

Transfer of rights and obligations

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

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

Maintenance of approved works etc.

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

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

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

Certification of plan etc.

10. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the deposited plan and the deposited section to the Secretary of State for certification that they are true copies of, respectively, the deposited plan and the deposited section referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Transfer of railway

11.—(1) In this article—

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

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

“the undertaking” means—

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

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

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

on such terms and conditions as may be agreed between the undertaker and the transferee.

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

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

Protective provisions

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

Withholding of consent

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

Arbitration

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