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STATUTORY INSTRUMENTS

1999 No. 2129

TRANSPORT AND WORKS

TRANSPORT

The Welsh Highland Railway Order 1999

| | |
|--------------------------|-----------------------|
| <i>Made</i> | <i>30th June 1999</i> |
| <i>Coming into force</i> | <i>21st July 1999</i> |

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Whereas an application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992[1] made under sections 6, 7 and 10 of the Transport and Works Act 1992[2] ("the Act"), for an Order under sections 1 and 5 of that Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the

application pursuant to section 11 of the Act;

And whereas the Secretary of State, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas the Secretary of State is satisfied that as respects the stopping up of the parts of the footpaths and bridleway mentioned in article 18 of the Order an alternative right of way has been or will be provided;

And whereas notice of the Secretary of State's determination was published in the London Gazette on 29th June 1999;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1, 2, 3, 4, 7, 8, 11, 12, 13, 15, 16 and 17 of Schedule 1 to, the Act and of all other powers enabling him in that behalf, hereby makes the following Order: -

PART I

PRELIMINARY

Citation and commencement

1. - (1) This Order may be cited as the Welsh Highland Railway Order 1999 and shall come into force on 21st July 1999.

(2) The Welsh Highland Railway (Light Railway) Orders 1922[3] and 1923[4], the Welsh Highland Railway (Transfer) Light Railway Order 1995[5] and this Order may be cited together as the Welsh Highland Railway Orders 1922 to 1999.

Interpretation

2. - (1) In this Order -

"the 1922 and 1923 Orders" means the Welsh Highland Railway (Light Railway) Order 1922 and the Welsh Highland Railway (Light Railway Order) 1923;

"the Act of 1832" means the Festiniog Railway Act 1832[6];

"the Act of 1845" means the Railways Clauses Consolidation Act 1845[7];

"the Act of 1965" means the Compulsory Purchase Act 1965[8];

"the Act of 1984" means the Road Traffic Regulation Act 1984[9];

"the Act of 1991" means the New Roads and Street Works Act 1999[10];

"the Applications Rules" means the Transport and Works (Applications and Objections Procedure) Rules 1992[11];

"the authorised works" means the scheduled works and any other works authorised by this Order;

"the book of reference" means the book of reference described in rule 7(5) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as the book of reference for the purposes of this Order;

"the Caernarfon railway" means the railway authorised by the Caernarfon Railway Light Railway Order 1997[12];

"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 and certified by the Secretary of State as the deposited plans for the purposes of this Order;

"the deposited sections" means the sections described in rule 7(2) of the Applications Rules deposited in respect of the application for this Order and certified by the Secretary of State as the deposited sections for the purposes of this Order;

"the Festiniog Order" means the Festiniog Railway (Light Railway) Order 1923[13];

"the Festiniog Railway" is the railway authorised by the Act of 1832;

"the former railway" means the railway authorised by the 1922 and 1923 Orders;

"highway" and "highway authority" have the same meaning as in the Highways Act 1980[14];

"the limits of deviation" means the lines marked "Limit of deviation" shown on the deposited plans;

"the Llyn Bach deviation" is that part of Work No. 3 which is located alongside the western side of Llyn Bach between Snowdon Street and the Britannia Bridge in Porthmadog;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace and cognate expressions shall be construed accordingly;

"owner", in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

"the railway" means Work No. 1, Work No. 1b, Work No. 1d, Work No. 1f, Work No. 2 and Work No. 3 authorised to be constructed and maintained under the terms of this Order and described in Schedule 1 to this Order, or any of them (as the case may require), together with all lands and works relating thereto, and where any part of the said works remain uncompleted, the expression includes the site of that part;

"the scheduled works" means the works specified in Schedule 1 to this Order;

"street" includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part III of the Act of 1991;

"the undertaker" means The Festiniog Railway Company, whose registered office is at Harbour Station, Porthmadog, Gwynedd LL49 9NF.

(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) References in this Order to Work No. 1, Work No. 1b, Work No. 1d, Work No. 1f, Work No. 2 or Work No. 3 are references to those numbered works as specified in Schedule 1 to this Order.

Incorporation and exclusion of Acts

3. - (1) The following provisions of the Act of 1845 shall be incorporated in this Order -

section 24 (obstructing construction of railway);

section 47 (provision in cases where roads are crossed on the level);

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 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 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923[15];

sections 103 and 104 (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway);

section 145 (recovery of penalties); and

section 154 (transient offenders).

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

"the company" means the undertaker;

"goods" includes any thing 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 Works Nos. 1 to 3 authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works;

"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 the railway.

(3) In its application to the railway, section 24 of the Act of 1845 shall have effect as if the maximum fine which may be imposed on summary conviction of an offence under that section were, instead of a fine not exceeding level 2 on the standard scale, a fine not exceeding level 3 on the standard scale.

(4) The provisions of the Regulation of Railways Acts 1840 to 1893, except the provisions of the Regulation of Railways Act 1871[16], shall not apply in relation to Work No. 3.

(5) The provisions of the Highway (Railway Crossings) Act 1839[17] shall not apply in relation to Work No. 3.

(6) Nothing in this article shall be taken as affecting the application to Work No. 3 of sections 32 to 34 of the Offences Against the Person Act 1861[18].

PART II

WORKS PROVISIONS

Power to construct and maintain works

4. - (1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 6 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (6) below, the undertaker 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) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and

(d) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (7) below, the undertaker may carry out and maintain such of the works required for, or in connection with, the control of traffic on Work No. 3 as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of Work No. 3.

(5) Subject to paragraph (6) below, the undertaker 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 scheduled works.

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

(7) Paragraph (4) above -

(a) shall only authorise the carrying out or maintenance of works outside the limits of deviation for Work No. 3 shown on the deposited plans if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule; and

(b) shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

Period for commencement of works

5. - (1) If the construction of the scheduled works shall not have commenced within 5 years of the date on which this Order comes into force, the powers conferred by this Order shall cease to have effect.

(2) For the purposes of paragraph (1) above, construction of the scheduled works shall be regarded as having commenced on the date on which any material operation comprised in those works begins to be carried out.

(3) In this article "material operation" has the meaning conferred by section 56(4) of the Town and Country Planning Act 1990[19].

Power to deviate

6. In constructing or maintaining any of the scheduled works, the undertaker may -

(a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on those plans; and

(b) deviate vertically from the levels shown on the deposited sections -

(i) to any extent not exceeding 1.5 metres upwards; or

(ii) to any extent downwards.

Power to execute street works

7. - (1) The undertaker may, for the purpose of exercising the powers conferred by article 10 below and the other provisions of this Order, enter upon any street along which the railway is laid and may execute there any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) This article is subject to paragraph 3 of Schedule 3 to this Order.

Temporary stopping up of streets

8. - (1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for such period as may be reasonable in the circumstances of the case -

(a) divert the traffic from the street; and

(b) subject to paragraph (2) below, prevent all persons from passing along the street.

(2) The undertaker 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) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 4 to this Order to the extent specified in column (3) to that Schedule.

(4) The undertaker shall not exercise the powers of this article -

(a) in relation to any street specified as mentioned in paragraph (3) above 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.

(5) The provisions of the Act of 1991 mentioned in paragraph (6) 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 undertaker 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 undertaker.

(6) The provisions of the Act of 1991 referred to in paragraph (5) 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 alternative route); and

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

Power to alter layout of streets

9. - (1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 2 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) above but subject to paragraph (3) below, the undertaker may for the purpose of constructing, maintaining or using Work No. 3 alter the layout of the street along which that railway is laid; and, without prejudice to the generality of the foregoing, the undertaker may -

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level of any such kerb, footpath, footway, cycle track or verge;
- (c) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than trains from passing along that railway; and
- (d) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) above shall not be exercised without the consent of the street authority but such consent shall not be unreasonably withheld.

Power to keep apparatus in streets

10. - (1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of Work No. 3, place and maintain in any street along which that railway is laid any work, equipment or apparatus including (without prejudice to the generality of the foregoing) foundations, road islands and any electrical or other apparatus.

(2) In this article -

- (a) "apparatus" has the same meaning as in Part III of the Act of 1991;
- (b) "electric line" has the meaning given by section 64(1) of the Electricity Act 1989[20]; and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Access to works

11. The undertaker may, for the purposes of the scheduled works, form and lay out means of access or improve existing means of access in such location or locations within the limits of deviation for those works shown on the deposited plans as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

12. - (1) A street authority and the undertaker may enter into agreements with respect to -

(a) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or

(b) the execution in the street of any of the works referred to in article 7(1) above.

(2) Such an agreement may, without prejudice to the generality of paragraph (1) above -

(a) provide 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.

Discharge of water

13. - (1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land shown on the deposited plans, make openings into, and connections with, the watercourse, sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The undertaker shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the beds or banks of any watercourse forming part of a main river.

(5) The undertaker shall 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 or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matters whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991[[21](#)].

(7) In this article -

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, a local authority, a National Park Authority or a harbour authority within the meaning of the Harbours Act 1964[[22](#)];

(b) "watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

(c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

PART III

ACQUISITION AND POSSESSION OF LAND

Power to acquire land

14. - (1) Subject to article 16(8) below, the undertaker may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on the deposited plans and described in the book of reference as may be required for the purposes of the authorised works, and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Nothing in this Order shall authorise the undertaker to acquire compulsorily land belonging to the National Trust which is held by the Trust inalienably under section 21 of the National Trust Act 1907[23] or section 8 of the National Trust Act 1939[24].

Application of Part I of Act of 1965

15. - (1) Part I of the Act of 1965, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order -

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981[25] applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the Act of 1965, as so applied, shall have effect as if -

(a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and

(b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted -

(i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or

(ii) in any other case, a reference to notice of 3 months.

(3) Schedule 5 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under article 14 above of a right over land by the creation of a new right, including a public right of way.

Temporary use of land for construction of works

16. - (1) The undertaker may, in connection with the carrying out of the authorised works -

(a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 to this Order 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;

(b) remove any buildings and vegetation from that land; and

(c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Where possible not less than 3 months, and in any case not less than 28 days before entering upon and taking temporary possession of land under paragraph (1) above, the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker shall give up possession of land of which temporary possession has been taken under this article as soon as practicable after the date of completion of the work or works specified in relation to that land in column (4) of Schedule 6 to this Order, but may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with that date.

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

(5) The undertaker shall 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) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961[26].

(7) Without prejudice to article 42 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the Act of 1965 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) above.

(8) In respect of the land specified in columns (1) and (2) of Schedule 6 to this Order, the undertaker shall not exercise the powers of compulsory acquisition under article 14 above but may acquire new rights over any part of that land.

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

(10) In this article "building" includes structure or any other erection.

Rights under or over streets

17. - (1) The undertaker may enter upon and appropriate so much of the subsoil or surface of, or air-space over, any street shown on the deposited plans and described in the book of reference as may be required for the purposes of the authorised works and may use the subsoil, surface and air-space for those purposes or any other purposes connected with or ancillary to its undertaking.

(2) The power under paragraph (1) above may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) The undertaker shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) above where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) Paragraphs (2) and (3) above shall not apply in relation to -

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting on to the street.

Extinction of rights of way

18. - (1) Subject to the provisions of this Order, the undertaker may stop up so much of any footpath or bridleway as lies between -

- (a) the points marked "A", "B" and "C" on the deposited plans and may substitute therefor a public footpath between those points and create a public bridleway between the points marked "C" and "CC" on the deposited plans;
- (b) the points marked "L", "E" and "F" on the deposited plans;
- (c) the points marked "D" and "E" on the deposited plans and may substitute therefor a new public footpath between the points marked "D" and "F" in the position shown on the deposited plans;
- (d) the points marked "G" and "H" on the deposited plans and may substitute therefor a new public bridleway between the points marked "G", "K" and "I" in the position shown on the deposited plans;
- (e) the points marked "jj" and "mm" on the deposited plans and may substitute therefor a new public footpath between the points marked "jj", "nn" and "mm" in the position shown on the deposited plans;
- (f) the points marked "J" and "M" on the deposited plans and may substitute a public footpath between the points marked "J" and "M", following the adjacent route marked "Path (um)" on the deposited plans;
- (g) the points marked "N", "P", "Q", "R" and "S" on the deposited plans and may substitute therefor public footpaths between the points marked "N", "P" and "Q", between the points marked "R" and "S" and the points marked "Q" and "R"; and
- (h) the points marked "T" and "W" on the deposited plans and may substitute therefor a new public footpath on the north-west side of the railway.

(2) The undertaker shall not stop up any footpath or bridleway referred to in paragraphs (a) or (c) to (h) above until the substitute public footpath or bridleway in question has been completed to the reasonable satisfaction of the highway authority and is open for use.

(3) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished -

- (a) as from the acquisition of the land by the undertaker, whether compulsorily or by agreement, or
- (b) on the entry on the land by the undertaker under section 11(1) of the Act of 1965,

whichever is the sooner.

(4) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990[27] (extinguishment of rights of statutory undertakers, etc.) applies.

Time limit for exercise of powers of acquisition

19. The powers conferred by this Order to acquire land or rights over land compulsorily shall cease at the end of the period of 5 years beginning with the day on which this Order comes into force.

PART IV

PROTECTIVE PROVISIONS

Statutory undertakers etc.

20. - (1) The provisions of Schedule 3 to this Order shall have effect, except in relation to -

- (a) Dŵr Cymru Cyf;
- (b) any public electricity supplier;
- (c) Railtrack PLC.

(2) Subject to article 23 below, nothing in this Part nor in Schedule 3 to this Order shall -

- (a) derogate from any provisions of any wayleave agreement in respect of any relevant apparatus; or
- (b) apply to any apparatus within the boundaries of the former Welsh Highland Railway as constructed.

For the protection of British Telecommunications PLC

21. - (1) The following provisions of this article shall apply for the purposes of the protection of BT in relation to the carrying out of the authorised works or the exercise of any other powers conferred by this Order, save in so far as otherwise agreed in writing by BT and the undertaker.

(2) Nothing in this Order or in the Act of 1845 in its application to the railway shall authorise the undertaker to interfere with BT's telecommunications apparatus.

(3) The temporary stopping up or diversion of any street under article 8 above shall not affect any right of BT under paragraph 9 of the Telecommunications Code, contained in Schedule 2 to the Telecommunications Act 1984[28], in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

(4) Where a street is altered under article 9 above and apparatus belonging to BT is under, over or in that street BT shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(5) The undertaker shall give to BT not less than 28 days notice in writing of its intention to temporarily stop up or alter any street under article 8 or article 9 of this Order if any apparatus belonging to BT is under, over or in that street.

(6) Where a notice under paragraph (5) above has been given, BT may and, if reasonably requested so to do by the undertaker in the notice, shall, as soon as reasonably practicable after service of the notice -

- (a) remove the apparatus and place it, or other apparatus provided in substitution for it, in such other position as BT may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position.

(7) If any apparatus belonging to BT is damaged as a consequence of the construction, use or failure of the works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT in making good such damage, and shall indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of any such damage, but

(a) nothing in this article shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and

(b) BT shall give to the undertaker reasonable notice of any claim or demand to which this paragraph applies and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not unreasonably to be withheld or delayed.

(8) The undertaker shall not use electrical power in connection with the works authorised by this Order in such a manner as to cause or be likely to cause any interference with telecommunications apparatus or with telecommunication by means of such apparatus, and the undertaker shall indemnify BT against any claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of such interference, but -

(a) nothing in this article shall impose any liability on the undertaker with respect to any interference to the extent that such interference is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and

(b) BT shall give to the undertaker reasonable notice of any claim or demand as aforesaid and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld or delayed.

(9) Nothing in this order shall affect any right of a telecommunications operator under Schedule 2 to the Telecommunications Act 1984.

(10) In this article -

"BT" means British Telecommunications PLC; and

"operator" and "telecommunications apparatus" have the same meanings as in Schedule 4 to the Telecommunications Act 1984.

For the protection of Dŵr Cymru Cyf

22. - (1). The following provisions of this article shall apply for the purposes of the protection of Dŵr Cymru Cyf in relation to the carrying out of the authorised works or the exercise of any other powers conferred by this order, save in so far as otherwise agreed in writing by Dŵr Cymru Cyf and the undertaker.

(2) Nothing in this Order or in the Act of 1845 in its application to the railway shall authorise the undertaker to raise, sink or otherwise alter the position of, or in any way to interfere with, a relevant pipe without the consent in writing of Dŵr Cymru Cyf, such consent not to be unreasonably withheld.

(3) Before commencing the construction, alteration or reconstruction of any work which will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, a relevant pipe the undertaker shall furnish to Dŵr Cymru Cyf such proper and sufficient plans of the work as may reasonably be required by Dŵr Cymru Cyf and shall not commence the work until such plans thereof have been approved in writing by Dŵr Cymru Cyf (which approval shall not be unreasonably withheld) or settled by arbitration under article 42 below.

(4) Dŵr Cymru Cyf may as a condition of their approval of the said plans require any such modification to be made as may be reasonably required to secure a relevant pipe against interference or risk of damage and to secure a convenient means of access to it and the work shall be executed only in accordance with the plans approved in accordance with this article.

(5) The approval of Dŵr Cymru Cyf of any plans under this article shall not (in the absence of negligence on the part of Dŵr Cymru Cyf) exonerate the undertaker from any liability or affect any claim for compensation under this article.

(6) Where a relevant pipe is situated in or under any land owned or held for the purposes of the railway the undertaker shall at their own expense maintain all culverts over such relevant pipe which are in existence at the coming into force of this Order so as to leave that relevant pipe accessible for the purpose of repairs.

(7) The undertaker shall afford reasonable facilities to Dŵr Cymru Cyf for the execution and doing of all such works and things as may be reasonably necessary to enable them to inspect, repair, maintain, renew, replace, remove, alter or use a relevant pipe and in particular to carry out any protective works or any diversions required by reason of the exercise of the powers of this Order.

(8) The undertaker shall compensate Dŵr Cymru Cyf -

(a) for any damage done or disturbance caused to a relevant pipe;

(b) for any costs incurred by Dŵr Cymru Cyf in diverting a relevant pipe or in carrying out works for the protection of a relevant pipe; and

(c) for any other expenses, loss, damages, penalty or costs (including the liabilities resulting from the burst, leakage or other failure of a relevant pipe) incurred by Dŵr Cymru Cyf;

by reason or in consequence of the execution, maintenance, use or failure of any of the works or otherwise by reason or in consequence of the exercise by the undertaker of the powers of this Order.

(9) Nothing in the foregoing paragraph shall entitle Dŵr Cymru Cyf to any payment in respect of damages attributable to the neglect or default of Dŵr Cymru Cyf, their servants or agents.

(10) Nothing in this Order shall prejudice or affect the rights of Dŵr Cymru Cyf in respect of a relevant pipe (including the right of access to such pipe for the purpose of inspection, maintenance or renewal) or the provisions of any agreement regulating the relations between the undertaker and Dŵr Cymru Cyf with regard to a relevant pipe and whether made before or after this Order comes into force.

(11) The provisions of the Act of 1991 shall be subject to the provisions of this article.

(12) Any difference arising between the undertaker and Dŵr Cymru Cyf under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 42 below.

(13) In this article -

"a relevant pipe" in relation to Dŵr Cymru Cyf has the meaning given by section 158(7) of the Water Industry Act 1991[29]; and

"work" means any of the authorised works.

For the protection of public electricity suppliers

23. - (1) The following provisions of this article shall apply for the purposes of the protection of any public electricity supplier in relation to the carrying out of the authorised works for the exercise of any other powers conferred by this Order, save in so far as otherwise agreed in writing by the public electricity supplier in question and the undertaker.

(2) The provisions of article 20(2) above shall not apply in relation to any apparatus.

(3) The following provisions of this article shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the public electricity supplier concerned are regulated by the provisions of Part

III of the Act of 1991.

(4) The undertaker shall not under or for the purposes of this Order acquire any apparatus or seek to terminate any wayleave or other right of a public electricity supplier otherwise than by agreement with the public electricity supplier concerned.

(5) The undertaker shall afford to any public electricity supplier affected by the authorised works new permanent easements in respect of all apparatus situated in land acquired by it for the purposes of the railway or otherwise vested in it following the completion of the authorised works, such easements to afford to the public electricity supplier concerned the right to enter for the purposes of and to use, maintain, repair, remove and replace existing and future apparatus upon reasonable terms to be agreed between the undertaker and the public electricity supplier concerned including provision -

(a) to ensure that the public electricity supplier concerned is able to fulfill its obligations under the Electricity Act 1989^[30] and any licence granted to it under that Act; and

(b) for annual rental payments to the undertaker and an indemnity for the undertaker in respect of any damage caused by the public electricity supplier.

(6) The undertaker shall use its best endeavours to co-operate with any public electricity supplier in preparing for, and in the construction of, the authorised works -

(a) in the interests of safety;

(b) to minimise the need for any relocation or replacement of or alteration to apparatus or disturbance to apparatus;

(c) to avoid the need for any relocation or replacement of apparatus on or onto, or alteration of apparatus on, land not vested in the undertaker;

and the undertaker shall use its best endeavours to assist the public electricity supplier concerned to obtain any statutory consents or other rights required for the relocation, replacement or alteration of apparatus.

(7) Without prejudice to the generality of paragraph (6) above, the undertaker shall agree with any public electricity supplier (such agreement not to be unreasonably withheld) any necessary relocation, replacement or alteration of the public electricity supplier's apparatus (and the programmes and procedures for such relocation, replacement or alteration) and shall not commence the construction of the authorised works until any such relocation, replacement or alteration has been completed by the public electricity supplier concerned and is operating to its reasonable satisfaction, provided that any such relocation, replacement or alteration is undertaken by the public electricity supplier with all reasonable expedition.

(8) Without prejudice to paragraph (7) above, not less than 56 days before commencing to construct any work authorised by this Order which is near to, or may affect, any apparatus, the undertaker shall submit to the public electricity supplier a plan and description of the work and of any protective measures which the undertaker proposes to take in respect of that apparatus, together with a specification of such measures where appropriate.

(9) Any work of a type mentioned in paragraph (8) above shall be constructed only in accordance with the plan and description submitted in accordance with that paragraph and in accordance with such reasonable requirements as may be specified by the public electricity supplier for the protection of the apparatus or for securing access to it and the public electricity supplier shall be entitled (by its officer) to watch and inspect the construction of the work.

(10) Nothing in paragraphs (8) and (9) above shall preclude the undertaker from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of the work in question, a new plan and description in substitution for the plan and description previously submitted, and where such a new plan and description are

submitted, the provisions of paragraph 9 and this paragraph shall thereafter apply to and in respect of the new plan and description.

(11) Subject to the following provisions of this article, the undertaker shall within 28 days of the submission to it of an invoice by a public electricity supplier repay to that public electricity supplier the reasonable expenses incurred by it (including the cost of obtaining any necessary rights or consents) in, or in connection with -

- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this article;
- (b) the cutting off of any apparatus from any other apparatus in consequence of the exercise by the undertaker of any power under this article; and
- (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power.

(12) Paragraph (11) above does not apply to any expenses incurred as a consequence of the construction of any part of the specified works on the same alignment and level as the former railway, other than expenses incurred in acquiring any consents or rights to install apparatus required to be relocated, replaced or altered on land not vested in the undertaker or any expenses relating to apparatus exclusively serving the railway.

(13) There shall be deducted from any sum payable under sub-paragraph (11) above the value of any apparatus removed under the provisions of this article, that value being calculated after removal.

(14) If in pursuance of the provisions of this article -

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has occurred solely due to the use of the nearest currently available type to the apparatus for which the substitution is being made; or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated;

and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth (as the case may be) is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator pursuant to article 42 below to be necessary, then, if such placing involves costs in the construction of works in excess of the costs which would have been incurred if the apparatus placed had been of the existing type, capacity or dimensions (or the nearest currently available type), or at the existing depth (as the case may be), the amount which apart from this paragraph would be payable to the public electricity supplier by virtue of paragraph (11) above shall be reduced by the amount of that excess.

(15) For the purposes of paragraph (14) above -

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus, except where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(16) Subject to paragraphs (17) and (18) below, if by reason or in consequence of the construction of any of the authorised works, or any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the public electricity supplier, or there is any interruption in any service provided, or in the supply of any goods, by the public electricity supplier, the undertaker shall bear and pay the cost reasonably incurred by the public electricity supplier in making good such damage or restoring the supply and shall -

(a) make reasonable compensation to the public electricity supplier for loss sustained by it; and

(b) indemnify the public electricity supplier against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, it;

by reason or in consequence of any such damage or interruption.

(17) Nothing in paragraph (16) above shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to any act, neglect or default of the public electricity supplier, its officers, servants, contractors or agents.

(18) The public electricity supplier shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the undertaker, which consent shall not be unreasonably withheld.

(19) The undertaker shall, so far as it is reasonably practicable, exercise its powers under this Order so as not to obstruct or render less convenient the access to any apparatus.

(20) Notwithstanding the temporary stopping up or diversion of any highway under article 8 above, the public electricity supplier may do all such works and things in any such highway as may be reasonably necessary to enable it to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.

(21) A public electricity supplier may give notice to the undertaker that, by reason of proposed works required for the construction, maintenance or renewal of any apparatus or of any service provided by it, it is reasonably necessary, for reasons of safety, for the undertaker to cease to use the railway or to reduce the speed of the trains on the railway within such area and for such periods as may be stipulated in the notice.

(22) Where a notice has been served under paragraph (21) above the undertaker shall cease to use the railway or reduce the speed of the trains on the railway (as the case may be) within such area and for such periods as the undertaker shall agree, such agreement not to be unreasonably withheld.

(23) Where a notice has been served under paragraph (21) above, the public electricity suppliers shall carry out the proposed works mentioned in that notice -

(a) in a manner which conforms with any requirements of the Health and Safety Executive in relation to railway safety and operational procedures; and

(b) with all expedition;

and shall take reasonable steps to minimise interruption in the operation of the railway.

(24) The notice referred to in paragraph (21) above shall be given in writing not less than 7 days before the commencement of the first period specified in that notice unless the proposed works in question arise as a matter of urgency, in which case the public electricity supplier shall give such notice as is reasonably practicable in all the circumstances of the case (which notice need not be given in writing).

(25) Any difference arising between the undertaker and a public electricity supplier under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 42 below.

(26) In determining any such dispute the arbitrator may, if he thinks fit, require the undertaker to construct any temporary or other works so as to avoid, so far as reasonably possible, interference with the use of any apparatus.

(27) In this article -

"apparatus" means electric lines or electrical plant (as defined in section 64(1) of the Electricity Act 1989) belonging to or maintained by a public electricity supplier and includes any structure used, or to be used, to lodge apparatus or given access to apparatus;

"construction" includes execution, placing, altering, replacing, laying, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

"in", in a context referring to apparatus in land, includes under and over land;

"plans" includes sections and method statements; and

"public electricity supplier" means a licence holder within the meaning of Part I of the Electricity Act 1989 and, in relation to any apparatus, means the public electricity supplier to whom it belongs or by whom it is maintained.

For the protection of Railtrack PLC

24. - (1) The compulsory powers of acquisition and temporary possession conferred by this Order shall not be applicable to land owned by Railtrack PLC.

(2) Subject to the following provisions of this article, the powers under article 4 above shall not be exercisable where Work No. 2 traverses the land of Railtrack PLC numbered on the deposited plan 5 in Porthmadog and there crosses its Cambrian Coast railway except with the consent of Railtrack PLC.

(3) A consent given for the purposes of paragraph (2) above may be made subject: -

(a) to the requirement that the relevant authorised works or any part of those works affecting the property of Railtrack PLC shall be executed by Railtrack PLC; and

(b) to such reasonable conditions as may be specified by Railtrack PLC;

but shall not be unreasonably withheld.

For protection of owners of land adjoining railway

25. - (1) Without prejudice to section 71 of the Act of 1845, the owner of any land adjoining the railway may with the consent of the undertaker (such consent not to be unreasonably withheld or delayed) at any time after the making of this Order, at his own expense make and thereafter maintain any accommodation works for the benefit of his land.

(2) If the undertaker so desires, any accommodation works constructed under this article shall be constructed under the superintendence of its engineer and according to plans and specifications approved by the undertaker (such approval not to be unreasonably withheld or delayed).

(3) In this article "accommodation works" means any accommodation works for the benefit of the land in question and includes any of the works referred to in section 68 of the Act of 1845.

Saving for highway authorities

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

Public open space

27. - (1) As from the date on which this Order comes into force, the date on which the special category land is vested in the undertaker or the date on which the exchange land is vested in the undertaker, whichever is the latest, the exchange land shall vest in the Gwynedd Council, subject to the like rights, trusts and incidents as attached to the special category land; and the special category land shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article -

"special category land" means the lands delineated on the deposited plans and thereon numbered 11 in the County of Gwynedd, Town of Porthmadog, or so much of those lands as are required by the undertaker for the purposes of this Order; and

"exchange land" means so much of the lands delineated on the deposited plans and thereon numbered 10 in the County of Gwynedd, Town of Porthmadog as the Secretary of State certifies to be not less in area than the special category land and equally advantageous to the public.

PART V

OPERATION OF RAILWAYS

Power to operate and use railways

28. - (1) The undertaker 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) The railway shall be constructed to a nominal gauge of 600 millimetres.

(3) Work No. 3 shall be so constructed and maintained as to ensure that the uppermost surface of the rails is level with the surrounding surfaces of any street in which they are laid.

(4) Subject to paragraph (6) below and to article 35 below, the undertaker shall, for the purpose of operating Work No. 3, have the exclusive rights -

(a) to use the rails, foundations and other apparatus used for the operation of the railway; and

(b) to occupy any part of a street in which that apparatus is situated.

(5) Any person who, without the consent of the undertaker or other reasonable excuse uses the apparatus mentioned in paragraph (4) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Nothing in this article shall restrict the exercise of any public right of way over any part of a street in which apparatus is situated in pursuance of paragraph (4) above, except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Maintenance of approved works etc.

29. - (1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992[31] (approval of works, plant and equipment) approval has been obtained in relation 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.

Power to charge fares

30. The undertaker may demand, take or 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.

Removal of obstructions

31. - (1) If any obstruction is caused to trains using the railway by a vehicle waiting, loading, unloading or breaking down on any part of the railway, the person in charge of the vehicle shall forthwith remove it; and if he fails to do so the undertaker 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 the time unless he shows that he was not, at that time, 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 shall forthwith remove the load from the railway; and if he fails to do so, the undertaker 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 when the load fell from it; or

(b) any person who was the owner of the vehicle at that time unless he shows that he 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 shall be taken to be 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 shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994[[32](#)].

Traffic control

32. - (1) The undertaker may, for the purposes of, or in connection with the operation of, Work No. 3, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the Act of 1984 or of a character authorised by the Secretary of State on or near any street along which the railway is laid.

(2) The undertaker -

(a) shall consult the traffic authority as to the placing of signs; and

(b) unless the traffic authority are unwilling to do so and subject to any directions given under section 65 of the Act of 1984 shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the Act of 1984 to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) above shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the Act of 1984 to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which Work No. 3 is laid shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of that railway.

(5) Trains using Work No. 3 shall be taken to be public service vehicles for the purposes of section 122(2)(c) of the Act of 1984.

(6) Expressions used in this article and in the Act of 1984 shall have the same meaning in this article as in that Act.

Power to lop trees overhanging railways

33. - (1) The undertaker may fell or lop any tree or shrub near any part of the railway, 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 railway or any apparatus used for the purposes of the railway; or
- (b) from constituting a danger to passengers or other persons using the railway.

(2) Except in a case of emergency, the undertaker shall not exercise the powers in paragraph (1) above without having given not less than 28 days notice in writing to the owner and occupier of the land on which the tree or shrub is growing, unless he cannot be identified or cannot be found.

(3) In exercising the powers in paragraph (1) above, the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(4) Any dispute as to a person's entitlement to compensation under paragraph (3) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

Trespass on railway

34. - (1) Any person who -

- (a) trespasses on the railway, except where the railway is in a highway; or
- (b) trespasses on any land of the undertaker in dangerous proximity to the railway or to any electrical or other apparatus used for or in connection with the operation of the railway;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the railway was clearly exhibited and maintained at the station or other stopping place on the railway nearest the place where the offence is alleged to have been committed.

Agreement with other railway operators

35. - (1) The undertaker may enter into an agreement with another railway operator, providing for the transfer of the undertaking and the vesting of it in the other operator or

providing for the transfer of the other operator's railway and the vesting of it in the undertaker.

(2) Any transfer made pursuant to a provision of the types mentioned in paragraph (1) above shall only be valid if the written consent of the Secretary of State is obtained prior to the making of the transfer.

(3) Where a valid transfer of the types mentioned in paragraph (1) above is made, as from the date on which that transfer takes effect, the transferee shall, to the exclusion of the transferor, be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations whether statutory or otherwise for the time being in force in respect of the railway or such part of it as is transferred.

(4) In giving his consent pursuant to paragraph (2) above, the Secretary of State may impose such terms, conditions or restrictions on or in relation to the transfer as he shall think fit.

(5) In this article, "the undertaking" means the railway and the Caernarfon railway.

Level crossings

36. - (1) The undertaker and the highway authority for the highway at a level crossing may enter into an agreement with respect to the construction and maintenance of that level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(2) The undertaker may provide, maintain and operate at or near a level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

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

(4) The undertaker may construct the railway so as to carry it on the level across the highways specified in Schedule 2 to this Order.

(5) Without prejudice to the generality of article 9 above, the undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 2 to this Order.

(6) In this article -

"barrier" includes gate;

"level crossing" means a level crossing listed in Schedule 2 to this Order at the point where the railway will cross the highway;

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

Accommodation and occupation crossings

37. - (1) The undertaker may provide, maintain and operate at or near an accommodation crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(2) The undertaker may construct the railway so as to carry it on the level across the accommodation crossings shown on the deposited plans.

(3) In this article -

"accommodation crossing" means a level crossing shown on the deposited plans as either an accommodation crossing or an occupation crossing where the authorised works will cross such crossings;

"barrier" includes gate;

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

PART VI

MISCELLANEOUS AND GENERAL

Certification of plans etc.

38. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are true copies, respectively, of the book of reference, the deposited sections and the deposited plans 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.

Service of notices

39. - (1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(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 of the Interpretation Act 1978[33], as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he 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, his last known address 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by -

(a) addressing it to him 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Borrowing

40. In article 13(1) of the Blaenau Ffestiniog (Central Station) Light Railway Order 1981[34], for "£750,000" there shall be substituted "£10,000,000".

No double recovery

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

Arbitration

42. Subject to articles 22(12) and 23(25) above, any difference between any persons under any provision of this Order (other than a difference which falls to be determined by the Lands Tribunal) shall be referred to and settled by a single arbitrator to be agreed between the persons in question or, failing agreement, to be appointed on the application of any of those persons (after notice in writing to the others) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

A. S. D. Whybrow

Head of Charging and Local Transport Division, Department of the Environment, Transport and the Regions

30th June 1999

SCHEDULES**SCHEDULE 1**

Article 2

SCHEDULED WORKS

Work No. 1 -

A railway in the county of Gwynedd, commencing at a junction with the Caernarfon Railway approximately 5 kilometres south of Caernarfon at Dinas, in the community of Llandwnda and extending for some 15 kilometres terminating near the former station at Rhyd Ddu, as shown on the deposited plans, constructed substantially on the formation of the former railway.

Work No. 1a -

An access track near Tryfan Junction, indicated on the deposited plans as Work No. 1a.

Work No. 1b -

A public highway diversion and railway realignment at Tryfan Junction, indicated on the deposited plans as Work No. 1b.

Work No. 1c -

An access track near Betws Garmon, indicated on the deposited plans as Work No. 1c.

Work No. 1d -

A replacement bridge and railway realignment at Betws Garmon, indicated on the deposited plans as Work No. 1d.

Work No. 1e -

An access track near Plas y Nant, indicated on the deposited plans as Work No. 1e.

Work No. 1f -

Deviation of the railway at Rhyd Ddu, indicated on the deposited plans as Work No. 1f.

Work No. 2 -

A railway in the county of Gwynedd, commencing at the termination of Work No. 1f and extending for about 19 kilometres and terminating at Porthmadog at, and including, Snowdon Street, constructed substantially on the formation of the former railway.

Work No. 2a -

An access track near Hafod y Llyn, indicated on the deposited plans as Work No. 2a.

Work No. 2b -

An access track near Hafod y Llyn, indicated on the deposited plans as Work No. 2b.

Work No. 3 -

A railway commencing at the termination of Work No. 2 at Porthmadog and extending for about one kilometre and terminating at a junction with the Festiniog Railway at Porthmadog, constructed -

(a) from Snowdon Street and then diverting from the line of the former railway onto the Llyn Bach deviation in a south-westerly direction to the High Street, there turning in a south-easterly direction across the Britannia Bridge; and

(b) on the formation of the railway No. 1 authorised by the Festiniog Order as amended by this Order, and terminating at a junction with the said Festiniog Railway 300 metres from the eastern abutment of the said Britannia Bridge.

SCHEDULE 2

Articles 4 and 9

STREETS SUBJECT TO STREET WORKS

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> |
|-------------|---|--|
| <i>Area</i> | <i>Street subject to street works</i> | <i>Description of alteration</i> |
| Llanwnda | The unclassified road at Tryfan Junction Halt | Re-alignment of roadway and railway and construction of level crossing |
| Beddgelert | The unclassified road at Nantmor adjacent to Pen Dyffryn | Construction of level crossing |
| Llanfrothen | The unclassified road off the B4410 between Prenteg and Garreg, near Tynewydd Morfa | Construction of level crossing |
| Dolbenmaen | The Pont Croesor crossing of the B4410 | Construction of level crossing |

| | | |
|------------|--|--------------------------------|
| | between Prenteg and Garreg | |
| Porthmadog | Snowdon Street | Construction of level crossing |
| | High Street at Britannia Bridge and the approach road to South Snowdon Wharf | Construction of level crossing |

SCHEDULE 3

Articles 7 and 20

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1. Sections 271 to 274 of the Act of 1990 (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land owned, acquired or appropriated by the undertaker under this Order subject to the following provisions of this Schedule; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

2. In the provisions of the Act of 1990, as applied by paragraph 1 above, references to the appropriate Minister are to be construed as references to the Secretary of State.

3. Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under sections 271, 272 or 273 of the Act of 1990, as applied by paragraph 1 above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

4. Paragraph 3 above shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is -

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer;

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

5. The provisions of the Act of 1990 mentioned in paragraph 1 above, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part III of the Act of 1991 applies.

6. In this Schedule -

"the Act of 1990" means the Town and Country Planning Act 1990^[35];

"public telecommunications operator" means -

(a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984[36] applies, to run a public telecommunications system; or

(b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

"public utility undertakers" has the same meaning as in the Highways Act 1980[37].

SCHEDULE 4

Article 8(3)

STREETS TO BE TEMPORARILY STOPPED UP

| (1) | (2) | (3) |
|-------------|--|--|
| <i>Area</i> | <i>Street to be stopped up</i> | <i>Extent of temporary stopping up</i> |
| Llanwnda | The unclassified road at Tryfan Junction Halt | The limits of deviation. |
| Beddgelert | The unclassified road in Nantmor adjacent to Pen Dyffryn | The limits of deviation. |
| Llanfrothen | The unclassified road off the B4410 between Prenteg and Garreg, near Ty-newydd Morfa | The limits of deviation. |
| Dolbenmaen | The Pont Croesor crossing of the B4410 between Prenteg and Garreg | The limits of deviation. |
| Porthmadog | Snowdon Street | The limits of deviation. |
| | High Street at Britannia Bridge and the approach road to South Snowdon Wharf | The limits of deviation. |

SCHEDULE 5

Article 15(3)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2. - (1) Without prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973 shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for

injurious affection under section 7 of the Act of 1965 as substituted by paragraph 4 below -

(a) for the words "land is acquired or taken" there shall be substituted the words "a right over land is purchased"; and

(b) for the words "acquired or taken from him" there shall be substituted the words "over which the right is exercisable".

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the Act of 1965 as substituted by paragraph 5 below -

(a) for the word "part" in paragraphs (a) and (b) there shall be substituted the words "a right over land consisting";

(b) for the word "severance" there shall be substituted the words "right over the whole of the house, building or manufactory or of the house and the park or garden";

(c) for the words "part proposed" there shall be substituted the words "right proposed"; and

(d) for the words "part is" there shall be substituted the words "right is".

Adaptation of the Act of 1965

3. - (1) The Act of 1965 shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to -

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the Act of 1965 shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the Act of 1965 (measure of compensation) there shall be substituted the following section: -

" **7.** In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

5. For section 8 of the Act of 1965 (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following: -

" **8.** - (1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or

manufactory or of a park or garden belonging to a house ("the relevant land") -

(a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal ("the tribunal"); and

(b) before the tribunal has determined that question, the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and -

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or

(ii) where the land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Welsh Highland Railway Order 1999 ("the Order") shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where, in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section, the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice."

6. The following provisions of the Act of 1965 (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say -

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the Act of 1965 (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the Act of 1965 shall be modified correspondingly.

8. Section 20 of the Act of 1965 (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the Act of 1965 (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 6

Article 16

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN OR USE MADE

| (1) | (2) | (3) | (4) |
|--------------|--|---|------------------------|
| <i>Area</i> | <i>Number of land shown on deposited plans</i> | <i>Purpose for which temporary possession may be taken</i> | <i>Authorised work</i> |
| Llanwnda | 4 | Access to railway formation and bridge works | Work No. 1 (part) |
| | 5 | New access track to be constructed on landowner's own land | Work No. 1a |
| Betws Garmon | 4 | Access to railway formation | Work No. 1 (part) |
| | 5 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 6 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 7 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 8 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 9 | Access for works | Work No. 1 (part) |
| | 10 | Existing accommodation over bridge to be rebuilt in altered position | Work No. 1d |
| | 11 | Existing accommodation over bridge to be rebuilt in altered position | Work No. 1d |
| | 13 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 14 | Existing bridge to be rebuilt and access to highway used | Work No. 1 (part) |
| | 15 | Existing bridge to be rebuilt and new access track to be made on landowner's own land | Work No. 1c |

| | | | |
|------------|-----|---|-------------------|
| | 16 | New access track to be made on landowner's own land | Work No. 1c |
| | 17 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 18 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 19 | New access track to be made on landowner's own land | Work No. 1e |
| | 20 | New access track to be made on landowner's own land | Work No. 1e |
| | 22 | Temporary work site | Work No. 1 (part) |
| | 23 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 24 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 25 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 26 | Existing bridge to be rebuilt | Work No. 1 (part) |
| | 29 | Access route and drainage works | Work No. 1 (part) |
| | 30 | Drainage works | Work No. 1 (part) |
| | 31 | For access and bridleway diversion | Work No. 1 (part) |
| | 31A | Access for bridge to be repaired | Work No. 1 (part) |
| | 31B | Access for bridge to be repaired | Work No. 1 (part) |
| | 31C | Access for bridge to be repaired | Work No. 1 (part) |
| | 31D | Access for bridge to be repaired | Work No. 1 (part) |
| | 31E | Access for bridge to be repaired | Work No. 1 (part) |
| | 32 | Public footpath to be diverted | Work No. 1 (part) |
| Beddgelert | 2 | Public bridleway to be diverted | Work No. 2 (part) |
| | 2A | For access | Work No. 2 (part) |
| | 2B | For footpath to be created between car park and station by easement over landowner's own land | Work No. 2 (part) |
| | 15 | Construction of access track | Work No. 2a |
| | 20 | Existing bridge to be rebuilt | Work No. |

| | | | |
|-------------|----|---|----------------------|
| | | | 2 (part) |
| | 21 | New access track to be created on landowner's own land | Work No. 2b |
| | 22 | Existing bridge to be rebuilt | Work No. 2 (part) |
| Llanfrothen | 2 | Existing bridge to be rebuilt | Work No. 2 (part) |
| | 3 | Existing bridge to be rebuilt | Work No. 2 (part) |
| Dolbenmaen | 2 | Level crossing to be rebuilt | Level crossing No. 4 |
| Porthmadog | 3 | Occupation and public bridleway crossing to be rebuilt | Work No. 2 (part) |
| | 5 | Level crossing to be rebuilt | Work No. 2 (part) |
| | 6 | Pottery entrance to be reformed | Work No. 2 (part) |
| | 7 | For traffic signals to be installed | Level crossing No. 5 |
| | 15 | For bridge works | Work No. 3 (part) |
| | 16 | For railway track, road reconstruction, traffic signals to be installed and for widening of the Cob | Level crossing No. 6 |
| | 17 | For railway track, road reconstruction and traffic signals to be installed | Level crossing No. 6 |
| | 18 | Station improvements on own land | Work No. 3 (part) |
| | 19 | For widening of the Cob | Work No. 3 (part) |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises The Festiniog Railway Company to construct works and compulsorily to acquire land for the purpose of rebuilding the Welsh Highland Railway from Dinas to Porthmadog in the County of Gwynedd. It includes level crossings of public highways at six places. Provision is made for the stopping up and diversion of footpaths and a bridleway. It also provides for the vesting in the Gwynedd Council of exchange land for public open space purposes.

Copies of the plans, the sections and the book of reference are available for inspection free of charge during working hours at -

Messrs. Sharpe Pritchard, Elizabeth House, Fulwood Place, London WC1V 6HG; and

Notes:

[1] S.I. 1992/2902.[back](#)

[2] 1992 c.42.[back](#)

[3] S.R. & O. 1922/432.[back](#)

[4] S.R. & O. 1923/275.[back](#)

[5] S.I. 1995/861.[back](#)

[6] 1832 c.48.[back](#)

[7] 1845 c.20.[back](#)

[8] 1965 c.56.[back](#)

[9] 1984 c.27.[back](#)

[10] 1991 c.22.[back](#)

[11] S.I. 1992/2902.[back](#)

[12] S.I. 1997/2534.[back](#)

[13] S.R. & O. 1923/301.[back](#)

[14] 1980 c.66.[back](#)

[15] 1923 c.20.[back](#)

[16] 1871 c.78.[back](#)

[17] 1839 c.45.[back](#)

[18] 1861 c.6.[back](#)

[19] 1990 c.8.[back](#)

[20] 1989 c.29.[back](#)

[21] 1991 c.57.[back](#)

[22] 1964 c.40.[back](#)

[23] 1907 c.cxxxvi.[back](#)

[24] 1939 c.lxxxvi.[back](#)

[25] 1981 c.67.[back](#)

[26] 1961 c.33.[back](#)

[27] 1990 c.8.[back](#)

[28] 1984 c.12.[back](#)

[29] 1991 c.56.[back](#)

[30] 1989 c.29.[back](#)

[31] 1992 c.42.[back](#)

[32] 1994 c.22.[back](#)

[33] 1978 c.30.[back](#)

[34] S.I. 1981/62.[back](#)

[35] 1990 c.8.[back](#)

[36] 1984 c.12.[back](#)

[37] 1980 c.66.[back](#)

ISBN 0 11 085010 6

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